



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RR

Introduction

The tenants apply for compensation in the nature of a retroactive rent reduction for a myriad of problems experienced with the rental unit over the life of the tenancy. They also seek recovery of \$4800.00 of deposit money and an order under which they might retrieve a gas furnace installed by them during the tenancy.

The listed parties attended the hearing, the landlord by an agent Ms. Y., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord failed to provide reasonable accommodation or to conduct repairs properly or in a timely manner? Are the tenants entitled to retrieve the furnace or recover their deposit money?

Background and Evidence

The rental unit is what could be considered a luxury home, though it appears to have been constructed in the 1960's or '70's and has suffered some of the unavoidable ravages of time.

There is a written tenancy agreement. The tenancy started in June 2015. The monthly rent was \$4800.00. The tenants paid a \$2400.00 security deposit and a \$2400.00 pet damage deposit.

The tenancy was a fixed term tenancy ending December 31, 2016, however it ended earlier, on July 29, 2016, as the result of a ten day Notice to End Tenancy for non-payment of rent.

The tenants were evicted by a bailiff on September 21, 2016.

The tenant Mr. E. testifies to a list of problems with the home from the very start. For none of them does he seek a particular reimbursement. He argues that when seen in their totality, they draw a picture of a rental unit worth far less than the \$4800.00 per month that he and Ms. E. were paying.

The landlord told him there would be a general house cleaning before he moved in. There was not. As well, various minor items like cupboard door hinges needed repair. He took care of these items himself, without involving the landlord.

The landlord's workmen had to attend though for repairs to a dishwasher, a clothes dryer and a bathroom drain.

Mr. E. fixed a shower door that had come completely off its frame. He found a couple of dormant wasp nests on a bedroom ceiling and in a light fixture.

The heating system did not work properly at the start but it appears to have been fixed by a tradesman the tenants already had on sight attending to the installation of a furnace in the pool room.

The tenants had the fireplaces cleaned out by a chimneysweep.

Some of the cable outlet covers did not actually have a cable connection behind them.

The garage interior lights did not work properly. Mr. E. says that they would not switch on. Then one day they came on and one set would not switch off. He set up his own portable lights, which, I understand, he took with him when he left.

The previous occupants left a considerable number of furnishings and appliances; dated, deteriorated and of little use. The tenants moved and stored the items. Some were disposed of with the landlord's consent.

The home included a "conservatory;" an enclosed garden. While the garden appeared healthy when the tenants viewed the home in May or June, it had been neglected by the time of move-in in July. The tenants revitalized it at their own expense.

The rental unit came with an indoor pool. The parties agreed in their tenancy agreement that "the pool is not included in the rent" and that the tenants could use the pool but if repairs were required they were to be at the tenants' expense.

The pool room was heated by a gas furnace that was not working. The tenants replaced it with a new one at their expense. Mr. E. says he did not have time to remove it at the end and would like the opportunity to do so as it is of some value.

The landlord's representative Ms. Y. thinks the furnace is to heat the pool water, but the tenant's photos, showing the adjacent galvanized air ducts, give a clear indication that it is meant to heat air, not water.

Of particular complaint for the tenants was that the home's roof leaked. On three occasions over the fall and winter of 2015-2016 the landlord's workmen attended to repair the roof and stem the leaks.

There were leaks in two bedrooms, the conservatory, a lounge, the garage and the pool room.

Mr. E. says the garage and pool room had the worst leaks and that they never were completely stopped by the landlord's workmen. He says the workmen told him that the proper solution to the leaks was a new roof but the landlord thought it to be too expensive a fix.

Mr. E. also takes issue with the state of the exterior decking. His photos show that the wood decking paint is peeling badly. He indicates a spot of rot near a stair.

As well, there was a set of wooden stairs along the side of the house, permitting access from the front yard to the back. The stairs look very old. They have no railing. They appear to be about 75 cm wide and are rather steep with a significant drop off into foliage. The tenants wanted the landlord to make the stairs safe. The landlord through the agent declined and told the tenants not to use them.

While the tenants lived there, the neighbour commenced to demolish the house next door and start construction on a new one. The intermittent construction and loss of a tree barrier created noise and was an eyesore.

As well, in 2016 someone came on the property and topped trees so as to improve a neighbour's view. It would appear that neither the tenant nor the landlord had given any permission for tree topping.

Ms. Y. for the landlord testifies that the rental unit was generally clean at move-in and produces a move-in inspection report as corroboration.

She notes that any problems with the dishwasher, dryer and wasp nests were attended to promptly by the landlord. Had the landlord been notified of the shower door issue, it would have been attended to as well.

Similarly, there was no request that the heating system be repaired, nor mention of the cable outlet issue.

She says the tenants consented to the furniture that was left at the premises, apparently by the owner, and in fact it was listed on the move-in condition report and initialled by the tenants.

Regarding roof leaks, Ms. Y. takes the position that when her client the owner purchased the property in March 2015 there had been mention of roof leaks but they'd all been fixed. She says the landlord attended to the leaks in timely fashion once they were reported, sending roofers three separate times. She says that after the last repair, in February 2016, there were no more complaints about leaks from the tenants.

Ms. Y. is of the view that the pool room itself, not just the pool, were removed from the landlord's responsibility in the tenancy agreement. Therefore, any problems with leaks in the pool room are for the tenants.

Regarding decking she says the paint peeling is merely cosmetic and was observed and accepted by the tenants when they moved in. There were no complaints about the deck during the tenancy.

Regarding the side stairs she indicated the tenants were made aware of their rickety nature and directed to use other means to gain access to the back yard.

