



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RP, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a 10 day Notice to End Tenancy dated October 27, 2016.
- b. An order for a monetary order in the sum of \$25,000
- c. A repair order
- d. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenants on October 27, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord on October 28, 2016. I find that the Amended Application for Dispute Resolution was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated October 27?
- b. Whether the tenant is entitled to an order for repairs?
- c. Whether the tenant is entitled to a monetary order?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

On July 24, 2015 the tenants and the previous landlord entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2015, end on July 31, 2017 and become month to month after that. The rent was \$1800 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$900 on July 24, 2016. The present landlord purchased the property with the possession taking place on May 2, 2016.

The tenancy ended on November 30, 2016.

The tenant testified they are entitled to compensation based on the following:

- On March 15, 2016 they experienced the back up of a sewage line that caused significant damage to the basement.
- The rental unit has two levels. The basement contains 2 bedrooms, a living room area, a bathroom and a laundry room. The upstairs portion contains 3 bedrooms.
- At the time the tenants, their four children (ages 4, 5, 14 and 15) and a friend.
- The tenants testified the previous landlord and the present landlord failed to properly respond to repair the problem and as a result they lost the use of ½ of the house for approximately 8 months.
- In March the tenants brought in a restoration company who warned them about the unhealthy condition, provided an estimate of \$7000 to fix it and told them they should avoid the area. From that period forward the tenants used the basement to change the laundry (and always wearing a mask) only.
- They experienced a 2nd flood on July 10, 2016. The landlord fixed the outdoor sewage piping but failed to do much about repairing the interior.
- The photographs show significant damage to the downstairs area.
- The tenants testified they advised the previous owner who reassured them the purchaser would deal with the problems promptly.
- At all times the tenants dealt with the landlord's agent AT. The rent was paid to AT and they continually advised him of the problems.

The agent for the landlord gave the following testimony.

- His client was purchased the property with possession taking place on May 2, 2016.
- He was unaware of the problems until July when the second flood occurred.
- As a result of being advised of the second flood he excavated the sewage system and made repairs. The repairs cost \$15,000.

- He never received any complaints from the Tenants.

Analysis

The tenants vacated the rental unit on November 30, 2016 and have not desire to reinstate the tenancy. As a result I dismissed the application to cancel the 10 day Notice to End Tenancy and for a repair order as those issues are moot.

Application for a Monetary Order:

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim to establish the following:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

After carefully considering all of the evidence I made the following determinations:

- The tenants may have a claim against the previous owner for the reduced value of the tenancy for the period March 15, 2016 to May 2, 2016 but they do not have a claim against the respondent as he was not the landlord at the time.
- I determined the tenants are entitled to compensation against the present landlord for the reduced value of the tenancy for the period May 2, 2016 to October 31, 2016. The tenants were allowed to stay in the rental unit rent free

for November. They do not have a claim for the reduced value of the tenancy for the month of November.

- I determined the landlord failed to respond effectively and the tenants suffered a significant reduction in the value of the tenancy from May 2, 2016 to October 31, 2016 or for 6 months.
- I do not accept the submission of the landlord that he is not responsible because he was not aware of the problem. I determined the tenants advised his agent as soon as he made himself available. The respondent failed to provide the tenants with an address where he could be served.
- The rent was \$1800 per month.

With respect to each of the Tenants' claims I find as follows:

- a. The tenants claim the sum of \$7650 for 8.5 months that they did not have the use of the basement portion of the house. I determined the tenants are entitled to 40% of the value of rent for the period May 1, 2016 to October 31, 2016 (6 months) or the sum of \$4320. I determined the respondent was negligent in failing to remediate a serious health issue promptly. The tenants informed the respondent's agent. However, I determined the respondent is not responsible for the period of time that he was not the owner. There was not tenancy, implied or expressed between the parties prior to the landlord purchasing the property.
- b. The Residential Tenancy Act provides that the landlord must return the security deposit within 15 days of the later of the end of the tenancy or when he receives the Tenant's forwarding address in writing. The Tenant's claim for the return of the deposit was premature. The tenants were still in possession when they made this claim. The hearing was held on December 15, 2016 and the 15 days had not expired. As a result I dismissed the claim for the return of the deposit with liberty to re-apply.
- c. The Tenants claimed \$1000 for the loss of their belongings. They claimed for the loss of a 2 year dresser, a 2 years old bedframe, a 2 year old mattress, clothing and 30 to 40 towels. I accept the tenants' testimony these items were lost. However, they failed to present sufficient evidence as to value. Further, they failed to present evidence as to whether the goods were lost in the first or second flood. The respondent is not responsible for the losses from the first flood. It is not reasonable to expect the tenants would have the receipts from when they purchased. Despite the difficulty in evidence an arbitrator must do the best he/she can. In the circumstances I determined the tenants are entitled to \$400 for this claim.

- d. I dismissed the claim of \$1000 for loss of privacy without leave to re-apply. The tenants testified they had to sleep in the living room as a result of the two floods. I determined this claim is included with the reduction of the value of the tenancy and to award an additional sum for this claim is not supported by the evidence and would result in double recovery.
- e. I dismissed the tenants' claim of \$2000 for unnecessary duress, \$1000 for strain on relationship, \$1000 for loss of intimacy and \$4000 for unnecessary stress and instability on 4 children without leave to re-apply. The tenants failed to present sufficient evidence to support these claims. I determined these claims are not recoverable. .
- f. I dismissed the claim of \$6000 for possible exposure to asbestos without leave to re-apply as the tenant failed to present sufficient evidence to establish this claim.

Conclusion

I dismissed the claim for repairs and to cancel the 10 day Notice to End Tenancy as the tenants vacated the rental unit at the end of November. I ordered the landlord(s) to pay to the tenant the sum of \$4720 plus the sum of \$100 in respect of the filing fee for a total of \$4820.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 Residential Tenancy Act.

Dated: December 17, 2016

Residential Tenancy Branch