



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The original hearing took place on June 28, 2016 with the tenant in attendance. The tenant was partially successful with her claim and received a Monetary Order. The landlords successfully applied for a review consideration and a review hearing was ordered to be heard today pursuant to s. 82(2)(c) of the *Act*.

The tenant and landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

At the outset of the hearing the tenant amended her application and reduced her claim to \$17,920.00.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started in November, 2003 between the tenant and the former landlord. The property was sold to the present landlords in 2014. Rent for this unit was \$1,040.00 per month due on the 1st of each month.

The tenant testified that she was served a Two Month Notice to End Tenancy for the landlords' use of the property (the Notice) on October 30, 2014. This Notice had an effective date of December 31, 2014 and indicated that the reason for ending the tenancy is that the landlords have all necessary permits and approvals required by law in place to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant testified that she did not dispute the Notice and moved from the rental unit on November 28, 2014. The tenant testified that while she had been living in the unit previously over 11 years the former landlord had made many major renovations in the unit while the tenant still lived there. These included gutting and replacing two bathrooms, new carpets, new door, new subfloor in kitchen and replacement joists, new balcony and supports, new bedroom windows, new balcony door, new hot water tank, furnace and thermostat, updated breaker panel, new safety light outside and a new shed. The tenant also painted the unit four times in 11 years, replaced the ceiling in the basement with drywall and built a pony wall in the basement.

The tenant testified that the work done by these landlords after the tenant vacated was only cosmetic work and only the carpet needed to be replaced upstairs as it had some

fraying. The landlords did take down a wall in the kitchen and replace the cabinets but none of the work they did required vacant possession.

The tenant testified that she did offer to put her belongings into storage while the landlords made the minor repairs and offered to live in the basement but they refused. The tenant testified that as the landlords did not do renovations that required vacant possession the tenant seeks compensation equal to two months' rent to an amount of \$2,080.00.

The tenant testified that she had to find alternative accommodation and ended up having to rent an apartment with half the space but a rent of \$1,100.00 a month. The tenant testified that as she did not have to vacate the rental unit because the scope of the work was not great then the tenant seeks to recover the difference in rent between the rental unit and her new rental unit of \$60.00 per month for 24 months to an amount of \$1,440.00.

The tenant testified that she had a roommate in her rental unit and he was paying \$600.00 per month which helped the tenant with her rent. The landlords were aware of this roommate when they came to see the unit. The tenant testified that when she found her new rental unit her roommate was going to move in with her but when he saw how small the new unit was he refused to move in and therefore the tenant seeks to recover her loss of rent of \$600.00 per month for two years to an amount of \$14,400.00.

The landlord WJ gave testimony on behalf of both tenants and testified that when they purchased the property they knew it needed substantial repairs. If the work required had been done one item at a time then it is possible the tenant could have continued to live in the unit; however the landlords needed to protect their investment and decided to get all the work done at the same time. This work was completed in a two month and eight day period and it would have been impossible for the tenant to have continued to live there. The landlord provided a list of all work completed and photographic evidence showing before and after pictures of the unit. The landlords' submission show all the

baseboard and window trims were removed and replaced; all the flooring on the upper floor was removed and laminate flooring installed; linoleum was installed in the bathrooms; kitchen was completely gutted and new cabinets and counter tops installed; kitchen was redesigned to incorporate an eating bar and dishwasher; all appliances were replaced and dishwasher had to be plumbed in; a new hood fan was installed; a large portion of wall between the kitchen and family room was removed; installed new sink and facet; installed new window coverings; installed new light fixtures and door knobs; replaced heating vents and return air grates; installed new, to code, smoke detectors; installed new digital furnace thermostat; repaired old laundry plumbing; installed new flooring on lower level bathroom; installed shelving and cabinetry in lower level storage room; replaced front door jam and weather stripping; installed two hand rails; painted the entire suite all walls ceilings and doors on upper floor; replaced bathroom fan; repaired kitchen floor and replaced plywood from past water damage; replaced toilet seal and repaired connection; substantial drywall repairs throughout home; caulked kitchen and bathrooms; repaired and replaced components of bedroom closets.

