Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; both landlords and their legal counsel.

I note that when the tenant submitted her original Monetary Order Worksheet explaining the breakdown of her claim dated November 30, 2015 it indicated that she sought return of all of her rent for the duration of the tenancy from May 2011 to February 2015 inclusive or a total of $50,600.00.

In her Application for Dispute Resolution section entitled Details of Dispute the tenant acknowledged that she was only asking for the "RTB limit of $25,000 in recompense" [reproduced as written].

I also note the tenant submitted an additional Monetary Order Worksheet dated September 12, 2016 where she indicated that she was seeking additional compensation in the amount of $5,469.50 for the costs of bottled water during the entire tenancy; the replacement of a power washer; and the cost of purchasing household items damaged by water provided by the landlords.

At the outset of the hearing I advised the tenant that I could only hear her claim for up to $25,000.00 and I sought clarity on what claims the tenant wanted to pursue – the return of rent in the amount of $25, 000 or a combination of the additional costs she has claimed totaling $5,469.50 plus $24,430.50 for rent.

The tenant confirmed she wished to have the tenancy found to be nullified and return of her rent to a maximum of $25,000.00. This decision is written, therefore, in response solely to the claim for returned rent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of rent and to recover the filing fee from the landlord or the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlords submitted into evidence the following relevant documents:

- A copy of a Rental Agreement dated April 7, 2011 for 12 month fixed term tenancy beginning on May 1, 2011 for the month rent amount of $1,100.00 due on the 1st of each month with a security deposit of $1,100.00 paid. This agreement included additional terms outlined the tenants were responsible for the costs of utilities, including firewood, and regular maintenance of the house and grounds. The agreement stipulates how the parties would deal with repairs during the tenancy. This agreement stipulated that the parties could enter into another 12 month fixed term tenancy; and
- A copy of a Rental Agreement dated April 9, 2012 for 6 month fixed term tenancy beginning on May 1, 2012 for the month rent amount of $1,100.00 due on the 1st of each month with a security deposit of $1,100.00 paid. This agreement included additional terms outlined the tenants were responsible for the costs of utilities, including firewood, and regular maintenance of the house and grounds. The agreement stipulates how the parties would deal with repairs during the tenancy. This agreement stipulated that the parties could enter into another 6 month fixed term tenancy.

The parties agreed the tenancy ended by September 30, 2015.

The tenant submitted that when being shown the property prior to the start of the first tenancy the landlord stated that the water tasted a little salty but it was safe to use for cooking and food preparation. The tenant submitted the landlords repeated this information in a document entitled “Tips” that was provided to them at the start of the tenancy – both parties provided a copy of this information.

The “Tips” sheet included the following text:

> “Saline H_2O - we use for everything except drinking & plants;
> - Will rust metal if left in H_20 for lengthy time;
> - To prevent corrosion of faucets, fixtures, etc, we
> - Wipe down/clean regularly
> - Put dab of plumber’s grease on washers in taps every so often.”

The tenant submitted that right away after they moved into the rental unit they found the water to be too salty for their taste and immediately started using bottled water. She stated that they had called the landlord to tell them that they could not drink the water and asked about the reverse osmosis filtration that had been in place when the viewed the property but had been removed before they moved in.

The tenant's written submission stated that at that point they felt the water was "unpleasant but safe". She stated that despite this problem of their need to buy bottled water and in light of the "extremely low vacancy rate" they decided to stay and bought bottled water. The tenant estimated $4,888.62 for the purchase of water for the period of May 2011 to February 2015. The tenant also stated the landlords did not offer to purchase or provide bottled water for the tenants.

The tenant also submitted that they had used their power washer in May 2011 as part of the preparation to seal the concrete floor in the garage. She stated that after using the power washer one day the next day it had seized and could not be used again – they had to buy a new power washer. The tenant submitted a receipt for the purchase and ferry costs. The tenant submitted that they contacted the landlords to advise them of the damage to the power washer but the landlords did not offer any compensation for the damage.

The tenant submitted that during the first year of the tenancy they stopped using their power washer; they stopped washing their truck at home; after clothing was ruined they washed delicate and dress clothes elsewhere; and after cutlery became corroded they stopped using metallic kitchen utensils and purchased new cutlery and plastic kitchen ware.

The tenant submitted that in late February 2015 the water became increasingly more salty to taste and it progressed to cloudy to dark and then back to clear and they stopped using the well altogether. After testing of the well the parties acknowledge the landlords began providing delivered water. Both parties submitted a substantial volume of email correspondence between themselves beginning in March 2015 regarding the issues raised by the tenants, subsequent testing, and provision of delivered water.

