



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, RR, FF

Introduction

The tenants apply for compensation for improvements and renovation work done to the rental unit, for extra electrical expenses and for the equivalent of two months rent claiming the landlords or a close family member failed to occupy the home within a reasonable time after giving notice to do so, contrary to s. 51 of the *Residential Tenancy Act* (the “RTA”).

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlords, through their counsel, filed 93 pages of photographic evidence with the Residential Tenancy Branch on December 8, 2015. Counsel for the landlords indicated that he had sent the tenants a copy of that material by three email attachments to the tenant Ms. V.J. on the same day. Ms. V.J. denies receiving them. Section 88 of the *RTA* sets out the permitted methods by which documents may be delivered. Email is not one of them. At hearing I found that the documents were not admissible as evidence, as not having been provided to the tenants before the hearing. There was no request for an adjournment.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenants are entitled to compensation for the alleged renovation

work performed on the home or for extraordinary electrical usage or for the s. 51 compensation claimed?

Background and Evidence

The rental unit is a modern, six bedroom house. The tenancy started in October 2014.

At the start of the first day of hearing the tenants claimed the tenancy was for a fixed term of two years with right to renew for an additional year at the same rent plus the annual rent increase set by regulation under the *RTA*.

The landlords claimed the agreement was for only a one year fixed term.

Both sides agreed that there was a written tenancy agreement, though neither side had submitted one.

At the end of the first day of hearing I requested both sides to submit their copy of the tenancy agreement. Prior to the second day of hearing, the tenants submitted a written tenancy agreement between the parties. It was admitted without objection from counsel for the landlords. It is in the standard form of agreement offered by the Residential Tenancy Branch (#RTB-1). Unfortunately, the signing page 6 was not submitted. However, the landlords' initials appear throughout the document. There was no dispute but that it was the tenancy agreement and I so find.

The term of the tenancy is shown for a two year fixed term ending October 15, 2016, with "right to renew."

The monthly rent was \$1500.00, due on the first of each month.

Included in the rent was: water, stove and oven, dishwasher, refrigerator, carpets, window coverings, garbage collection, washer and dryer. Under "Additional information" in the "What is included in rent" section of the agreement, it is written "Payment of Repairs to house see attached forms for all work required by both landlord and tenants." That particular provision was initialed by both landlords and the tenant Ms. V.J.

Attached to the tenancy agreement was a handwritten page entitled "Landlord Improvements." It lists,

- must pay for all repairs to the house including:
- pay for Hydro while repairs are being done September 16th, 2014 to October 15th, 2014
- pay for Bin for Garage removal
- New floors in Kitchen, Bedrooms, living room, Hallways, and stairs
- new Appliances (2 fridges, oven, stove, dishwasher, washing machine & Dryer
- all painting supplies
- New Light fixtures, Blinds, Mirrors, Doors, Baseboards, Trim, Outlets
- New Heaters in all Rooms
- New Closet Doors & shelving
- New Drywall where all the mold is and where mirror are [sic] in living Room
- New roof where the storage room is
- New wiring & plumbing for washer & dryer
- New Lock and Keys
- Celing [sic] Paint
- Fix all plumbing issues
- Respond promptly on all repairs needed
- Have someone come in to do the carpets in the Bedrooms.

The page was signed by the tenant Ms. V.J. and initialled by both landlords.

A second handwritten page entitled "Tenant Improvements" lists:

- Removal of Garbage
- Cleaning of house & property
- Removal of Mold & Drywall
- All painting of the interior of the House
- Replacing of Doors, mirrors, Trim
- Fix Roof of the storage room
- Replace flooring in main areas
- clean gutters
- presser [sic] wash Deck & Driving way.
- Plumbing (leaks, replacing)
- Check all pipe's [sic] water.

This page does not appear to have been signed or initialled by any of the parties.

The tenants submitted three other handwritten pages indicating work done to the premises. They are unsigned and undated. They list work done in the past tense and I conclude that they are writings prepared by the tenants after the tenancy agreement, as

an outline of work that had been done. I find they do not form part of the original lease agreement.

In May 2015, the landlord Mr. A.G. issued a two month Notice to End Tenancy for "landlord's use of property." In the Notice he listed himself as the only landlord. The Notice gives an effective end of tenancy date of July 15, 2015. On the second page of the Notice it is indicated that the Notice is being given because the rental unit "will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." Such a ground for ending a tenancy is a permitted ground under s. 49 of the *RTA*.

The tenant Ms. V.J. testifies that on receipt of the Notice she took advice from the Residential Tenancy Branch and was made aware that a landlord could not end a tenancy during a fixed term by the use of such a Notice. She says that nevertheless, she and Mr. D.R. felt it would be difficult to stay. She did not elaborate. On May 21st, she and Mr. D.R. signed a Mutual Agreement to End a Tenancy (the "mutual agreement") with the landlords effective July 1st, 2015. The June rent was not paid, as permitted under s. 51(1) of the *RTA* which states

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The mutual agreement contained additional, handwritten terms on its back, referring to the waiver of June rent and indicating that the landlords would pay up to \$500.00 for moving expenses and would return the security deposit (which was done).

