



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is a 2 storey house. The tenants first inspected the house with the landlords in May 2015. Neither the upstairs nor the downstairs was available at that time, and it was agreed that a month-to-month tenancy for the whole house would begin in August 2015. Monthly rent of \$2,000.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,000.00 was collected. It is understood that when the tenants began moving into the house on August 02, 2015, they informed the landlords of their concerns about the broken upstairs washroom fan, a rotting basement kitchen counter, and carpeting in the basement which they considered required replacing. A move-in condition inspection report was not completed.

On August 03, 2015 the landlords replaced the upstairs washroom fan, and committed to replacing the basement kitchen counter. However, the landlords informed the tenants that as a result of budgeting concerns, it would take a little longer to replace carpeting in the basement. On this occasion the tenants informed the landlord that they would be reconsidering whether they wished to continue with the tenancy.

At the request of the tenants the landlords returned to the unit on August 05, 2015, at which time the tenants informed the landlords of their decision to end the tenancy and vacate the unit immediately. The tenants cancelled the rent cheque for August 2015. A

forwarding address was provided by the tenants on August 11, 2015, and at their request the security deposit was returned in full by the landlords on that same date. In short, the tenants assert that as the unit was “unhealthy,” they could not continue to live there, and they claim to have returned to the residence from which they had just come.

On August 14, 2015, a local government authority building inspector attended the unit in response to a complaint from the tenants in which they alleged unhealthy conditions in the 2 storey unit. As a result, the report issued by the building inspector noted, in part:

We looked through B suite to find the rotting kitchen counter.

Upstairs suite had no issues except maybe a bit of cleaning needed in the bathroom. [The landlord] stated he will replace the kitchen counter before Sept 15 when the next tenant moves in.

During the hearing the landlords testified that the upstairs portion of the house was later rented effective from September 01, 2015, while the downstairs portion was rented effective from September 15, 2015. In the meantime, the landlords state that they suffered loss of rental income for all of August 2015 as a result of the tenants’ actions.

Analysis

Based on the documentary evidence and testimony of the parties, the various aspects of the tenants’ application and my related findings are set out below.

\$69.08: *truck rental*

The tenants claim this cost was incurred for rental of a truck used to move some of their personal belongings to the unit at the start of tenancy on August 02, 2015. I find there is no statutory basis for finding the landlords responsible for such a cost, and this aspect of the application is therefore dismissed.

\$2,275.65: *emergency move-out*

\$4,000.00: *(4 persons x \$1,000.00) emotional distress*

Section 28 of the Act addresses **Protection of tenant’s right to quiet enjoyment:**

28 A tenant is entitled to quiet enjoyment including but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes free from significant interference.

Additionally, section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

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.

While there is no dispute that the basement kitchen counter required replacing, I find that the tenants have failed to meet the burden of proving that the unit broadly failed to comply with the “health, safety and housing standards required by law,” that “emergency repairs” were urgently required, and that the unit was therefore unsuitable for occupation by a tenant and had to be vacated immediately. Following from this, I also find there is insufficient evidence of a breach of the right to quiet enjoyment. These aspects of the application are therefore dismissed.

Options available to the tenants in light of the miscellaneous allegations made around the condition of the unit, included setting out specific concerns in writing and presenting them to the landlords; if necessary, filing an application for dispute resolution in order to obtain an order instructing the landlords to make repairs to the unit, site or property, and / or in order to obtain a reduction in rent for services or facilities agreed to but not provided. None of these options was undertaken, rather, the tenants identified some concerns orally and then, after deciding not to continue with tenancy for reasons that may not have been fully disclosed, ended the tenancy and vacated the unit on short

notice. Finally, the landlords noted that certain of the concerns identified by the tenants in their application were not brought to the attention of the landlords during the tenancy.

I note that notice given by the tenants to end the month-to-month tenancy failed to comply with section 45 of the Act with addresses **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I further note that notice given by the tenants to end tenancy did not comply with section 52 of the Act which addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

\$63.74: *flea treatment for tenants' dog*

In the absence of sufficient and conclusive evidence that the tenants' dog was exposed to fleas in the rental unit, and as a result, was subsequently required to be treated for fleas, this aspect of the application is hereby dismissed.

\$22.48: *hydro*

\$34.84: *Fortis (gas)*

I note that the above costs concern the 5 day period from August 01 to 05, 2015. I find that as the tenants effectively had possession of the unit during this period, they have failed to establish entitlement to reimbursement of any portion of these utility costs. Accordingly, both of these aspects of the application are therefore dismissed.

\$200.00: *1 day's loss of pay*

Tenant "NRC" testified that her husband, tenant "ECM" lost 1 day's pay on August 05, 2015 as a result of their decision to move out of the unit on that day. However, in the absence of any documentary evidence in support of the loss claimed, and in the absence of sufficient evidence that the unit broadly failed to meet the "health, safety and housing standards required by law," was not suitable for occupation by a tenant, and had to be vacated immediately, this aspect of the application must be dismissed.

\$100.00: *filing fee*

As the tenants have not succeeded with the principal aspects of their application, I find that their application to recover the filing fee must also be dismissed.

Conclusion

The tenants' application is hereby dismissed in its 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: March 02, 2016

Residential Tenancy Branch

