



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Are the tenants entitled to a monetary order as compensation for loss or other money owed?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on September 2013 and is ongoing. The tenants were obligated to pay \$3050 per month in rent which later went up to \$3135.00 on September 1, 2016. ED testified that the landlord had advised that they would be conducting maintenance type work on the home and that it would take about four weeks. ED testified that the landlord undertook a major renovation that took almost three months. ED testified that the home was uninhabitable for extended lengths of time. KW testified that she moved out for two months as it was virtually impossible to live in the unit. TM testified that he had move out as well causing him to add about five

hours per week to his commute because of relocation. PB testified that the work consisted of carpeting being torn out, new floors installed, new bathroom fixtures, new roof, new deck, and paint throughout the house, new doors installed, and new tiles. The tenants testified that the work was conducted from June 19, 2016 to September 17, 2016. The tenants have provided the following calculation as to what they seek:

June Rent prorated for 12 days = \$1220.00

July Rent \$3050.00 minus \$915.00 that the landlord has already provided as compensation = \$2135.00.

August Rent = \$3050.00

September rent prorated at new rental rate of \$3135.00 for 17 days = 1776.50 for a total amount of \$8181.50 plus the \$100.00 filing fee.

The landlords' agent gave the following testimony. The agent testified that the landlord was very upset at how this situation unfolded. The agent testified that the landlord wanted to improve the home and was under the belief the contractor was experienced and skilled in dealing with this type of work when homes were tenanted. The agent testified that the tenants always had the necessary amenities in the home and although they were inconvenienced, the home was still livable. The agent testified that the landlord agrees that some compensation is required but feels that 40% of the rent is fair.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Both parties were in agreement as to the timeline of the events however the severity of inconvenience is where they differed. I found the landlords' agent very forthright, concise and credible and accept her testimony that much of the problem stemmed from the contractors actions. However, the contractor was working for the landlord and therefore the landlord is responsible for the outcome. I have considered the testimony of both parties and reviewed all the documentation. Also, I have reviewed the timeline and the scope of work and the impact it had on the tenant at different points during the three months. Based on the evidence before me, and on a balance of probabilities, I find that the tenants are entitled to a monetary order but not the amount as sought. I find that 60% of the \$8181.50 is appropriate = \$4908.90. I find that 60% adequately and fairly represents the loss of value to the tenants during those three months. For complete clarity, the amount of \$4908.90 is in addition to the \$915.00 the tenants have already received in compensation from the landlord.

The tenants are also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have established a claim for \$5008.90. I grant the tenants an order under section 67 for the balance due of \$5008.90. This order may be filed in the Small Claims 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: April 27, 2017

Residential Tenancy Branch