The tenant submitted that the test results showed the water was significantly contaminated with a variety of items with a particular concern on the level of fluoride and boron that were 3.8 and 1.2 times the acceptable limits respectively.

The tenant stated she sought information from the landlords as to any previous testing that had been completed and despite repeated requests the landlords appeared to evade responding to the specific questions. Eventually, the tenants learned the landlords had never had the water or well tested prior to the tests completed in March 2015.

The tenant submitted that as they were packing to move in September 2015 she came across some water that they had stored the previous year (November 2014) and sent it in for sampling with results showing the levels of boron and fluoride were even higher in the previous sample. The tenant submitted, in her written statements, that "The results show that we were exposed to harmful levels of fluoride and the metal boron even earlier than 2015 and likely for the duration of our tenancy."

The tenant submitted that pursuant to a variety of provincial legislation landlords are required to provide potable water when renting out a property or rental unit. The tenant cited but did not provide any copies of relevant sections of the following legislation:

- *Residential Tenancy Act* Section 32
- Health Regulation
- *Public Health Act*
- Health Hazards Regulation
- *Drinking Water Protection Act,* including the Drinking Water Protection Regulation.

The tenant asserts that results of the testing shows that the water is not potable. The tenant also asserts that based on the results of the further testing she had completed on the November 2014 sample it is likely that the water was not potable at the start of the tenancy. The tenant states that had she known the water was not potable she never would have entered into the first tenancy agreement.

The tenant submitted that she has suffered affects to her health from the contaminated water, however, she would not provide any details as to what type of impact on her health she has suffered.

The tenant submitted the landlords have either fraudulently or negligently represented that the property contained a potable water supply and as a result the tenancy should be nullified and her rent returned to her.

The landlords submitted that despite the test results from the property in March 2015 the tenant has failed to provide any evidence to confirm that the water at the start of the tenancy was not potable.

The landlords also submitted that the November 2014 sample submitted for testing by the tenant was collected contrary to practices outlined by the laboratory for uncontaminated sampling. The landlords submit that even if the results of this secondary test are valid they still do not represent the condition of the well and water supply at the start of the tenancy.

The landlords testified that the tenants did not identify any problems with the water system or the water supply until they were notified in March 2015 at which time they took immediate action.

Analysis

Section 7 of the *Act* states if a party to a tenancy does not comply with the *Act*, regulations or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results.

The section goes on to state that the party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

I accept the tenant's position that under Section 32 of the *Act* the landlords are required to ensure that the residential property does comply with the health, safety, and housing standards required by law. I also accept that it is likely that the acts and regulations submitted by the tenant are relevant to the matters before me. However, in the absence of copies of specific language in each of the respective pieces of legislation, I find the tenant has failed to provide any connection between the other legislation cited and Section 32 of the *Act,* to support this claim.

Furthermore, the tenant's claim rests on the assertion that the landlords failed to provide potable water, however the tenant has provided no legislative or regulatory definition of potable water or any standards set by appropriate authourities such as the provincial government or Health Authourities as to what standards for content or contaminants is acceptable in any water source.

In addition, while I accept that the landlords did advise the tenants that there was a salty taste to the water but that they used it for everything but drinking the tenant was warned when she viewed the property that there may be an issue with the water provided at the residential property.

I find there is no evidence submitted by the tenant or the landlords that there was any problem with the water system prior to the emails of March 2015, other than that already acknowledged by the landlords (i.e. the salty taste)

As a result, I find the tenant has failed to establish that the water was not potable prior to May 2011, despite the findings on the samples provided in both March 2015 and November 2014. In fact, in the absence of any definition or standards that authorities utilize to determine if water is potable I find the tenant has failed to establish the water was not potable at the time of the two samples.

As such, I find the tenant cannot provide any evidence to establish that the landlords' claims at the start of the tenancy that the water had a salty taste but was safe to use for cooking preparation were untrue or false at the time.

Black's Law Dictionary, 7th Edition defines misrepresentation as the act of making a false or misleading statement about something with the intent to deceive. Fraudulent Misrepresentation is define as a false statement that is known to be false or is made recklessly without knowing or caring whether it is true or false and that is intended to induce a party to detrimentally rely on it.

Therefore, I find the tenant has failed to establish that, at any time prior to the signing of their tenancy agreement, the landlords made an fraudulent or negligent representations regarding potable water.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution 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: December 02, 2016

Residential Tenancy Branch