



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

Following an adjournment for the Parties to further exchange evidence and confirming from each that evidence has been exchanged, the Landlord and Tenants were each given further full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on June 1, 2014. Rent of \$1,350.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$675.00 as a security deposit. This has not been returned. The Landlords served the Tenants with a 2 month notice to end tenancy for landlord's use. The stated reason on the Notice is that the unit would be converted to non-residential use. Although the Tenants initially disputed the Notice the Tenants moved out of the unit on October 31, 2015 prior to the hearing on the matter.

The Tenant states that the rental unit included the yard with no restrictions. The Tenant states that there was a deck and they planned on using the yard to park their own vehicles. The Tenant states that shortly after the start of the tenancy the Landlord began to use a portion of the yard to park business vehicles. The Tenant states that the Landlord was confronted and asked for a rebate and the Landlord informed the Tenant that, as the owner, the Landlord could do as he pleased with the land. The Tenant states that the Landlord also started construction of house on the yard without informing the Tenant. The Tenant states that as a result of the Landlord's actions the Tenant lost use of 70% of the yard. The Tenants claim \$6,615.00, calculated as 70% of the rent for 7 months.

The Landlord states that they were using the land for the business vehicles before the tenancy started and that although there is nothing in writing the Tenant was told that the Landlord would use the yard for the vehicles and were in planning stages to build a house. The Landlord states that the vehicles were parked in the yard at the time of signing the tenancy agreement and the Tenant had asked if they were part of the Landlord's business. The Landlord states that the Tenant said they were fine with the presence of the vehicles.

The Landlord states that the Tenants were informed in December 2014 that construction on the house would start April 23, 2015. The Landlord states that they gave the Tenant the option of moving out and the Tenants chose to stay. The Landlord states that they also discussed the Tenants renting the Landlord's old house after the new house was completed.

The Tenant states that no vehicles were present at signing and no discussion was held about the option of the Tenants moving out or renting the Landlord's old house. The Tenant states that in order to get the permit to construct the new house the rental unit had to be deemed uninhabitable. The Tenant states that the Landlord told the Tenants that there would be no problems moving the Tenants around. The Tenant states that

this angered the Tenants as they had rented the unit on a long term basis and the Landlord was refusing to make repairs.

The Tenants claim the costs of registered mail and interest.

The Tenants state that the windows in the unit would not close and as a result the Tenants suffered a heat loss. The Tenant states that the Landlord told them before move-in that the windows would be fixed. The Tenant states that they repeatedly asked the Landlord to repair the windows and the Landlord did nothing. The Tenant states that they are not sure what they paid for their heating costs for November 2014 to February 2015 inclusive but that they had it figured out when they calculated their claimed amounts. The Tenants claim compensation of \$75.00 for each of these months.

The Landlord states that the Tenants never said anything about the windows and that there were no problems with the windows at move-in or during the move-in inspection. The Landlord states that there have never been any issues with the windows closing. The Landlord states that nothing was noted at the move-out inspection as the Tenants left after 5 minutes. The Tenant states that the windows were closed during the inspection and that when they were opened after, they would not close. The Tenant states that the Landlord was told about the windows shortly after move-in. The Tenant refers to the digital video evidence and it is noted that cd containing the evidence cannot be read.

The Tenant states that the Landlord used the Tenants' hydro from about December 2014 when they started preparing for construction. The Tenant states that they were not asked or told about this usage and only found out after the fact. The Tenant states that when asked about the usage the Landlord offered to pay the Tenants \$50.00 per month. The Tenant states that he did not agree to this amount as the Landlord was using the hydro to clean cars and for night lights as they partied. The Tenant states that the Landlord used their hydro until June of July 2015. The Tenant states that the

Landlord only paid the Tenant \$50.00 and maybe another \$40.00. The Tenant states that they paid \$200.00 per month for their hydro and claim \$50.00 per month for 7 months. The Tenants monetary submissions indicate that the Landlord paid \$90.00 and the Tenants claim the remaining \$260.00.

The Landlord states that the construction started April 23, 2015 and hydro was only used for the framing. The Landlord states that the hydro was used again from the end of May to the end of June 2015. The Landlord agrees that he offered \$50.00 a month but only for 2 months and that the Tenants were given this deduction for June and July 2015. The Landlord states that the Tenants agreed to this and never asked for more. The Landlord states that the hydro was never used for the vehicles.

The Tenant claims the equivalent of one month's rent pursuant to the Notice to end tenancy. The Parties confirm that the Tenants paid no rent for the last month of the tenancy.