Regarding garage lights she says this item was not reported by the tenants during the tenancy.

Regarding the construction next door and the tree topping on the rental property, she denies that the landlord has any responsibility.

Additionally, at the hearing Ms. Y. desired to set out additional claims the landlord considers it has against the tenants for rent, loss of rental income, bailiff fees and house cleaning. The parties were informed that in order to advance such claims it is necessary for the landlord to make a formal application for dispute resolution. It should be added that the jurisdiction of this forum is limited to amounts not exceeding

\$25,000.00. A party seeking to recover more than that must make a claim through the court system.

Analysis

Move-In Condition and Junk Clean Up

On a consideration of all the evidence I find I must dismiss the tenants claim for loss regarding the state of the premises at move-in. Any dispute about it should have been resolved at that time. The tenants took the premises as they were, subject to any remarks made in the move-in condition report. They are not arguing that the landlord failed to comply with any obligation imposed by that report.

The tenants clearly accepted that furnishings and items were being left at the rental unit. They did not make any complaint or demand on the landlord during the tenancy to attend to these items. They cannot fairly raise these matters as a complaint at this late date.

Decking Condition

For the same reasons I dismiss the tenants' claim about the decking. While the tenants' photos show a deck in need of repainting, it is unlikely that the deterioration occurred over the life of this tenancy. The state of the deck would have been apparent and accepted at move-in.

Back Yard Access Stairs

I am not persuaded that this matter was settled by the landlord simply telling the tenants not to use the stairs. However, the tenant's evidence about loss or inconvenience because of the state of the stairs is very limited. Coupled with the lack of any attempt on the tenants' part during the tenancy to remedy the situation, either by repairing the stairs or requesting that the landlords do so, I do not consider it a factor in the assessment of any loss or inconvenience the tenants might have suffered.

Garage Lighting

I accept Ms. Y.'s evidence that the landlords were not formally informed of this problem and were not afforded any opportunity to address it. In such circumstances the tenants cannot fairly complain about it now.

Tree Topping and Construction Next Door

Had the landlords permitted the topping of trees resulting in a significant loss of amenity the tenants could be entitled to compensation.

Although the circumstances of the tree topping sound extraordinary, I accept Ms. Y's statement that it had not been done with the landlord's knowledge or consent.

The tree topping and the neighbour's construction project were items outside the landlord's responsibility. The tenants cannot claim a loss against the landlord for them.

Leaks

Having regard to the age, character and location of the rental unit and to the significant rent being paid, these tenants should not have suffered more than minor inconvenience from a leaking roof.

What the landlord might or might not have been told about the roof when the home was purchased is not particularly relevant to the tenancy agreement made with the applicant tenants

I do not accept Ms. Y.'s contention that the pool room was not the landlord's responsibility. The tenancy agreement states that "the pool is not included into the rent and is not guaranteed functional" and the tenants "may use pool and if repairs are required, the tenant shall pay his own expense."

The agreement says nothing about the pool room. I find it was included as part of the rental unit and that the landlord continued to be responsible for its maintenance.

I accept the tenant Mr. E.'s evidence regarding the leaks and that the leaks in the garage and pool room were the worst.

Leaking water onto a pool deck cannot be seen to be a major issue. It is, after all, a pool deck. However the leaking garage roof I find to have caused the tenants occasional but significant inconvenience. The tenants' photos show the plywood flooring to be saturated during a rainy period and their boxed belongings and other personal property to be exposed to the threat of water damage.

I consider that the tenants are entitled to compensation for the persistent leaks in the home and particularly the garage. The evidence of loss or inconvenience is minimal.

However, having regard to all the circumstances I consider an award of \$500.00 to be appropriate for loss and inconvenience caused by roof leaks in the home at various times during this tenancy.

The Pool Room Furnace

I am satisfied that the tenants should be entitled to retrieve, at their cost, the pool room furnace they installed during this tenancy. They are responsible for re-installing the pre-existing furnace, which the tenants' photos show to be there still. The landlord may decline having the old furnace reinstalled. That refusal should be in writing.

I would recommend that the parties agree on a value for the furnace *in situ* rather than go through the process of removal and reinstallation of the old one. However, should they not settle the matter I make the following order and direction;

In order to permit the landlord the opportunity to give any current occupants lawful notice to enter for the purpose of removal of the tenants' furnace and replacing the pre-existing unit, I direct that the tenants provide the offices of Ms. Y. with no less than fourteen (14) days notice in writing, including date and time, of their intention to have a qualified workman or workmen attend at the premises to remove the pool room furnace shown in the tenants' photographs filed in this application, take it away and (unless declined by the landlord) reinstall the pre-existing furnace unit.

The landlord is authorized to require the tenants to produce evidence of any workman's qualifications to conduct the work, prior to permitting that workman on the premises.

I grant any party leave to re-apply should circumstances change in this regard, or for further directions.

The Security Deposit

As determined at hearing, the landlord has been granted a monetary award in an earlier proceeding at least equal to the \$4800.00 total of the two deposits. Section 72(2) of the *Act* provides:

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

(emphasis added)

Accordingly, the tenants are entitled to credit for the deposit money, in reduction of the landlord's previous award. I refrain from including the deposit money in the monetary order the tenants will receive here.

Conclusion

The tenant's application is allowed in part. They will have a monetary order against the landlord in the amount of \$500.00 and the order outlined above permitting retrieval of the pool room furnace.

There is no claim for recovery of any filing fee.

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: February 09, 2017

Residential Tenancy Branch