



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, RR, FF

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$18,064.76
- b. An order that the landlord provide services or facilities required by law
- c. An order to allow the tenant to reduce rent for repairs, services, or facilities agreed upon by not provided.
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides in early January 2017.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

Tenants' Evidence:

The advertisement given by the landlord stated "5 bedroom House For Rent for \$3000 plus utilities starting May 1st with the option to rent the house as six bedroom house for \$3450 + utilities."

On March 1, 2016 the parties signed a one year fixed term tenancy agreement that provided that the rent was \$3450 per month, subject to increase as provided in section 7 of the tenancy agreement. The landlord testified he used the \$3450 as the rent as the tenants represented it was likely they could find someone to rent one of the rooms.

The tenants testified the Municipal bylaws do not permit the rental of all six bedrooms.

Shortly before the tenants moved in the landlord and tenant met and the parties renegotiated the rent for the rental unit as the tenants were not able to find a tenant to rent the rooms to.. The new tenancy agreement provided that the rent would be reduced to \$3225/month until September, with the condition that if we rented any of the basement rooms the rent would be increased to \$3450/month. The rent was to be increased to \$3450 on September 1, 2017 and for the months after that.

The tenant testified the rental unit was not satisfactory and the landlord failed to make the necessary repairs or deal with the problems including the following:

1. A silverfish infestation.
2. A wasp infestation
3. The largest burner on the stove did not function.
4. Failure to remove a large amount of garbage left on the property.
5. Failure to fix the stairs leaving from the kitchen to ground level.
6. Failure to fix the doors of three basement rooms that were severely damaged.
7. Failure to fix the kitchen was loose
8. Failure to install window screens
9. Failure to fix the front door that was damaged and need replaced.
10. Failure to fix the outdoor lights
11. Failure to fix the gasket on the door of the dishwasher
12. Failure to install weather stripping on the door leaving from the basement.

The tenants testified they expressed their concerns orally to the landlord on several occasions. On June 24, 2017 they sent the landlord an e-mail identifying items that needed attention included the front door needed replacement, the burner on the stove doesn't work, no screens on the windows (which we only recently noticed), electrical outlets stopped functioning, silverfish, and back steps are continuing to degrade.

The tenants testified the landlord never attended to #1 and #2 above. Issues #3 to #8 were finally attend to in September after they filed an Application for Dispute Resolution seeking a repair order.. Issues #9 to #12 were not addressed while the tenants live in the rental unit.

The tenants testified they were not able to rent the basement rooms for May to September because of their poor condition. As a result they submit they should not have to pay the rent for a 5 or 6 bedroom house.

The tenants seek compensation stating they were unreasonably disturbed based on the following:

- In September the landlord issued one month Notice to End Tenancy based on the grounds that the Tenants were repeatedly late paying the rent. He began advertising and showing the rental property which caused stress and was disruptive.
- The landlord attended the rental property on a regular basis to make repairs including the following:
 - The landlord repaired the doors to the basement rooms in late August. This took approximately 12 hours over a 3 day period.
 - Work was done on various projects in September. The landlord would often accompany the contractor which further disrupted their enjoyment.
 - In October the backstairs were repaired. This took less than one hour.
 - In October the stove was repaired which took one to 2 hours.
 - On October 21 a plumber came in to deal with a plumbing problem.
 - At the end of October a contractor came in to deal with the testing for mould.
- The landlord showed the home on 4 occasions over a 2 hour time block for each of the showings.

The landlord served a one month Notice to End Tenancy on the tenant in August. The tenants disputed the Notice. In a decision dated October 3, 2016 the arbitrator cancelled the Notice. The arbitrator determined that the landlord's preferred method of rent payment was by e-mail money transfer. The maximum amount the tenants' could transfer each day was \$3000 per day. Since the rent was more than this amount the arbitrator determined it is reasonable for the landlord to expect that the rent would be paid in two instalments.

The landlord served a 10 day Notice to End Tenancy on the Tenants on October 3, 2016. The tenants had paid \$3000 by e-mail money transfer on October 1, 2017 but failed to pay the balance of \$450. The tenants produced evidence the e-mail transfer was completed on October 7, 2017.

The landlord served a 10 day Notice to End Tenancy on November 3, 2017. The tenants had paid \$3000 on November 1, 2016. The \$450 balance was not paid.

The Tenants vacated the rental unit on November 15, 2017. The landlord returned the security deposit.

Landlord's Evidence:

The landlord gave the following testimony:

- No specific mention of repairs was made by the Tenant TM when she viewed the property in February.
- I sent the tenancy agreement to the Tenant on February 28, 2016. The tenant had an opportunity to review it (2016 is a leap year) and we signed the original agreement of March 1, 2017.

