



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FF, MNDC, MNR, MNSD, RR

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to recover the cost of emergency repairs?
- b. An order for a monetary order in the sum of \$7355
- c. An order to make emergency repairs for health or safety reasons.
- d. A repair order
- e. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided
- f. An order to recover the security deposit.
- g. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the landlords reside. I find that the Amended Application for Dispute Resolution was personally served personally served at the end of September.

Preliminary Issue:

A major issue in this case is whether the tenant gave the landlord sufficient notice of the problem with the septic system. The tenant testified she gave the landlord the following letters:

- Letter dated February 20, 2015 asking to have the septic system pumped.
- Letter dated April 21, 2015 thanking the landlord for pumping the septic system and advising a strong odor is still coming from the area

- Letter dated July 15, 2015 reminding the landlord that the septic system seems to be leaking.

The landlord testified he has never seen these letters. He denied receiving these letters at the time they were allegedly written. He further denies the tenants included them with their materials.

I summarized the letters to the landlord and he was aware of the contents. The landlord did not request and adjournment. In the circumstances I determine an adjournment would not assist either party and I continue with the hearing.

The tenants vacated the rental unit on September 17, 2015. As a result I dismissed the tenant's application for repairs as that issue is moot. The Amended Application for Dispute Resolution contains an application to recover the security deposit. However, the tenants have not provided the landlord with their forwarding address in writing. The obligation of the tenants to provide the landlord with their forwarding address in writing is a pre-requisite before an arbitrator can consider the tenants' claim for the security deposit. As a result I dismissed the tenants' claim to recover the security deposit with liberty to re-apply.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order for the abatement of past or future rent and if so how much?
- b. Whether the tenants are entitled to a monetary order and if so how much?
- c. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on July 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$1600 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$800 at the start of the tenancy.

The tenants' adult daughter and her two children lived with the tenants in the rental unit. The daughter's boyfriend also spent some time there.

The tenants seek a monetary order in the sum of \$7355 based on the following:

- The tenants testified the septic system for the rental property is defective causing a biohazard.

- She testified she advised the landlord of the problem in letters dated February 20, 2015, April 21, 2015 and July 15, 2015. The landlord denies being given those letters. The tenant testified the landlord failed to make repairs to the septic system.
- The tenant testified the landlord failed to fix the washing machine for 3 months and the dishwasher for December and January.
- The landlord had the septic system pumped in early March.
- The bad odour continued. The tenants testified they advised the landlord of the problem in April. The tenants' notes indicate that in June the tenants began to notice the smells getting stronger. They also began to find seepage in the floor of the basement and a small amount of beetles.
- The tenant testified the problem with the septic system caused them to become ill including her daughter and her children who have been diagnosed with e-coli. Fraser Health has investigated. The determined there is no e-coli in the water. The tenant suggests the e-coli might be coming from the blueberries. .
- In June 2015 a boarder who lived in the basement was forced to move out because of the problem of sewage seeping into the basement.. She was paying \$400 a month for room and board. .
- The tenant referred to a number of photographs which show the problems in the basement including mould etc.
- The relationship between the parties deteriorated. On July 27, 2015 the landlord served the tenant with a 10 day Notice to End Tenancy.
- The tenant testified that on July 28, 2015 the employee from the Septic System company came to pump out the system. He provided the tenants with a letter stating this was not an inspection but an observation, there was a strong smell of methane gas, found wet spots of leaking grey water indicating that service system was not functioning with today's standards and I would recommend that the system(illegible) be replaced? The landlord disputes this letter. He testified he talked to the Septic System Company and they deny writing this.
- The tenant testified that she was forced to give her daughter's kids to an aunt for 30 days because of the biohazard concerns and the worry that the Ministry might take the children.
- She testified that on July 28, 2015 they rented an hotel room so they could properly bathe because of the bio hazard problems.
- The dispute between the parties continued. The landlord subsequently obtained an order for the early termination of the tenancy and an Order for Possession. The tenants testified they were never served with the Application for Dispute Resolution.

- The bailiff attended the rental unit on September 17, 2015 to enforce the Writ of Possession.
- The tenants make the following claims:
 - \$2500 for lost wages (\$250 a day each for 10 days) to deal with this situation.
 - \$2500 for stress leave
 - \$2090 for loss of personal belongings including winter clothing, blankets, towels, work cloths, kids clothing, non working clothing
 - \$30 for doctors' note.
 - \$220 for laundry
 - \$96.35 cost of hotel and shower
 - \$39.43 for dump fees
 - \$1600 for rental loss (\$400 a month for 4 months)
 - \$2200 for housing the children (30 days @ \$75 a day).

