



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, OLC, 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 both tenants; the landlord and his legal counsel.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation and to recover the filing fee from the landlord for 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 parties agreed the tenancy began on a month to month basis in August 2012 for a monthly rent of \$1,000.00 due on the 1st of each month and that the tenancy ended in January 2016. Neither party provided a copy of a written tenancy agreement.

The parties also agreed that during the tenancy the male tenant worked for the landlord. The landlord stated that part of the work that the tenant was assigned was to work on the rental unit as well as the business side of the property. The tenant submitted that when he would work on his rental unit he would be pulled away to work on some other tasks.

The tenants submitted that "conditions" for them to move into the rental unit were that the fence would be built; siding on the house and drinkable water. The tenants assert the fence was building after 8 months of continued complaints; the siding was never fixed and the well was never fixed.

The tenants submitted that they had to buy bottled water for cooking and drinking. The stated that they had to go to family sometimes to bathe and that in December 2014 that had to use a garden hose to get water from the landlord.

The tenants submitted that when they moved in there were no countertops or running water. That there had been a problem with the furnace and lack of insulation resulting them paying \$400.00 in a three week period for oil.

The tenants seek compensation in an amount equivalent to return of 30% of rent paid for the full duration of the tenancy. While the tenants' original Application for Dispute Resolution indicated they were seeking \$14,700.00 the tenants had submitted an Amendment to an Application for Dispute Resolution reducing that amount to \$12,900.00.

The tenants submitted that during the tenancy they had contacted the Residential Tenancy Branch to find out how to deal with the situation but they did not want to put the male tenant's employment at risk so they didn't do anything.

The landlord submitted there were no conditions requiring the landlord to provide a fence or complete the siding prior to or during the tenancy. The landlord also submitted that potable water was provided at all times during the tenancy.

The landlord submitted that part of the male tenant's job was to work on the business and rental properties for the employer/landlord. The landlord stated he provided the materials to the tenants and the male tenant was allowed to work on the items at his leisure and be compensated for it.

The landlord acknowledged that there had been a problem with the well it was found that the pump was not deep enough but until they discovered this he did have them hook up to his other building by a garden hose.

The landlord acknowledges the tenants had a problem with the furnace. He confirmed when it could not be fixed a new one was put in.

In his written submission the landlord's legal counsel wrote:

"The Respondent seeks a dismissal of the Applicants' claim, the damages claimed are not quantifiable, and the allegations relate to the whole period of the Tenancy, issues which, if they had merit, should have been brought forward to

the Residential Tenancy Branch during the course of the Tenancy, not post-Tenancy.”

Analysis

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.

In this case, the burden rests with the tenants to provide sufficient evidence to establish all 4 of these above noted points. The totality of the tenants’ evidence in regard to their claim for \$12,900.00 consists of 12 lines on their Application for Dispute Resolution and their verbal testimony at the hearing.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

Despite submitting that they had contacted the Residential Tenancy Branch a couple times during the tenancy the tenants have submitted no documentary evidence such as written requests for repairs; photographs of the incomplete siding; fuel bills; receipts for the purchase of water.

As such, I find the tenant’s submissions to be unreliable at best. Having said this, I accept that the landlord has acknowledged that the tenants had raised some of these issues during the tenancy. I find, however, the tenants have failed to provide any evidence that the landlord to fulfill his obligations in relation to those issues.

Furthermore, and again despite the tenants assertions that they contacted the Residential Tenancy Branch a couple of times during the tenancy, I concur with the landlord’s legal counsel that even if their claim had merit the tenants had recourse through the Residential Tenancy Branch to obtain orders to have the landlord complete specific repairs and/or emergency repairs during their tenancy.

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others. In this case, the tenants' failure to address any concerns they had with the value of their tenancy is inconsistent with their claim now that they have suffered a loss of value.

Furthermore, in consideration of all of the above, I find tenants' claim is frivolous.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and 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: January 05, 2017

Residential Tenancy Branch