



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and recovery of their filing fee. Both parties participated in the conference call hearing, with the tenants being represented by counsel and the landlords being represented by ML. In this decision where I refer to the landlords in the singular form, it is ML to whom I refer.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The facts which are not in dispute are as follows. The tenancy in question began on March 15, 2013 and the monthly rent included the use of a dishwasher and laundry facilities. There is no dispute that for a period of time the dishwasher and washing machine did not function properly. ML and the tenants exchanged a series of emails in which they discussed whether the tenants were entitled to compensation for loss of use of those facilities and in an email dated May 7, 2014, ML wrote as follows:

Also, following my phone conversation with you, owner will reimburse you half month rent for the trouble your experienced. I am very sorry for what happened to you and your family. [reproduced as written]

The tenancy ended on May 31, 2014 and shortly thereafter, the landlords returned to the tenants the full amount of the security deposit. The tenants requested the \$775.00 in compensation which was promised in the May 7 email to which ML responded on June 19 that because the rental unit was not left in an acceptable condition and because the technician who serviced the appliances believed the problems to be caused by the tenants, the owners would not provide the compensation.

One issue is in dispute. At the hearing, ML claimed that she had told the tenants that the offer of compensation was subject to 2 conditions, which were that the service history had to show that the problems were not the fault of the tenants and that the rental unit be left in an acceptable condition. The tenants' counsel stated that such conditions were not placed upon the offer accepted by the tenants and put the landlord to the strict proof thereof. The landlord claimed that she had provided to the tenants and to the Residential Tenancy Branch copies of an email outlining conditions, but neither the tenants nor the Branch had received this evidence prior to the hearing.

The tenants seek the following:

Compensation for loss of facilities	\$ 775.00
Residential Tenancy Branch filing fee	\$ 50.00
Title search	\$ 52.79
Mileage to do laundry	\$ 132.00
Agent's fee and disbursements	\$ 156.31
Total:	\$1,166.10

Analysis

The tenants' claim is based on a contractual entitlement. I find that the evidence shows that in the May 7, 2014 email, the landlord offered to the tenants compensation in the amount of \$775.00, an offer which was accepted by the tenants. I find that consideration was exchanged (a promise to pay in exchange for the tenants not pursuing a prospective claim for their losses) and I find that the contract was binding on the parties. Although ML claimed that she told the tenants her offer was conditional, there is no evidence before me that on May 7 the tenants were told that the offer was conditional. It would appear that the first mention of any conditions did not arise until ML emailed the tenants on June 19 to advise that the landlords would not compensate them. The landlord cannot arbitrarily impose conditions on an offer after it has been accepted and in the absence of evidence to corroborate ML's claim that the offer was conditional, I find that there were no conditions on the May 7 offer. I find that the landlords are obligated to pay the tenant \$775.00 and I award the tenants that sum.

I dismiss the claim for the cost of a title search and lawyer's fees and disbursements. Under the *Act*, the only litigation related expense I am empowered to award is the cost of the filing fee. Although the tenants' counsel argued that disbursements and the title search are not litigation related expenses, I disagree.

I also dismiss the claim for the cost of mileage. The tenants were well aware of the cost of mileage when the landlord offered them \$775.00 in compensation and chose to

accept that offer rather than insist it be increased to include the cost of mileage. The tenants cannot both rely on the contract and change its terms for their benefit.

As the tenants have been substantially successful in their claim, I find they should recover the \$50.00 filing fee paid to bring their application and I award them \$50.00 for a total entitlement of \$825.00. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order for \$825.00.

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: August 05, 2015

Residential Tenancy Branch

