



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC PSF RR FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

All parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties or their representatives were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). The landlord confirmed receipt of the tenants' application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The landlord's name was amended during the hearing, by consent of both parties, to reflect the name on the tenancy agreement.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in July of 2016. The tenants testified that the unit was rented over the phone after seeing it advertised on Craigslist for \$1,375.00 per month. Tenant MN moved in first in July of 2016. The tenants testified that this was a cross country move for them, which cost them \$5,600.00. Upon move in, MN discovered that the unit was not as advertised. The tenants believed that the landlord had misrepresented the unit in the online listing, and the state and condition of the apartment was not disclosed to them prior to the move-in. The unit was on the ground floor, not the upper floor, and there was no dishwasher, or shelves in the bathroom. The unit was also missing curtains, and other deficiencies such as a broken handle on the kitchen cabinet and a tile that had fallen off in the kitchen. The tenant was asked to sign a tenancy agreement, which she did as she had arrived off an airplane with nothing but her luggage. The other tenant, MM, moved in mid-October 2016.

The tenants testified that they were also subjected to excessive noise and dust due to renovations that the landlord undertook from October to December 2016. The tenants stated that in the course of renovations the contractors had discovered asbestos, which the tenants felt was a health hazard. MM testified that the stress had become so great that he had lost sleep, and had to see a psychiatrist. The tenants submitted in their evidence a doctor's note dated December 2, 2016 that MM was to be off work from November 20, 2016 to February 15, 2017 due to medical reasons as his health was deteriorating from the stress. The tenants submitted a medical report dated September 13, 2016 for MM stating that the patient had "difficulty concentrating, difficulty managing stress, and difficulty managing interpersonal conflicts". The tenants testified that MM was threatened by the property manager, which was reported to the building management on January 8, 2017. A copy of the email was submitted in evidence.

The tenants testified that although the rent was advertised as \$1,375.00, the actual rent turned out to be \$1,405.00. The tenants stated that they had signed the tenancy agreement and Schedule A despite the amount not being what they had agreed on. The tenants did confirm that most of the repairs and deficiencies were addressed by the landlord with the exception of the hole in the dining room window which let in a draft. The tenants did not obtain access to the balcony until December 2016.

The landlord testified that a new property manager had taken over in October of 2016. The renovations were a necessity as the useful life of the building had come to an end. The building was built in the 1960s, and the renovations were to upgrade and renovate the building in order to meet safety standards. The renovations involved interior and exterior painting, as well as new balconies for safety reasons. The landlord testified that an engineering company was retained for this major project. The interior renovations included updates to the lobbies, hallways, and laundry room. The landlord testified that individual units were updated as tenants moved out. The landlord does not dispute the tenants' allegations regarding the asbestos issue, but stated that they had stopped work pursuant to a voluntary stop work order in mid-December 2016. The landlord has retained consultants to address the asbestos issue, and reports have been shared with Worksafe. The landlord testified that the renovations have been on hold since December 2016 due to the stop work order.

The landlord also testified that the contractors completed the work between Monday to Friday, 8:30 a.m. to 4:30 p.m., and had complied with municipal bylaws. The landlord stated that work was completed intermittently on Saturdays as approved by the municipality. The landlord testified that they had offered to end the tenancy and return the security deposit to the tenants without an inspection. The tenants rejected this offer as they wanted financial compensation.

KH, legal counsel for the landlord, attended this hearing, and testified that the tenants had signed the tenancy agreement as well as "Schedule A" of the Rental application that states that "This is Notice that...intends to proceed in the short term with the following maintenance, repairs and capital work at this residential complex: Corridor, lobby, and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balconies, unit renovations, energy efficient systems and mechanical equipment replacement. This work is intended to ensure the long term physical and structural integrity of the buildings and improve the quality and safety of your physical surroundings. This work is expected to take 24 to 36 months to complete. As a result of the proposed construction activity at the property there will be noise, vibration, dust and inconvenience to access and egress at the property". The tenants did not submit any evidence to support the variance in monthly rent, or what was advertised by the landlord. KG testified that the landlord had fulfilled their obligations by addressing the deficiencies and making repairs as requested by the tenants in a timely manner. KH testified that the landlord had a duty to repair the balconies for safety reasons, and had no choice but to do so.

The tenants submitted a monetary claim for \$10,182.50. The tenants stated in their written testimony that the claim was for the landlord's failure to fulfil their obligations as required by Section 32 of the *Act*. The tenants requested a rent reduction of 50 % for the rent paid for July through to September 2016, as well as 100% of the rent for October 2016 through to February 2017. The tenants also requested compensation for projected moving costs in the amount of \$950.00.

Analysis

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I have considered the testimony of both parties, and while the tenants had provided testimony to support that they had experienced stress and inconvenience during this tenancy, the tenants did not provide sufficient evidence to establish that the landlord failed to fulfill their obligations as required by section 32(1) of the *Act* as stated above. I accept the landlord's testimony that the building is extremely old, and that the landlord had to take the necessary steps to maintain the property in a state of repair as required by law with regard to the age of the home and availability of materials for the home. The tenants did not provide any witness testimony, nor did they produce any expert evidence, to support that the landlord had failed in their obligations. I find that the inconvenience and stress that the tenants faced are the result of the landlord's necessary steps to fulfill their obligations, rather than their failure to fulfill their obligations, as required by section 32 of the *Act*.

I note the tenants' concerns that the state of the building and renovations was not disclosed to them prior to their move, but I am not satisfied that the landlord failed in their obligations as a landlord. The tenants had made the decision to move across the country at their own expense, and without inspecting the prospective rental premises. Such a move can be stressful, even without problems associated with the rental premises. When tenants choose to rent without viewing the rental premises or having someone they trust do so, they do so at their own risk, knowing that there is a possibility that the unit they had rented may not meet their expectations. As no copy of the Craigslist ad, or any communication between both parties, was provided, I am not able to verify any discrepancies that were brought up in this hearing, including the monthly rent.

Furthermore I find that the tenants did sign the tenancy agreement and Schedule A of the application, which fully disclosed the state of the landlord's renovations. I find that the landlord addressed the tenants' concerns in a timely manner, and fulfilled their obligations as required by the *Act*. When they signed the tenancy agreement, they realized that the renovations would

include repairs to the balconies in this building, repairs that were completed on their balcony by December 2016. The landlord offered the tenants an opportunity to end the tenancy. The tenants declined the landlord's offer to end this tenancy.

The tenants submitted a monetary claim for \$10,182.50, but did not provide any receipts, statements, or bills. The tenants did submit a medical report for pre-existing medical conditions that the tenant MM suffered from, as well as a doctor's note confirming that the tenant was "off work" from November 20, 2016 through to February 15, 2017. The note does not indicate the reason why the tenant was unable to work, nor does it explain how the landlord contributed to, or aggravated these pre-existing conditions. No witness testimony or reports were provided to support that the tenant's medical or physical condition was a result of the landlord's actions.

Although I find that the tenants' expectations of this tenancy were not met, I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter, and on this basis I am dismissing the tenants' entire application.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenants' application for recovery of the filing fee.

Conclusion

I dismiss the tenant's entire application.

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: April 20, 2017

Residential Tenancy Branch