The additional terms also state that "landlords agree that all work done to house was done correctly."

The tenants vacated the home on July 1st 2015.

The tenant Ms. V.J. testifies that all the tenant work called for in the tenancy agreement was completed by the tenants. She submits and refers to 64 photographs taken before and after, what I will refer to as the renovation work, was done.

The work was extensive. Built in appliances were removed and replaced. Carpeting was ripped up as was flooring in hallways and rooms. The tenants installed new

flooring but for carpeting in a bedroom. Stair railings were removed and replaced. An entire wall above the main stairway was "opened up" by the tenants.

The tenants attended to mold remediation in the home by removing and replacing affected drywall. They renovated the fireplace and installed a new insert at their own cost.

The tenants installed a number of new fixtures and a ceiling fan in the home.

The tenants replaced three exterior windows and at least one door in the home.

The tenants painted most of the interior of the home.

The landlords paid for all material and had it delivered. They paid for the paint but let the tenants pick the colours. They paid all disposal fees.

Ms. V.J. provided a quote from a demolition company which indicates that the cost of the demolition portion of the tenants' work would have been \$4350.00, not including tax or disposal.

She provided the written statement of Mr. R.J., her ex-husband and eleven others who helped with the work, all stating that they helped complete demolition work, floor tiling, laminate floor laying, painting, installing appliances, installing doors and windows, fixing plumbing, staining railing, installing light fixtures, replacing electrical outlets, replacing drywall in multiple areas, opening a basement wall, laying subfloor in the kitchen, helping install carpeting and other, more minor work.

Ms. V.J. did not attempt to quantify the value of the work done by the tenants. She says that the arrangement with the landlords was that the rent was reduced by \$1000.00 per month over the fixed term in consideration of the tenants' work. She says that by the landlords ending the tenancy early, the tenants have lost the benefit of the \$1000.00 of reduced rent they worked for and earned over the remainder of the fixed term.

Ms. V.J. says that the hot water heating system did not work for the first two months of the tenancy. She says that finally the tenants repaired it themselves but spent two months using space heaters and the fireplace at an increase cost of electrical usage that she estimates at \$800.00.

Ms. V.J. testifies that she visited the house on October 15, 2015 and that the landlords were not living there. She says the home was occupied by two Caucasian men (the

landlords are not Caucasian) who indicated that were living there and working on the house.

The tenant Mr. D.R. testifies that the home was in a very poor state when the tenants rented it. He indicates that it had been inhabited by drug users and had been badly mistreated. When he first heard that the house was for rent he went to look at it and found the house empty with the door open. He was interested in the house because his ex wife and children lived close by.

He complains that the landlords were late in providing some of the things they had promised.

He says the landlords did not want to hire a renovation company. He did not say why not.

He says that during the tenancy the landlords asked him to sign another tenancy agreement showing the rent to be \$4000.00 per month. He says the landlords told him they wanted the agreement to show a higher rent in order to obtain a bank loan, though the actual rent would stay the same. He declined to sign the new agreement.

Mr. D.R. says that he was at the house with Ms. V.J. on October 15th and that the two "white guys" showed them through the house and the work they were doing. He says they were living there and that neither landlord was living there.

In response, the landlord Mr. A.G. was offered an opportunity to testify but declined.

The landlord Mr. N.B. testifies that the landlords rented the house "as is." He complains about some of the work, particularly that tiles were not grouted and a fixture not hung correctly.

He says the tenants had to move because the local government bylaw people were threatening to fine them due to "toys" in the yard.

Ms. V.J. asked Mr. N.B. that if the rental was "as is" why the tenancy agreement didn't say so. Mr. N.B. responded that it should have said so.

Mr. N.B. testifies that he has lived in the house since early or mid September with his wife, three kids, two brothers and the two repair men. He says the two repairmen are not Caucasian. He says he also has his former house in a different city, but that his parents live there.

On being questioned about his occupancy by Ms. V.J., Mr. N.B. initially declined to answer when he moved in and declined to answer why he did not move in shortly after the tenants moved out.

The tenant Mr. D.R. testified that the bylaw enforcement issue was an old one and concerned the removal of equipment related to the renovation work from the yard. It was not a reason for ending the tenancy.

Analysis

Credibility is a central issue in this dispute. I find that the landlord Mr. N.B., the only landlord who testified, has little credibility.

He claimed the tenancy was for only one year when the tenancy agreement clearly shows it to be a two year fixed term tenancy.

He testified that the house was rented to the tenants "as is" when clearly it was not. The tenancy agreement and the facts show there was a detailed agreement about renovating the home. Indeed, the landlords must have spent thousands of dollars supplying the tenants with materials for the renovation and knew the tenants were providing considerable work for the betterment of the home.

He did not dispute Mr. D.R.'s testimony that the landlords approached the tenants to sign a new tenancy agreement in order to misstate rental income to a lender.

