



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPE, MNDC, CNE, CNC, MNR, MNDC, FF

Introduction

This hearing dealt with applications filed by both parties. The landlord filed an application seeking a monetary order and an order of possession and the tenants filed an application seeking a monetary order and an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenants had vacated the rental unit. As the tenancy has ended, I consider the claims for an order of possession and an order setting aside the notice to end the tenancy to have been withdrawn. The hearing dealt exclusively with the respective monetary claims.

5 days before the hearing, the landlord filed a new monetary order worksheet purporting to amend her application to include a further monetary claim of \$19,466.07. 1 day before the hearing, the tenants filed a new monetary order worksheet purporting to amend their application to include a further monetary claim of \$652,000.00. At the hearing, I advised the parties that Rule 2.11 of the Residential Tenancy Rules of Procedure required them to amend their applications and serve the other party no later than 14 days before the hearing and because neither party had complied with the Rules, I would not permit the amendments. The parties are free to bring further claims although the tenants are reminded that the monetary jurisdiction of this tribunal is \$25,000.00 so if they intend to pursue \$652,000.00, they should proceed through the Supreme Court.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in October 2013 and ended on or about September 30, 2015. They further agreed that rent was set at \$800.00 per month and that the tenancy agreement provides that the tenants acted as caretakers of the property until August 2015. They further agreed that the rental unit was on the main floor of a residence in which the lower floor contains a separate self-contained suite. The lower and upper suites share the garage and laundry room as common areas.

The tenants seek to recover the cost of a roof repair undertaken in March 2015. The parties agreed that the roof required repair as a result of a windstorm and that the tenants paid \$240.00 for that repair. The tenants testified that they paid for the repair as they were caretakers at the time, but when the landlord fired them as caretakers in August, they felt they should be reimbursed for the cost of the repair. The landlord argued that the following tenancy agreement provision precluded the tenants' claim:

Tenants observe that rent has been reduced from 1200.00 per month to 800.00 per month to account for dual role of tenant/caretaker of property. Tenants agree to maintain property and make reasonable repairs to property in lieu of 400.00 rent decrease. Tenants also oversee and caretake suite and tenant(s) renting the basement suite.

The landlord testified that the tenants received approximately \$9,600.00 in reduced rent over the course of the time they acted as caretakers and spent only a small fraction of that amount on the repairs which had been contemplated by the above provision, so they had been more than adequately compensated for the repair.

The tenants seek to recover \$25.00 per month for the hydro and gas bills throughout the tenancy. The parties agreed that the tenants paid the utilities for the entire residence including the lower suite and that they are obligated to do so under the terms of the tenancy agreement. The tenants testified that the lower suite was empty for most of the tenancy, although the tenants' uncle rented the suite for 6 months and shared utility costs during the time he resided there. The suite remained empty for the rest of the tenancy except for the month of September. The landlord testified that the utilities were always shared on a "per person" basis and that the upper unit had control of the thermostat.

The landlord seeks to recover \$750.00 as the value of storage costs for November 2014 – April 2015 as the tenants were using the lower suite for storage of their belongings. She further seeks to recover \$2,250.00 in rent for the lower suite for the months of April – June 2015, arguing that the tenants actually occupied the lower suite and used it for accommodation in those months. The tenants acknowledged that they used the lower

suite for storage and claimed that the landlord gave them verbal permission to do so. The landlord denied having given such permission. The tenants testified that they did not use the lower suite for accommodation on a regular basis, but put a bed in the suite and used it to house people on occasion because there was no room in the rental unit. The tenants argued that because they were appointed caretakers of the entire building, they should have free and unlimited access to the lower suite.

Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

The tenants seek to recover the cost of the roof repair. I find that the tenants had a valid agreement in place with the landlord under which they agreed to pay for “reasonable repairs” throughout the tenancy. Had the repairs required throughout the tenancy amounted to the amount by which their rent was reduced, the tenants might have been successful in this claim, but I find that the cumulative rent reduction has more than compensated the tenants for the roof repair and I further find that the landlord has not breached the Act or tenancy agreement, which is the first element of the test above which must be proven. I therefore dismiss the claim.

The tenants have the obligation under the terms of the tenancy agreement to pay for the utilities for the entire residence. Ordinarily, I would consider that perhaps such a term was unconscionable as the tenants were paying for heat and hydro for an area in which they did not reside. However, the tenants’ uncle shared the cost with them for 6 months and in many of the other months, the tenants were using the basement as storage or as a spare bedroom. As the unit was empty for the remaining months, I find that so little gas would have been used to heat the lower unit and as the tenants did not even submit copies of their utility bills except for the September 2015 bill, I am unable to find that a compensable loss has been suffered or that the tenants have proven the value of that loss as is required by the test outlined above. Further, the tenants filed their application in August 2015 and therefore I can only consider evidence and testimony regarding events occurring prior to the date they made their claim as their claim was for past rather than prospective losses. For these reasons, I dismiss the claim.

Turning to the landlord's claim, I reject the tenants' argument that as caretakers, they were permitted to use the lower suite for their own purposes. This is akin to arguing that if they were the managers of a multi-unit apartment building, they could occupy each and every apartment in the building. Just because the lower suite was not occupied did not give the tenants the right to use it for storage or as an extra bedroom. Their tenancy agreement specifies that they were renting the main floor of the home and that is therefore the only area they had the right to use. I do not accept that the landlord gave permission for them to use the area for storage as she denied having done so and the tenants provided no evidence to corroborate their claim.

Although the tenants clearly breached their tenancy agreement by occupying a space to which they were not entitled, in order to succeed in her claim, the landlord must prove that she suffered a loss as a result. The landlord did not attempt to rent the lower suite during this time and apparently did not attempt to occupy it herself and therefore I find that she has failed to prove that she suffered any monetary loss. I dismiss the claim.

Conclusion

The claims of both parties are dismissed in their entirety.

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: October 21, 2015

Residential Tenancy Branch

