



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage Parksville Qualicum Beach Realty, Agent for Brent Hughes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF
 MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the security deposit or pet damage deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

Both tenants and the named landlord attended the hearing, and the named landlord also represented the landlord company. The parties each gave affirmed testimony and were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised, and the parties agree that all evidence has been exchanged.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for bank fees, carpet cleaning costs, breach of agreement, and loss of rental revenue?
- Should the landlords be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit and pet damage deposit?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of the last month of rent due to a devaluation of the tenancy?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 15, 2015 expiring on September 30, 2016 after which time the tenants were required to move out of the rental unit. The tenants vacated the rental unit earlier on February 28, 2016, having paid rent for February. Rent in the amount of \$1,200.00 per month was payable on the 1st day of each month. On October 8, 2015 the landlords collected a security deposit from the tenants in the amount of \$600.00, as well as a pet damage deposit in the amount of \$600.00 on October 15, 2015. Both deposits are still held in trust by the landlords. A copy of the tenancy agreement has been provided. The rental unit is a single family dwelling on water-front property that also contains a cottage that the landlord occasionally uses.

The landlord further testified that on January 27, 2016 the tenants notified the landlords of a leak in the living room. The landlord contacted the tenants asking about any water damage, and the response was that the TV was not affected and the tenants had placed a rubber-maid tote under the leak. The landlord had someone attend the following day from a home maintenance company, who assessed it and said the roof needed to be replaced.

On January 30, 2016 the landlord received an email from the tenants stating that they were moving out effective the end of February. The landlord responded by letter on February 5, 2016 stating that the repairs were being done by a qualified contractor and the owner of the rental unit wanted the tenants to fulfill the contract.

The owner wanted a second opinion about the repair, which was done on February 2 or 3 and that contractor was hired by the landlord. The first visit was the 4th of February, and the contractor was supposed to return on the 5th but didn't get there until February 6 and the work was completed somewhere near the 10th. The owner also wanted to repair the inside, but the tenant stated that due to his wife's illness, they didn't want the work done. There was excessive water in the insulation which was removed, but no mold whatsoever.

A move-in condition inspection report had been completed at the beginning of the tenancy, and the husband tenant participated in the move-out condition inspection on March 2, 2016. The landlord received the tenants' forwarding address on the move-out condition inspection report that day, and provided a copy of the report to the tenants with the evidentiary material for this hearing.

The landlord ran advertisements in local newspapers, evidence of which has been provided. The landlord also advertised on the company website, and places an advertisement weekly for rentals in general. The rental unit was re-rented for April 19, 2016.

The tenancy agreement provides that a fee for a dishonored cheque will be charged at \$25.00. The tenants placed a Stop Payment on the rent cheque for March, 2016, and the landlords claim that amount.

The tenancy agreement also provides that the tenants will have the carpets professionally steam cleaned by a reputable carpet cleaning company at the end of the tenancy regardless of the length of the tenancy and provide the landlords with a receipt. The tenants did not do so and the landlords have provided a receipt in the amount of \$147.00 and claim that amount from the tenants.

The landlords claim \$1,200.00 for rent for March, 2016; \$720.00 for the 18 days in April that the rental unit was vacant; \$25.00 for the Stop Payment fee; \$147.00 for carpet cleaning; and recovery of the \$100.00 filing fee.

In response to the tenants' claim about the dryer vent, the landlord testified that she received an email from the tenants on November 11 and responded later that day that the washer and dryer are not included in the rent. The landlord had a person attend to assess it and received a quote on November 17, 2015 for repair work, which was completed on November 20.

With respect to the tenants' claim about water damage, the landlord testified that she saw bubbling in the ceiling and a small amount in a bucket the day after it was reported. The tenant told the landlord he could handle it. There were strong winds in the area during that time and roofers were very busy. The back half (over the living room) of the roof was repaired to stop the leak and insulation was removed. The landlords didn't get an opportunity to respond to the leak before the tenants gave notice to vacate. The tenants were able to live in the house, there were no gaping holes, and the landlords were fully prepared to fix it, but the tenants decided to move anyway.

With respect to hydro, the tenants were advised that the cottage was for the owner's use and the tenants would be compensated for hydro use by checking the meter when arriving and leaving. However, the owner never used the cottage during the tenancy. The landlord is certain of that because she took photographs of the meter. Further, the landlord disagrees that there was any on-going lack of power to the rental home.

The first tenant (BRE) testified that the home was unrealistic and the tenants could not stay there. Photographs have been provided and the tenant pointed out one that shows copious amounts of moss among and under virtually all of the shingles. The tenant testified that the front of the house didn't look bad when the tenants first viewed the rental property, and it's still in the same condition now. The way it's situated, there was no access to view the back part of the roof unless the tenant went up onto a bank, and testified that if he had, he possibly would not have rented the house. The tenant also showed the photograph to a few contractors who were surprised at the condition and said that water has gone under the shingles, not just from a freak storm, but total lack of maintenance. He also showed the photograph to a person at the environmental health department as well as a photograph of the inside of the house, who confirmed it is mold on the ceiling but couldn't say what kind, good or bad. Once the hole was punched into the ceiling, mold expanded and enlarged. Given the lack of maintenance, his advice was to move out.

The tenants do not believe they should be held to a lease on such poorly maintained property, and the landlords' reasoning is to hold a tenant to a one year lease and keep it rented while they work on it rather than providing a rental unit in good condition. The expectation of the tenants was reasonable maintenance and a roof that doesn't leak.

