



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, LRE, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order setting conditions or limiting the landlords' right to enter the rental unit; and to recover the filing fee from the landlords for the cost of the application.

Both tenants and both landlords attended the hearing and all parties gave affirmed testimony. The parties were also given the opportunity to question each other.

During the course of the hearing, the landlords submitted that they could not provide evidence in response to the tenants' claim because the tenants moved out and did not provide a forwarding address to the landlords. The Tenant's Application for Dispute Resolution contains an address for service of the tenants. Providing evidence to that address in accordance with the Rules of Procedure would be sufficient service, and if provided by registered mail, would be deemed to have been served on the tenants 5 days after mailing.

No other issues with respect to service or delivery of documents or evidence were raised, and all evidence of the tenants has been reviewed and is considered in this Decision.

At the commencement of the hearing, the tenants advised that they have vacated the rental unit and withdrew the applications for an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order suspending or setting conditions on the landlords' right to enter the rental unit.

Issue(s) to be Decided

The issue remaining to be decided is:

- have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of rent paid, hotel accommodation, repairs made by the tenants and recovery of asbestos testing costs?

Background and Evidence

The first tenant (RE) testified that this month-to-month tenancy began in June, 2016 and the tenants vacated the rental unit on May 20 or May 21, 2017. Rent in the amount of \$1,500.00 per month was payable on the 1st day of each month. No security deposit or pet damage deposit was collected by the landlords, however the tenants paid the first and last month's rent at the beginning of the tenancy. The rental unit is a single family dwelling, however the tenant does not recall signing a tenancy agreement, and none has been provided as evidence for this hearing.

The tenant further testified that in early April, 2017 the ceiling over the dining room caved in. It had been leaking off and on since the tenants moved in and the landlords attempted to have the roof repaired, but it didn't work. The gyprock became saturated and caved in. The tenant took a photograph of the ceiling and sent it to the landlords right away. The landlord arrived at the rental unit but the tenant had torn down the saturated gyprock with a hammer, and testified that it was unsafe, and the tenant notified the landlord that the tenants were staying in a hotel that night. The tenants claim \$145.42 for the hotel stay and have provided a copy of a receipt for an overnight stay on April 10, departing on April 11, 2017.

The tenant works for a drywall company, and got a sample of the ceiling tested for asbestos at a cost of \$52.50 and an invoice dated April 12, 2017 has been provided. The result shows positive at 1% for asbestos and 99% of non fibrous material.

The landlords served the tenants with a "Notice to Quit," a copy of which has been provided for this hearing. It is dated April 15, 2017 and states that due to damage caused by the tenants and violence or threats of violence by the tenants, the landlords have elected to terminate the lease. It also states that the tenants are given 30 days notice to quit the premises in compliance with the applicable laws, and to vacate by noon on May 15, 2017.

The tenant also testified that rent was always paid on time, however the landlords threatened to throw the tenant's belongings outside and did cut off the gas so there was no heat in the rental unit. A furnace repair person attended and said not all 3 pilot lights to the furnace, fireplace and hot water tank would go out all at once. The tenants were forced to move out, and claim 10 days rent, or \$483.87.

The second tenant (KG) testified that the tenants paid the landlords a deposit of \$200.00 on June 10, 2016, then the following Friday they paid an additional \$1,300.00 to make up the \$1,500.00 rent. Just before July 1, 2016 the tenants paid another \$1,500.00. When the landlord called, she asked the tenants for the last month's rent and they agreed. When the tenants got there, the husband landlord said that the tenants had paid the first and last month's rent and a security deposit, but the landlord wife replied that the tenants had only paid the first and last month's rent.

The tenants moved out on Saturday, May 20, 2017.

The tenant also testified that there was a written tenancy agreement.

The tenants have not provided the landlords with a forwarding address.

The ceiling caved in on April 10, 2017 when the tenant wasn't home, but it was wet and just dropped.

The landlords gave the Notice to Quit, and hassled the tenants by parking their truck in the driveway so the tenants couldn't park well. The tenant also assumes it was the landlords that turned the gas off. When the repair person arrived, all pilot lights were out and the gas meter seal was broken.

It was uncomfortable living there, and there were squirrels in the attic as well as a plastic window in the dining room which bulged out. The landlords said they would fix it but didn't do so, and it cost more to heat the home. The tenants claim half a month's rent.

The tenants also replaced a broken thermostat in the rental home with a digital one, and a receipt in the amount of \$47.01 has been provided.

The tenants have also provided photographs.

The first landlord (GS) testified that a move-in condition inspection report was completed at the beginning of the tenancy. There was a small leak in the ceiling and the tenant brought it to the landlord's attention which was addressed immediately, and the tenants were told to let the landlords know if there was any moisture. A week after the repair the landlord attended with a moisture reader which came out at 0%. Literally 6 months later is when the tenant says the ceiling caved in. The tenant sent a photograph of a small crack and said that he opened a 1foot in diameter hole. The landlord went there right away and by then the tenant had ripped out more than 1 sheet of drywall and 90% of it was dry.