He declined to answer straightforward and pertinent questions from Ms. V.J. regarding his occupancy of the home after the tenants left. When he did answer one of the questions, reciting the list of people living in the home, including the workers, his answer had a particular ring of spontaneity and invention, not consonant with veracity.

Where the evidence of Mr. N.B. contrasts with that of either tenant, I prefer the evidence of the tenant.

Renovation Work

The tenants allege an agreement to conduct renovation work and I find that there was such an agreement.

The only testimony about compensation under that agreement was the tenants' evidence that rent was reduced by \$1000.00 per month in consideration for their work. I find that the agreement between the parties was that for their work efforts the tenants' rent for the home was reduced by \$1000.00 per month for the duration of the fixed term.

On the tenants' uncontradicted evidence I find that all the work required of the tenants under the agreement had been completed. The Mutual Agreement to End Tenancy confirms that it had been completed to the satisfaction of the landlords.

I find that had the tenants continued to reside in the home and pay rent for the balance of the fixed term tenancy, they would have earned a benefit of six months' reduced rent in 2015 and nine and one-half months' reduced rent in 2016; a total of fifteen and one-half months. That totals a benefit of \$15,500.00.

The tenants' claim for renovation compensation, and their claim for two months' rent equivalent under s. 51 of the *RTA*, must rely on the position that the landlords' two month Notice to End Tenancy wrongfully terminated the tenancy during the fixed term, thus denying the tenants the rent reduction earned by their renovation work.

It is arguable that any such claim was subsumed or waived by the signing of the Mutual Agreement to End a Tenancy document. That argument was not advanced by counsel for the landlords.

On a consideration of the facts outlined, I find that this tenancy ended as the result of the two month Notice and that the mutual agreement ending it earlier was in the nature of an arrangement to accommodate the tenants' right to an earlier end of the tenancy as permitted by s. 50 of the *RTA*. I make that finding considering that though the document touches on the quality of the work provided by the tenants, it does not canvas payment for the work.

As well, the document enshrines the tenants' right to the one month's rent compensation associated with a two month Notice to End Tenancy, as mandated by s. 51. Had the parties intended to end the tenancy simply as the result of a mutual agreement, I do not consider it likely that one month's rent compensation required in the case of a two month Notice would have been provided for in mutual agreement document.

I give no credence to the landlords' suggestion that the tenancy ended because of bylaw enforcement problems. There is no evidence to support such a claim but for Mr.

N.B.'s statement. And if it was the case, there would have been no need for the two month Notice. The landlords would have issued to the tenants a one month Notice to End Tenancy for cause under s. 47 of the *RTA*.

As a result, I find that the landlords wrongfully ended the tenancy before the end of the fixed term of the tenancy and thereby deprived the tenants of the benefit of reduced rent over the remainder of the fixed term. I award the tenants \$15,500.00, being the value of that benefit.

I decline to award that benefit past the end of the fixed term stated in the tenancy agreement. Though the agreement indicates that the tenancy could be "renewed" past then, it does not say for how long. The agreement as it is written does not commit the landlords to renew it for a term of any length.

Section 51 Compensation

I accept the tenants' evidence that when they attended at the premises in October neither landlord was living there. I consider it unlikely that the tenants would invent such an unusual story, incorporating the existence of two men working and living in the home. I find that the landlord Mr. N.B. has not moved into the premises since July 2016 and that as of the tenants' attendance at the premises in mid-October, others, unrelated to either landlord, were occupying the premises.

As well, the two month Notice to End Tenancy for landlord use of property was signed only by the landlord Mr. A.G. and in it he lists only himself as the landlord. As grounds for terminating the tenancy, the Notice states that the rental unit will be occupied by "the landlord, the landlord's spouse or a close family member." When the document is read as a whole, "the landlord" can only reasonably mean Mr. A.G..

It was not shown that Mr. A.G. or his spouse or a close family member has taken up occupancy in the home.

Section 51(2) of the *RTA* states

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

(emphasis added)

The stated purpose of the Notice was for the landlord, particularly the landlord Mr. A.G., his spouse or a close family member to occupy the premise and that has not happened within a reasonable period following the July 1, 2015 end of the tenancy.

As a result, the tenants are entitled to an award of \$3000.00; the equivalent of double the monthly rent.

Additional Heating Cost

The tenants' third claim is that the home heating did not work for the first two months of the tenancy and that they incurred increased electrical (Hydro) costs by having to heat the home with space heaters and a fireplace.

I find that this claim has not been proved.

The fact that the space heaters or a fireplace cost more to operate than the central, hot water heat in place in the home is not a fact that has been established.

As well, the tenant Ms. V.J.'s estimate that it cost \$800.00 to heat the premises with space heaters for two months was an estimate not shown to have any basis in fact. No comparative Hydro bills or equivalent evidence was produced to justify the claim, as would normally have been provided and which are easily available.

I dismiss this item of the tenants' application.

Conclusion

I grant the tenants a monetary award totalling \$18,500.00 plus recovery of the \$100.00 filing fee. There will be a monetary order against the landlords jointly and severally in the amount of \$18,600.00.

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: December 27, 2015

Residential Tenancy Branch