The Tenant states that in May 2015 the Landlord left a water hose running and that as a result the basement was flooded with 2" of water. The Tenant states that the Landlord refused to clean the area. The Tenant states that it took 3 hours to clean the basement and claims \$60.00. The Tenant states that when the flood occurred the Landlord came to look and told the Tenants that a worker would clean it up. The Tenant states that the Landlord then tied the hose in a knot instead of turning off the tap. The Tenant provides a letter to the Landlord dated August 1, 2015 that requests repairs and refers to the flood. The Landlord states that he is not aware of any flood, that the Tenant's evidence is not real and that the incident never happened.

The Tenant states that they were required to mow the lawn but that the Landlord did not provide them with a lawnmower so the Tenant had to use their own. The Tenant states that the lawnmower was a year old and it stopped working. The Tenant states that it stopped working for various reasons and because the Landlord moved the lawn mower to the side of the road in June 2015 where it stayed for 3 days before it was found by

one of the Tenants. The Landlord states that the Tenants' belongings were in the garage and that the lawn mower was not touched by the Landlord.

The Tenant states that no repairs were done by the Landlord and that the Landlord was violent and made the Tenants life miserable. The Tenant claims the costs of having moved into the unit in the amount of \$1,500.00. The Landlord denies being violent towards the Tenants and states that the Tenant was violent towards him. The police were called in relation to these accusations.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. There is no reference in the written tenancy agreement to the Landlord retaining any use of the yard for any purpose. Although the Landlord states that the Tenant was aware of the use of the yard for the vehicles, I would expect that something as vital as this would be set out in the written tenancy agreement. I therefore prefer the Tenant's evidence that such usage was not agreed to by the Tenants. I also accept the Tenant's believable oral evidence that they were looking for a long term tenancy and were not aware that the Landlord was going to construct a house on the property in the near future. I find therefore that the Landlord's use of the yard resulted in a loss to the Tenants. In determining the loss that the Tenant has suffered, I consider that despite the yard being mostly lost the Tenants continued to otherwise have full use of the rental house. I find therefore that the Tenant has only lost a smaller portion of the value paid and that the Tenants are therefore entitled to reasonable and nominal compensation of \$200.00 per month for 7 months or **\$1,400.00**.

Given the Tenant's photo evidence I find that the overall state of the unit was poor. Given the Tenant's oral evidence, the photo of a window and the August 2015 note sent to the Landlord referencing the windows I find that the Tenant has substantiated on a balance of probabilities that the windows would not close, that the Landlord was repeatedly informed of the problem, that the Landlord failed to make the repairs and that

as a consequence the Tenants incurred a greater cost to heat the unit. However as the Tenants did not provide any evidence of actual costs to heat the unit I find that the Tenants have only substantiated a nominal amount of \$50.00 per month for the 4 months claimed for a total amount of **\$200.00**.

The Tenant's evidence of overall hydro usage by the Landlord is tentative and I consider that no bills were provided indicating the usage before, during, and after the period that the Tenant claims the Landlord used some portion of the hydro. For this reason and considering the undisputed evidence that the Tenant did receive some compensation for the hydro usage, I find that the Tenant has failed on a balance of probabilities to substantiate the loss claimed. I dismiss the claims for hydro costs.

The Tenants claim \$1,500.00 as the expenses incurred to move into the unit. As there is no evidence that the Tenant was not aware of the state of the unit at move-in and as there is no evidence that the unit was uninhabitable at move-in I find that the Tenants have not shown that the Landlord caused the loss claimed. While it may be that the Landlord failed to make repairs to the unit, this is not what the Tenants claimed in the application. While this may be due to the Tenant's inexperience in making a claim, this is not a basis for an entitlement and I am unable to make any other finding on the evidence provided by the Tenants. I dismiss the claim for moving costs.

As the Tenant paid no rent for the last month of the tenancy, I find that the Tenant has been compensated for having to move out of the unit and I dismiss the claim for compensation from the Notice.

Given the Tenant's oral evidence and the note dated August 2015 I find that the tenant has substantiated that a flood occurred during the tenancy, that the flood was caused by the negligence of the Landlord or the Landlord's workers and that the clean-up was not done by the Landlord or his workers. I find therefore that the Tenant has substantiated the cleaning costs claimed of **\$60.00**.

Given the Tenant's evidence that they do not know how the lawn mower ended up by the road, I find that the Tenants have not substantiated that the Landlord caused any damage to the lawn mower and I dismiss this claim.

As the only participation and dispute costs allowed under the Act to be recovered are filing fees, I dismiss the Tenants claims for interest and mail costs. As the Tenants have had some success I find that they are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,760.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,760.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 29, 2016

Residential Tenancy Branch