The landlord testified as follows:

- The landlord denied they reported stolen goods to the police or that they were responsible to the SWAT team presence.
- The SWAT team attended the rental unit on July 28/29. The tenants' daughter and her boyfriend were charged. The landlord produced court documents relating to the charges.
- The tenants owe outstanding rent of approximately \$4000 to \$5000. The tenants deny this.
- The landlord produced receipts from the Septic Tank service company dated March 4, 2015 and July 28, 2015 indicating the tanks were cleaned on those dates.
- The landlord provided evidence that he was notified by the tenants of a strong smell because of the septic tank some time after August 4, 2015 and he dealt with it the next day.
- The tenants are 3 months late with the rent.
- He is not able to get a plumber into the home to certify the work that was done as the tenants will not let anyone in.
- He believes the tenants are renting out rooms or trailer to other people and collecting rent.

Analysis

After carefully considering all of the evidence presented I determined there is a problem with the septic system. I further determined that the landlord failed to respond to the situation in a timely fashion. The septic system is old. It was pumped out in March

2015 which is several months earlier than its yearly pumping. A reasonable landlord would have taken steps to properly inspect.

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

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 determined the tenants failed to prove they gave the landlord the letters dated April 21, 2015 and July 15, 2015. However, the tank was pumped on July 28, 2015. I determined the tenants gave the landlord notice of a problem with the septic system prior to that date. .

With respect to each of the tenant's claims I find as follows:

- a. I dismissed the tenants' claim of \$2500 for loss of wages. The tenants failed to present evidence to verify this claim. The tenants claim for loss of wages for meeting with Health Board (2 days), gathering information (2 days) and 1 day for arbitration) relate to a claim for the cost of litigation. The only jurisdiction for the cost of litigation given to an arbitrator is the cost of the filing fee.
- b. I dismissed the tenants' claim of \$2500 for 20 more days off for stress leave. The tenants failed to produce sufficient medical evidence to prove the stress they experienced caused a loss of wages. Further, they failed to prove the stress they were experiencing was caused by the condition of the rental unit rather than the arrest of their daughter and her boyfriend.
- c. The tenants claimed \$2090 for loss of personal belongings including the following:
 - \$500 for all winter clothing (sweaters, jackets and pants)
 - \$500 for blankets (10 at \$50 each).
 - \$200 for towels (20 at \$10 each)
 - \$240 for work clothes
 - \$400 for good non work clothing

- \$250 for kids' clothes.

I am satisfied that the tenants threw away a large amount of clothing. The photographs produced by the tenants show a significant mould and water problem in the basement. The tenants failed to produce evidence as to the amount of their loss. While it is reasonable that the tenants would not have the receipts used to purchase the goods, the tenant could have produced catalogues and other documents to show the prices of these items. Further, the tenants are not entitled to replacement cost for these items. I determined the depreciated value of these items is \$500.

- d. I dismissed the tenants' claim of \$30 for doctors' notes. The notes state the tenant has "been advised to take 10 days off work/school for medical reasons. This is not evidence that the medical reasons relates to something caused by the landlord.
- e. I dismissed the tenants' claim of \$75 and \$285 for the cost of extermination as the tenants withdrew this claim.
- f. I determined the tenants are entitled to \$160 for the cost of laundry services.
- g. I dismissed the tenants' claim of \$2200 (@\$75 per day) for the cost of housing children. The tenant testified they gave tenants' daughters children to an aunt to take care of because they feared the Ministry might apprehend her children. The tenants failed to provide evidence verifying they actually made this payment to the aunt. Further, the daughter is not a tenant. Finally, the tenants failed to prove that this action was necessitated by the condition of the rental unit rather than the arrest of the children's mother.
- h. I dismissed the tenants' claim of \$96.35 for the cost of renting a hotel room. The tenants failed to prove this was caused by the condition of the rental unit rather than the presence of the SWAT police team and their concern to protect their grandchildren which took place at that time.
- i. I determined the tenants are entitled to \$39.43 for dump fees.
- j. The tenants claimed \$1600 (\$400 x 4 months) for loss of rental income. The tenants testified the person they provided room and board and lived in the basement was forced to leave during the middle of June because of the sewage problem. I do not accept the testimony of the tenant that \$100 of this monthly

sum should be allocated to board and \$300 should be allocated to the room. I determined a more reasonable allocation is 50/50. The tenants vacated the rental unit the middle of September. I determined the tenants are entitled to \$600 for this claim ($\$200 \times 3 \text{ months} = \600).

Reduction of Rent

I dismissed the tenants' claim for the reduction of rent as the tenants are no longer living in the rental unit.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$1299.43 plus the sum of \$50 (reduced to reflect the limited success of the tenants) in respect of the filing fee for a total of \$1349.43.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: November 24, 2015

Residential Tenancy Branch