The tenant is 74 years old and his wife has suffered a stroke. The tenants felt justified in breaking the tenancy and putting a Stop Payment order on the rent cheque for March, 2016.

With respect to the landlords' claim for carpet cleaning, the tenant testified that they purchased new carpets at the beginning of the tenancy and laid them over the existing carpets keeping them covered. During the walk-through, the landlord said she would forgo the requirement to professionally clean them. Also, since drywall had to be replaced in the ceiling, the tenants do not feel responsible for cleaning carpets.

The tenant also testified that 30 % of the power was diverted from the rental unit to the owner's cottage, and the tenants had no way of knowing what amount of hydro was used by the owner or guests. The tenants claim \$120.00 for recovery, being 1/3 of the bill.

The tenants claim \$1,200.00 for recovery of the pet damage deposit and security deposit; \$1,200.00 for recovery of the last month of rent paid due to the devaluation of the tenancy, \$120.00 for recovery of hydro, and recovery of the \$100.00 filing fee.

The second tenant (ME) testified that the tenants were very uncomfortable living in the rental home during the month of February, 2016 and several dates were made for repair work and cancelled without notice to the tenants. The tenant works full time, and has had a stroke. The landlord says there was no mold but mold was pointed out in bedrooms. The tenants made it clear to the landlord that they had previously lived in a house with water issues, so the landlord was fully aware of the expectation.

The tenant also testified that the landlord had no intention to tell the tenants anything about the power at all and the box was locked. Within the first week of the tenancy, the tenant told the landlord that she was upset about it. It was not what it was advertised to be at all.

Analysis

Where a party makes a monetary claim for damages against another party, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

With respect to the landlords' claim for unpaid rent and loss of rental revenue, I have reviewed the tenancy agreement, and it's clear that the parties entered into a written agreement for a 1 year fixed term. In order to be successful, I must be satisfied that the tenants were not justified in leaving prior to the end of the fixed term. I have reviewed the evidentiary material, including the photographs provided by both parties and I have to agree with the tenant that the owner's intent is to rent on a one year lease and keep it rented while it's worked on rather than providing a rental unit in good condition. A landlord's responsibility is not only to maintain, but also to provide rental accommodation in a state of decoration and repair that complies with the health, safety and housing standards required by law, and a landlord's obligation in that regard still exists even if the tenant knew of such a breach at the beginning of the tenancy.

Considering that, and the tenant's testimony that the tenants made it clear to the landlord that they had previously lived in a house with water issues, so the landlord was

fully aware of the expectation, I find that a house in good repair without a leaky roof was a material term of the tenancy agreement. A material term is a term so important to one party or another that the agreement would not have been made if the term wasn't a part of the agreement. Therefore, I find that the tenants were justified in breaking the tenancy agreement. I also note that the leak commenced within 3 ½ months of the start of the tenancy.

The tenants gave the landlord notice to end the tenancy on January 30, 2016 by email, and the landlord responded. Therefore, I find that the landlord received written notice of the tenants' intention to vacate the rental unit on January 30, 2016 but didn't respond until February 6, 2016. The tenants paid rent for February, and I find that the landlord is not entitled to rent for March or April, 2016. Therefore, I dismiss the landlords' application for a monetary order for unpaid rent, loss of rental income and late fees.

With respect to the landlord's claim for carpet cleaning, it is clear that the tenancy agreement provides for that, however, where there is evidence of a leak or renovations or repairs to a roof and ceiling, I find it unconscionable that the tenants could be held to such a term.

The regulations to the *Residential Tenancy Act* state that a landlord must provide a tenant with a copy of the move-out condition inspection report within 15 days of the later of the date the report is completed and the date the landlord receives the tenant's forwarding address in writing, and if the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit or both for damages is extinguished. However, in this case, the landlords also made a claim against the deposits for other than damages, which right is not extinguished. I accept that the landlords received the tenants' forwarding address in writing on that report on March 2, 2016, and the landlord has not returned either deposit to the tenants, however since the landlord made a claim for unpaid rent within the 15 days as required by the *Act*, the tenants are not entitled to double recovery of the deposits. The tenants are, however, entitled to recovery of both deposits, and I grant a monetary order in the amount of \$1,200.00.

With respect to the tenants' claim of \$1,200.00 for recovery of the last month of rent paid due to the devaluation of the tenancy, the parties agree that the contractors were there by the 10th of the month, and the tenants had full use and occupancy of the rental unit, and I find that the amount of rent abatement the tenants seek is excessive. I agree that the tenancy was devalued by a portion, and I find that due to the material term and the inconvenience, the tenants have established a claim for 10 days, or \$413.80 ($\$1,200.00 / 29 = \41.38 per day X 10 days = \$413.80).

With respect to the tenants' claim of \$120.00 for recovery of hydro costs, I have no evidence before me to satisfy me that the amount is accurate or that the landlord ever used any of the hydro during the tenancy, and the application is dismissed.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

In summary, I find that the tenants have established a monetary claim as against the landlord in the amount of \$600.00 for recovery of the security deposit; \$600.00 for recovery of the pet damage deposit; \$413.80 as recovery of a portion of February's rent; and recovery of the \$100.00 filing fee, for a total of \$1,713.80. The landlord's application is dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,713.80.

The landlords' application is hereby dismissed in its entirety without leave to reapply.

This order is final and binding and may be enforced.

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: July 28, 2016

Residential Tenancy Branch