



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, RR

Introduction

This hearing was convened in response to an application by the tenant for compensation / rent reduction of paid rent for *loss of quiet enjoyment* in respect to deficiencies in the rental unit.

Both parties attended the hearing, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form and to cross-examine the other party. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenant and landlord agree the tenant vacated the rental unit May 12, 2015. The landlord provided 19 pages of evidence received by the Branch within the timelines prescribed in the Rules of Procedure, which they also sent to the tenant on May 07, 2015 by registered mail. The landlord provided a tracking number for the registered mail and the tracking information indicating the package is being held unclaimed at the post office. **Section 90** of the Act deems a party to have received registered mail 5 days after it is sent. As a result, I accepted the landlord's evidence. All *relevant* document evidence of the landlord was described to the tenant, to which they were given opportunity to respond. The tenant did not provide any document evidence of their own, despite stating they possess some document evidence. Regardless, the tenant was permitted to provide any evidence through testimony - to which the landlord was provided opportunity to respond.

Issue(s) to be Decided

Are the tenants entitled to compensation?

Background and Evidence

The parties agree the tenancy began July 01, 2013 with rent set at \$650.00 per month, and that the tenancy ended on May 12, 2015 when the tenants moved out. The rental unit was described by the parties as a log house in the interior of the Province.

The tenant seeks one half (1/2) of all rent paid over the 23 month tenancy in compensation for a claimed list of deficiencies of the rental unit they claim caused them a loss of enjoyment of the residential property over the duration of the tenancy.

The tenant claims the roof leaked from the outset, the kitchen ceiling collapsed as a result, the bedroom window opening was covered in plastic sheet from the outset with window pane removed, parts of the electrical wiring was “exposed” – not within walls, outlet plugs in living room did not function, lack of heat throughout unit, initially no flooring in unit, hot water tank leaking from the outset, the front door was structurally compromised and did not close properly from the outset and allowed cold air, and the rental unit lacked sufficient insulation around the perimeter – skirting – causing water pipe freezing. The tenant testified that during the summer months the rental unit was comfortable – that it was a “great summer house”, but that in the winter months it was cold and the roof sometimes leaked.

The *undisputed* testimony is as follows. The parties agree that the rental unit heating system comprised of a wood stove in the living room, although the tenant claims it was on the smaller spectrum than required. The parties agreed it was available to the tenant to utilize the wood stove heating system and that heating was not an issue in the “summer months”. The rental unit flooring at the outset was a mix of some flooring and some finished flooring and that the tenant installed some of the flooring provided by the landlord. The living room has no functioning electrical outlets. The parties agree the tenant received compensation of reduced rent to half - \$325.00 per month for 9 of the 23 months of the tenancy – split between the 2 winters of the tenancy. The landlord testified it was in compensation for issues related to deficiencies of the rental unit which would be most prominent during winter weather: colder temperatures and any rain related issues.

The landlord disputes the rental unit had leaking roof issues throughout the tenancy, but did not dispute that the kitchen ceiling was compromised as a result. The landlord testified they were aware of the leaky roof and awaited appropriate weather to address the problem, but that in the interim reduced the rent in compensation. The tenant did not dispute the landlord's claim the tenant caused the bedroom window pane to

separate from the window opening upon moving into the rental unit; and which the tenant testified the landlord said they would rectify. The landlord did not agree that the

electrical wiring was “exposed”. The landlord testified the hot water tank was repaired during the tenancy, but that the tenant at one point may have caused the hot water tank to become compromised by shutting off the water supply during an absence – with which the tenant did not dispute. The landlord testified that the log house skirting was clad in plywood and that operating the wood stove in winter would have avoided any water pipe issues. The landlord did not dispute the house may have been inadequately insulated. The landlord testified they were not aware of any structural issues with the front door: the tenant never mentioned any such issues.

Analysis

It must be noted that the applicant in this type of claim is responsible to prove their claim on balance of probabilities. On preponderance of all the evidence in this matter I find as follows.

I find that the testimony of both parties was matter of fact and unembellished and therefore equally credible. However, in respect to any claim to which the parties disagreed or are in contrast, the burden of proof lies greater with the applicant to prove their version of events. As a result, in the absence of any supporting evidence by the tenant- which they claim they possess but did not provide - I do not accept the tenant’s version respecting *exposed wiring*, and the structurally *compromised front door*.

However, in respect to all other matters addressed by the parties, I find that **Section 32** of the Act prescribes:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find the tenant has not provided sufficient evidence that the rental unit was inadequately insulated or that the landlord was responsible to rectify replacing the window pane into the window opening. However, pursuant to **Section 32** of the Act, I find that the landlord is responsible to address such deficiencies as a leaking roof, the resulting problems with the kitchen ceiling, the leaky hot water tank and provision of adequate flooring surfaces for the rental unit. I find that in respect to these items the tenant incurred a *loss of quiet enjoyment*, pursuant to **Section 28** of the Act, which states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from *unreasonable* disturbance;

As a result of all the above, I accept the tenant's testimony that the rental unit was comfortable in the summer and showed it's deficiencies in the winter. I find that the tenant is entitled to be compensated equivalent to **5%** for *each summer month* they occupied the rental unit – which I set as April to September for each year of occupancy (\$32.5.00 x 11 months of the tenancy = \$357.50); and, compensation equivalent to **30%** for each *winter month* they occupied the rental unit – which I set as October to March for each year of occupancy (\$195.00 x 12 months of the tenancy = \$2340.00) - for a sum of **\$2697.50**. I find the landlord has already compensated the tenant in the amount of **\$2925.00** (\$325.00 x 9 months). As the landlord's compensation exceeds the tenant's entitlement I make **no monetary award** in this matter; and, effectively, the tenant's application is **dismissed**.

Conclusion

I have found the tenant entitled to compensation, which the landlord **has already satisfied**. The tenant's application is effectively **dismissed**.

This Decision is final and binding on both parties

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: June 08, 2015

Residential Tenancy Branch

