



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

In the first application, issued May 7, 2015, the tenants seek an order that the landlords conduct emergency repairs and general repairs, an order that they provide services or facilities, an order restricting landlord access and a monetary award for the cost of emergency repairs, for compensation for damage or loss under the *Residential Tenancy Act* (the “Act”) or the tenancy agreement and for return of their deposit money.

By the time of hearing the tenants had vacated the premises and so their only remaining issue is their claim for monetary compensation and return of the deposit money.

In the second application, issued May 14, 2015, the landlords seek to recover May and June rents or loss of rental income. Their application also seeks compensation for damage or loss under the *Act* or tenancy agreement, however the Monetary Order Worksheet submitted by them claims only the rent loss.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing of this dispute show on a balance of probabilities that either side is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a three bedroom home on a lot adjacent to an estuary leading to the ocean.

The tenancy started October 1, 2013 on a month to month basis at a rent of \$1640.00. The tenants paid an \$800.00 security deposit.

The tenants allege that they gave written notice in April 2015 to end the tenancy May 31. The tenants vacated the premises on or about May 8, 2015. It appears that the keys were returned to the landlords on May 21.

Since then the landlords have not sought to re-rent the premises. They have the property up for sale and have found a house sitter to occupy the home until it is sold.

The tenants did not pay the May rent. In their view they were entitled to withhold it until the landlords attended to the topping of two large trees on the boundary at the front of the yard that the tenants considered to be dangerous.

The tenants' evidence discloses three discrete complaints; first, that a tree limb had fallen from one of the large trees and damaged Mr. B.'s truck, costing him an insurance deductible of \$200.00, as well, the danger posed by the trees reduced the tenants' use and enjoyment of the property; second, that there was mould in the home and certain of the tenants' goods, of a value in excess of \$700.00, were ruined by the mould; third, the landlords repeatedly came onto the property, principally to conduct yard work and thereby further impinged on the tenants' enjoyment of the premises.

In addition to the three chief complaints, the tenants indicated they should also be compensated for repair to a small deck and for dealing with bugs in the home.

The tenant Ms. S.G. testifies that on December 10, 2014 a tree top fell over and landed on the tenants' truck, causing over \$4000.00 of damage and costing the tenants their \$200.00 insurance deductible. Since then she has tried to get the landlords to make the two front trees safe but they have ignored her protests and done nothing. As a result her driveway and front yard have had to serve as a parking lot for vehicles, a boat and an RV. She says she withheld payment of May rent until the landlords made the trees safe.

She testifies that when she was preparing to move out in early May 2015, she discovered that a number of clothes in a closet had signs of mould on them. She is of the view that the mould was caused by the high humidity in the home, resulting from clogged fans and a failed dehumidifier. She says that earlier on in the tenancy the dehumidifier (apparently an "HVC" air cleaning system installed in the home) was making noise and the landlords had told her to unplug it or turn it off.

The tenant Ms. S.G. testifies that during this tenancy the landlords, principally Ms. P.G., would frequently attend the premises without notice and do yard work. Not infrequently

the tenants would later receive an email directing them to do something like “close the gate” or “trim the rose bushes.”

She says that during the tenancy the home suffered a carpenter ant problem and that she had to buy and use \$40.00 worth of bug spray to eradicate them.

She says that Mr. J.B. had to repair a joist under a wooden deck covering the septic tank.

She says that the landlord Ms. P.G. removed a sage tree and pot that belonged to the tenants.

The landlord Ms. P.G. gave the majority of testimony for the landlords.

In regard to the tree issue she says that the falling branch occurred during a major windstorm, an “extreme weather event.” She says the trees are safe and healthy and that the area beneath the trees is not a parking lot. She says that the tenants should not have parked a vehicle there during the storm in December.

In regard to the mould allegation made by the tenants Ms. P.G. says that the home is not normally a humid home and that any humidity issues were caused by excessive showering. The landlord replaced the bathroom fan earlier on and it was working fine but for the fact that the tenants would not keep it free of dust. She says that the HVC system was there to provide fresh, clean air and was not to dehumidify the air. She says that it was the tenants who disconnected the system. It has been plugged back in since and is working perfectly fine. She says that any problem the tenants might have had was as a result of improper housekeeping; piling possessions in a corner of a closet with an exterior wall and failing to provide any air circulation to that area.

In regard to her frequent attendances at the property she says that she never entered the home without either permission or proper notice. She says she was informed by the Residential Tenancy Branch that she could come onto the premises to perform gardening or landscaping tasks without notice.

The landlord Ms. P.G. says that the tenant Mr. J.B. repaired the septic cover for free.

In regard to the landlords’ claim for rent, she confirms that May rent was not paid. She says that the landlords should receive June rent as well because of the tenants’ neglect of the premises.

She says the tenants moved not because of landlord action or inaction but because they were mad about an imminent rent increase and had purchased a home in a nearby town with a possession date of May 1, 2015.

She says that she was first informed of the mould issue on May 7, when the tenants were moving out. She says she offered to come over the next morning but the tenants declined the offer and so the landlords gave a notice to inspect the rental unit and attended with a mould renovation expert.

In response, the tenants acknowledge that they had purchased a new home but indicated they had to move early because of the mould.

Each side provided written evidence from people professing knowledge in the matters of dangerous trees and mould in houses.