The landlord testified that there was never a discussion with the tenant about her putting her belongings into storage the tenant appeared to be fine with moving out and the whole process went relatively smoothly. The tenant did not move her roommate's belongings out until December 10, 2014 which delayed the landlord's contractors who were due to start work on December 01, 2014.

The landlord testified that he also did some of the work himself to cut down on costs and was often working till 10.00 p.m. or 11.00 p.m. at night which would have significantly disturbed the tenant if she was still living in the unit. The tenant did not have cooking facilities in the basement. The landlord testified that the scope of the work did not require permits or approvals but was significant enough to require vacant possession.

The tenant testified that she had to move her roommate's belongings out of the unit on December 01, 2014 into a shed as he was away at the time. The tenant does not

believe the landlord started the renovations until January, 2015. The tenant testified that it was not necessary to change the kitchen cabinets as they came from a doctor's house. The tenant testified that she could have lived in the basement as she had a hotplate, fridge and toaster oven and could have shared that space with her roommate as there were three bedrooms and a living room.

The landlord testified that there were not three bedrooms in the basement there was two bedrooms and a den. The kitchen cabinets were not what the landlords wanted for their investment and these were replaced.

The landlord testified that he is not responsible for the tenant's difference in rent. It was the tenant's choice to rent her new unit and she found a place earlier than the effective date of the Notice.

The landlord testified that the tenant's loss of rent over two years is also not the landlord's responsibility. He was not aware the tenant was subletting the rental unit until the tenant was moving out. Her original tenancy agreement states that the tenant is not permitted to sublet any part of the rental unit. If her roommate could not move into her new place then this is not the landlords' responsibility.

The tenant testified that her former landlord was aware she had a roommate and there are emails between them concerning this. The new landlords were also aware as he was upset with her when WJ saw her building a pony wall in the basement to give her roommate some privacy. They could have evicted her in August 214 for having a roommate but they did not. The tenant testified that the landlords wanted to evict her so they could get more rent and the girl who used to live next door now rents the rental unit. The tenant testified that if the landlords were shutting off the water to fit the dishwasher, then this would have only been off for a few hours and not long enough to require vacant possession.

Analysis

I find from the evidence before me that the amount of renovation work done by the landlords was substantial. I find not all of the work done would have required vacant possession but I also find that some of the major renovations were significant enough to be done only when the rental unit was vacant. This work included the removal of a wall, the gutting of the kitchen, the removal of all flooring on the upper level and the laminate in the lower level bathroom, the plumbing work which required the water to be turned off and the painting of the upper level. I also find that it would have been more difficult for the landlord to do this work with the tenant living in the unit or in the lower level of the unit as it would have greatly impacted on the hours the landlord could have spent doing the work in the unit. Consequently, I am satisfied that the reason given on the Notice was valid and the landlord did require vacant possession of the unit to do these more major renovations. Consequently, the tenant's claim for a Monetary Order for an amount equal to two months rent is dismissed.

With regard to the tenant's application to recover compensation for the difference in her rent equal to \$1,440.00. I am not persuaded by the tenant's arguments that this is the responsibility of the landlords. The tenant's rent paid for this unit was increased in accordance with the *Act* over the last 11 years. Other rents in the area may have been higher but the landlords had no control over this or over the type of unit the tenant decided to rent when she was given the Two Month Notice. Consequently, I find the tenant's claim to recover compensation from the landlords for the difference in her rent has no merit under the *Act* and this section of her claim is dismissed.

With regard to the tenant's application to recover a loss of rent equal to \$14,400.00; I am not persuaded by the tenant's arguments in this matter either that the landlords are responsible for rent received from the tenant's roommate. This arrangement was between the tenant and her roommate. The tenant moved from the rental unit without disputing the Notice and moved into a smaller unit. If the tenant's choice of unit was not big enough to accommodate a roommate then this is not the landlords' responsibility

and there is no provision under the *Act* for me to award the tenant compensation for a loss of her roommate's rent. This section of the tenant's claim is dismissed.

Conclusion

In accordance with s. 82(3) of the *Act* the previous Decision and Monetary Order are set aside.

The tenant's application under review is dismissed in its entirety without leave to reapply.

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: September 02, 2016

Residential Tenancy Branch