The landlord further testified that the dining room window is not plastic, but plexi-glass and is more durable than glass, and during the tenancy the tenant ripped the putty out.

The landlords did not authorize any of the tenants' actions.

With respect to rent and deposits, the landlord testified that the tenants paid a deposit of \$200.00 on July 17, 2016 to hold the house, and on July 1, the tenants paid \$1,300.00. On July 1 the landlords collected a \$750.00 pet damage deposit and a \$750.00 security deposit.

The tenants paid rent up to May 1, 2017 but stayed until May 25. The landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 3, 2017 which contained an effective date of vacancy of May 13, 2017. The landlords have re-rented the rental unit but the new tenants can't move in until the repairs are completed, likely for July 1, 2017.

The second landlord (TS) testified that the tenants didn't have any authority to rip out the ceiling. The landlord also disputes the date the tenants say they vacated the rental unit and testified that one of the tenants texted the landlord saying they would be moved out on May 25, 2017.

Analysis

This is a tenant's application for monetary compensation for damages or loss suffered during a tenancy. In order to be successful, the onus is on the tenants to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the landlords' failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenants made to mitigate the damage or loss suffered.

The tenants claim half a month's rent, or a portion of that for the landlords requiring the tenants to move early,; \$145.42 for the motel stay after the ceiling collapsed; \$52.50 for the asbestos testing; \$47.01 for the digital thermostat; and recovery of the \$100.00 filing fee.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was also served on May 3, 2017, and the tenants did not dispute that, and in fact failed to mention it at all during their testimony. The landlord testified that it was effective May 13, 2017. Where rent isn't paid when it is due, a landlord has every right to issue such a notice, and I find that the landlord believed rent was due on the 1st of the month even

though the landlords had given the "Notice to Quit" on April 15, 2017 effective May 15, 2017.

The tenant believes that the landlords collected the first and last month's rent but didn't collect a security deposit or a pet damage deposit. The Residential Tenancy Act does not permit a landlord to collect the first and last month's rent, but does permit a landlord to collect rent in advance and a security deposit and pet damage deposit equal to no more than half a month's rent each. However it's phrased, I find that the tenants paid the first month's rent at the beginning of the tenancy as well as a pet damage deposit in the amount of \$750.00 and a security deposit in the amount of \$750.00, and both deposits are currently held in trust by the landlords. The tenants did not pay any rent for the month of May, 2017. Therefore, the landlords are not responsible for returning any rent for May to the tenants.

The tenant also testified that the tenants were forced to move out, but I disagree. The "Notice to Quit" had no effect, and the tenant made the situation worse by taking down more of the ceiling without giving the landlords an opportunity to complete the repair. Therefore, I find that the tenants have failed to establish any claim for recovery of partial rent for April, 2017.

The *Residential Tenancy Act* is clear with respect to repairs to a rental unit. A landlord is required to provide and maintain residential premises in a state of decoration and repair that makes it suitable for occupation by a tenant. In this case, the parties agree that the roof/ceiling needed repair and the landlord had the repair made. The tenant testified that the drywall was damp, or even saturated, and eventually fell onto the dining room table, and he knocked down more of it prior to the landlord attending. I see absolutely no reason for the tenant to do so.

The *Act* specifies that a tenant may make emergency repairs in certain circumstances, and specifies what repairs are emergency repairs, and contains other useful information (underlining added):

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,

- (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
- (a) claims reimbursement for those amounts from the landlord, and
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, I do not find that the digital thermostat qualifies as emergency repairs, and the tenants' application for recovery of that cost is dismissed.

I accept that a portion of the ceiling collapsed into the rental unit on or about April 10, 2017. It is unclear how much however the parties agree that the tenant took down more of the ceiling before the landlord arrived. I also accept the testimony that the landlords' contractor tested a sample in his vehicle, and the tenants have provided evidence of having it tested at a laboratory for asbestos which shows a positive amount of 1% and 99% of other material. There is no evidence before me that the tenants did anything to mitigate the costs of a hotel room, in that they have failed to establish that it was necessary before the additional portion of the ceiling was brought down by the tenant. I further find that the tenants failed to mitigate any loss suffered.

The parties also agree that a repair was made to the roof, and the tenant didn't dispute the landlord's testimony that it was done immediately and that the landlord told the tenants to notify the landlords of any moisture. In the circumstances, I am not satisfied that the tenants have established that the landlords failed to comply with the *Act* or the tenancy agreement.

Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenants' application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is withdrawn by the tenants.

The tenants' application for an order limiting or setting conditions on the landlords' right to enter the rental unit is withdrawn by the tenants.

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: June 14, 2017

Residential Tenancy Branch