A significant number of testimonials regarding the character of the parties have been submitted as evidence. As explained at hearing, such evidence is of little if any value in determining the facts of this matter. Generally speaking, character evidence is not admissible in a civil case unless character is in issue. Case and text authority holds that character is in issue in proceedings relating to defamation, breach of promise of marriage, seduction and actions in which damages for adultery are claimed and in proceedings concerning the care and custody of a child.

Analysis

Much evidence was given about aspects of this tenancy not particularly relevant to the issues raised by the applications for dispute resolution. I have not recited that evidence. I have considered all the relevant evidence presented during this hearing, though I may not refer to it all in this decision.

The Tree Issue

The competing evidence on the question of whether the trees in the front yard are dangerous does not show on a balance of probabilities that they are. I am influenced by the determination of the local government authority that the case for the dangerous trees was closed. I am also influenced by the fact, shown by the landlords' photos, that the tenants continued to park vehicles under the trees after the damage was caused.

The fact is that the tree limb that caused damage to the tenants' truck was a limb blown down in a heavy windstorm. There is no evidence upon which to find that the landlords

knew or should have known of any danger and taken appropriate steps. It was an unfortunate accident. I dismiss this item of the claim.

The Mould Issue

I have reviewed the tenant's restoration service report but I consider the landlords' evidence; the statement of the previous owner who dropped by during this tenancy, the statement of the worker hired to replace the fan and opinion of the restoration expert amply rebut any allegation that the home itself was prone to high humidity.

I am left with the conclusion that any mould problem was the result of the tenants' failure to provide adequate circulation to articles piled against an exterior wall in a closed closet. I dismiss this item of the tenant's claim.

Repair to the Septic Cover

This repair occurred quite awhile before the end of the tenancy. By the correspondence it appears clear that the tenants conducted the relatively simple repair without thought of being compensated. They cannot fairly change their minds about that simply because they have fallen into a dispute with the landlords about other things. I dismiss this item of the claim.

Landlord Invasion of Privacy

The landlords were under the impression that as long as they did not intend to enter the house, they could attend and work on the grounds of the property without prior notice to the tenants.

This is not my understanding of the law. The tenancy agreement in this case was for a single home on a municipal lot. Unless the tenancy agreement says otherwise, for example: where a landlord reserves to him or herself a building on the property or use of a portion of the grounds, it is implicit that a tenant's right to exclusive possession extends not just to the house but to the grounds as well.

As Residential Tenancy Policy Guideline 8 "Locks and Access" points out, at common law a tenant has a right to quiet enjoyment and peaceful possession of the premises. In the present circumstances, "the premises" include the grounds.

The Guideline goes on to say:

The Residential Tenancy Act does not require that notice be given for entry onto **residential property**, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.

Entry onto the premises for the purpose of gardening is not a reasonable activity in the nature of entry for the purpose of communicating with a tenant or collecting something from a tenant or delivering something to tenant. It requires consent or, absent consent, reasonable notice.

The landlords' were wrong to assume they were entitled to come onto the property to work in the yard without the tenants' consent or notice.

However, I find that for the most part the landlords' entry onto the grounds was with the tenants' implicit consent and when the first complaint or concern was raised and when the parties finally took steps to determine their rights (resulting in the landlords' continued entry without consent or notice) the infractions that followed were trivial in nature.

It is not the function of this dispute resolution system to punish a party for wrongful conduct but to award damages for actual loss suffered. The landlords did not cause any particular inconvenience to the tenants by their occasional attendance to work in the yard and their conduct does justify an award of damages. I therefore dismiss this item of the claim.

Carpenter Ants

It is not disputed that the tenants purchased a chemical to rid the home of an ant problem. It has not been shown how the problem arose; whether it was a failure in the building, for which a landlord would be responsible or whether it was as a result of tenant activity. In the absence of such evidence, the tenants have not shown that the landlords should bear the cost of the chemicals. I dismiss this item of the claim.

The Sage Tree

I find that during a yard work visit, the landlord P.G. accidentally removed a pot and plant belonging to the tenants. She is responsible to the tenants for its value. There is no clear evidence of its present value. In all the circumstances I award the tenants \$25.00 for loss of the pot and plant.

The Landlords' Claim for Rent

It is clear that the tenancy agreement continued into the month of May. The tenants were responsible under that agreement to pay the May rent of \$1640.00 when it came due on May 1.

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants were not entitled to withhold rent because they thought the landlords should attend to dangerous trees.

That money is owed and I award the landlords \$1640.00.

I dismiss the landlords' claim for June rent. It is apparent that the tenancy had ended by then and that the landlords did not consider re-renting the premises. They secured a housekeeper.

The landlords intimated that they should recover the June rent because the tenants neglected the premises. The condition of the premises at move-out is not issue properly raised by the landlord's application. If the landlords consider that the tenants did not meet the standard imposed by s.37(2) of the *Act* by leaving the rental unit "reasonably clean, and undamaged except for reasonable wear and tear," the landlords are free to re-apply in that regard.

Conclusion

The tenants are entitled to a monetary award of \$25.00. As their claim has been largely unsuccessful, I decline to allow recovery of their filing fee.

The landlords are entitled to a monetary award of \$1640.00. I award them recovery of the \$50.00 filing fee for their application.

I authorize the landlords to retain the \$800.00 security deposit in reduction of the amount awarded less the tenants' award. There will be a monetary order against the tenants for the remainder of \$865.00.

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 14, 2015

Residential Tenancy Branch

