



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC OLC ERP RP 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, and emergency repairs under the *Act*, regulation or tenancy agreement pursuant to section 67.
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlords, 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 Respondents confirmed receipt of the tenants' application. In accordance with section 89 of the *Act*, I find that the Respondents were duly served with the tenants' application. All parties confirmed receipt of each others' evidentiary materials.

Preliminary Issue—Named Respondents in this Dispute

At the outset of the hearing GL, agent for Respondents PG and KH, indicated that he was representing the new landlords in this hearing. He testified that this dispute involves the tenants and the old landlords, and that PG and KH should be removed from this application as they did not take over the tenancy until February 17, 2017. The tenant, MD, confirmed that the new landlords have sealed the hole where the rats were entering the home. The tenants confirmed that the issue with the rats was now resolved,

and that they were withdrawing the non-monetary portion of their application directed against Respondents PG and KH.

Based on the testimony of these parties, the non-monetary portion of the tenants' application directed against the Respondents is hereby withdrawn. The sole remaining portion of the tenants' application was a request for a monetary award against Respondents DM and MM, the tenants' former landlords..

Issue(s) to be Decided

Are the tenants entitled to a monetary award for compensation for damages, loss, or emergency repairs against Respondents DM and MM (the landlords)?

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

Background and Evidence

The tenants testified that on January 24, 2017 they heard some noise in the den's drop down ceiling. The tenants investigated, and discovered rat feces and staining. They noticed that the plastic vapor barrier was chewed up, and that there were shavings that appeared to be some sort of nesting. The tenants sent an email to the landlords the same day, requesting that they seal the hole and deal with the rats and the rat feces.

The landlords responded by sending a pest control company to attend the home on January 25, 2017. The landlords included an invoice in their evidence for \$250.00 from the company dated January 25, 2017. The tenants testified that rat poison was put in the ceiling, and they were told that they would return two weeks later on a Wednesday, which did not happen as they were too busy. The tenants testified that they had waited at home all day, and the pest control company came back the next day on February 2, 2017 and confirmed that the rat poison was gone.

The tenants testified that they started noticing a stench, and that the company did not remove the rat feces nor undertake any cleanup of the panels. The tenants spoke to Landlord DM who told her that the rat feces were not a health hazard if not disturbed, and that the feces was not in the actual suite itself. The tenants believed that the rats were now decomposing after being killed by the rat poison, and causing the stench.

The tenants sent an email to the landlords advising them that they would contact their own pest control company. They testified that they had obtained the advice from the

Residential Tenancy Board to do this. The tenants included in their evidence an invoice for \$315.00 from the pest control company they had contacted. The invoice is dated February 10, 2017 for “rodent remediation”. The technician reported that they had “vacuumed and sanitized drop ceiling” and that there was a “large amount of rat dropping in ceiling” and “dead rodent somewhere not able to locate likely in section that is not accessible”. The new owners took possession of the property on February 17, 2017, and the rat issue was resolved after the hole was sealed by the new landlords.

The landlords responded that they had responded to the tenants’ email immediately by calling the pest control company, who showed up the next day. The landlords testified that although the tenants demanded a cleanup of the feces, the company advised them to not disturb the feces, as it did not constitute a hazard. The landlords testified that they were unaware of the dead rat, and that the tenants hired a new company despite the fact that the landlords had a contract with the company that was already attending to the issue.

The tenants, in their application, also made a claim for \$350.00 in compensation for firewood, as they believed the fireplace was not working properly. The tenants testified that they had notified the landlords in January 2017 after receiving an extremely high electricity bill, but were told by the landlords that they were not using the fireplace properly. The tenants testified that they had used more wood than they normally would because the fireplace was not functioning as it should.

The landlords testified that the tenants paid only a portion of the electricity bill, which they shared with the tenants upstairs. The landlords testified that the tenants did not know how to use the wood stove properly, and that the wood stove was serviced yearly by a qualified chimney cleaner. The last service date was September 8, 2016, and an invoice was included in the landlords’ evidence package. The landlords stated that it was an extremely cold winter, and that was the main reason for why more wood and electricity was required to heat the home. The landlords testified that they had contacted the chimney cleaner on February 1, 2017 before putting the home up for sale, and the chimney had passed inspection and was working properly. The landlords dispute the tenants’ entire monetary claim as they believed that they had fulfilled their responsibility as landlords during this tenancy.

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.

I have considered the testimony of both parties, and while the tenants had provided evidence to support that they did have issues with rats in the home, the tenants did not provide sufficient evidence to establish that the landlords failed to fulfill their obligations as required by section 32(1) of the *Act* as stated above. I accept the landlords' testimony that they had contacted a pest control company immediately after being apprised of the issue, and that the landlords have maintained the property in a state of repair as required by law that complies with health and safety standards having regard to the age, character, and location of the home. The tenants testified in the hearing that they were instructed by the Residential Tenancy Board to contact their own pest control company, but the tenants did not provide any orders, documentation, or witness testimony to support this. The pest control company that the tenants had contacted themselves was unable to find the dead rat, and the rat issue was only resolved by the new landlords after they had sealed the hole the rats were entering through. The tenants did not provide any witness testimony, nor did they produce any expert evidence, to support that the landlords had failed in their obligations, or that the rat feces posed a health and safety hazard. Accordingly I dismiss this portion of the tenants' application.

The tenants had also made a claim for compensation for firewood as they believed the wood fireplace was not functioning properly. The tenants did not provide any receipts for the costs that they incurred, nor had they established that the landlords were responsible for the extra wood that was burned this winter. The tenants did not provide any expert evidence or witness testimony to support their claim. I accept the testimony provided by the landlords, which was supported by the invoice they had submitted to show that the chimney was regularly serviced by a qualified chimney cleaner. I find there is insufficient evidence for me to make a finding that the landlords had failed to meet their obligations regarding this matter, and on this basis I am dismissing this portion of the tenants' application.

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

Conclusion

The tenants withdrew the non-monetary portion of their application in this hearing.

I dismiss the tenants' entire monetary application 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: April 19, 2017

Residential Tenancy Branch