- On April 27, 2016 I was contacted by TM's spouse asking for a reduction of rent. He said they could not find a roommate to move into the house. I accommodated their request and the tenancy agreement was revised to provide for a monthly rent of \$3225 for the summer months increasing to \$3450 as we originally agreed in September.
- My handyman did a number of repairs including fixing the back steps in May.
- The tenants made a number of repair requests. I thought some were unreasonable including the request to refinish the hardwood floors. I had the electrical system and the dryer fixed in June.
- The tenants requested I fix the doors to the basement rooms. They were in the same condition they had been for the last 9 years. They were functional and closed although they needed repairs. I asked my handyman to do the work but he was booked up and not able to complete those repairs in a timely manner. I attempted to contact other contractors but they were too busy to commit to the work.
- The other repairs were completed over time although there were delays for a number of reasons.
- In August I went on my honeymoon for a period of time.
- The tenant failed to provide me with the information of what her claim was about and I was only able to get it after I contacted the Residential Tenancy Branch.
- At the start of September I only received \$1500 in rent from the tenants. I was under the impression that they intended to move at the end of the month as I had given them a one month Notice to End Tenancy. Soon after I received the Revised Application of the Tenants disputing the Notice to End Tenancy.
- During the month of September I discussed the repair issues with the tenants to come up with a game plan as to how they could be tackled.
- After the October 3, 2017 hearing I gave the Tenants 10 day Notices to End Tenancy on the 3rd of the month to give the tenants time to send the e-money transfers over the first two days.
- I was never informed the Tenants were moving out. My neighbour called me to inform me this was the case.
- After the tenants moved out I made multiple attempts to complete a move-out inspection report the tenants chose not to respond to my requests for an inspection.

Analysis:

With respect to each of the Tenants claims I find as follows:

- a. I dismissed the Tenants claim of \$675 for overpayment of rent for May, June, July and August 2016 and I dismissed the Tenants claim for overpayment of rent for September, October and November in the sum of \$900. The binding agreement between the parties is set out in the tenancy agreement which originally set the rent of \$3475. At the tenants request the landlord agreed to the Tenants request to a reduction of the rent for the months of May, June, July and August and then reverting back to \$3475. The advertisement which set two rents depending on the number of bedrooms that was to be

used is not the contract and there is no legal basis for an arbitrator to impose the lower rent where the parties have agreed otherwise.

- b. The Application for Dispute Resolution filed by the Tenants is unclear. They have claimed \$9000 for an unreasonable eviction and undue hardship for September, October, and November. I have interpreted this claim to mean undue hardship for September, October and November relating to the service of the Notices to End Tenancy and the termination of the tenancy. I will be dealing with undue hardship relating to the repairs when I consider the tenants claim for breach of the covenant of quiet enjoyment below.

I dismissed the Tenants' claim of \$9000 for unreasonable eviction and undue hardship relating to the events leading to the end of the tenancy. The landlord has a legal right to serve a 10 day Notice to End Tenancy when the tenants do not pay the rent when due. While the arbitrator in the October 3, 2016 hearing determined the landlord had by implication agreed to wait the two days to allow the tenant to complete the e-transfer, the second payment of the rent for October did not complete until October 7, 2016 and the Tenants failed to pay the last instalment of \$450 for November. The tenants breached the tenancy agreement when they vacated the rental unit without notice to the landlord. The landlord is not responsible for the tenancy coming to an end in the manner that it did. The tenants failed to prove they are entitled to compensation for this claim.

- c. I dismissed the tenants claim of \$1437 for moving expenses for the same reasons set out above..
- d. I dismissed the two claims of \$26.38 for the cost of serving documents. This claim relates to the cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee.
- e. The tenants claimed the sum of \$6000 for the reduced value of the tenancy for the months of July and August 2016. I take this to mean a claim for the breach of the covenant of quiet enjoyment and compensation for the deficiencies in the rental property caused by the delay in making repairs. I included a claim for compensation for the months of September, October and November for breach of the covenant of quiet enjoyment for the disturbances caused by the repairs in this analysis.

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;

- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord and tenant obligations to repair and maintain

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.

.....

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Policy Guideline #6 includes the following

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

....

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the

MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

After considering all of the evidence I determined there has been a reduction in the value of the tenancy and the Tenants are entitled to compensation. However I determined the amount claimed is excessive and not supported by the evidence. In coming to my determined I considered all of the evidence including the following:

- The work done by the landlord was necessary for the maintenance of the rental property.
- Much of the work done was done at the request of the Tenants. .
- I determined that while there had been oral discussions prior to June 24, 2016, the landlord had been put on Notice of the deficiencies in an e-mail to the landlord outlining the problems on that date.
- I determined there was a significant delay by the landlord in completing the repairs. While the landlord may have reasons for the delay including his honeymoon and difficulties in getting a contractor, the fact remains that the tenants were getting less than what they bargained for.
- Section 32(5) of the Act provides that the fact the tenants' may have been aware of the deficiencies at the time they entered into the tenancy agreement does not relieve the landlord of his obligations under section 32(1) of the Act.
- The tenants failed to prove the condition of the rental property prevented them from renting the rooms in the basement. They failed to produce evidence from a prospective tenant who chose not to rent the place. They failed to provide sufficient evidence of their efforts to rent the basement rooms. I accept the evidence of the landlord that those rooms had been rented in the past. The tenants failed to provide sufficient evidence of the room violating municipal bylaws.
- I determined that the deficiencies in the property were sufficient to give rise to a claim for compensation. However, the tenants failed to prove they were so sufficient to give rise to a reimbursement of the entire monthly rent.
- I considered the disruptions caused at the end of August and in September and October caused by the landlord and his contractors making the repairs were frequent and ongoing. Much of the repair work was done in the evening.
- The tenants use of the basement area was limited because of the failure of the landlord to make repairs in a timely fashion..

In the circumstances I determined the tenants are entitled to compensation in the sum of \$1350 (\$300 a month multiplied by 4.5 months for July, August, September, October and ½ of November 2016) for the reduced value of the tenancy and breach of the covenant of quiet enjoyment.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1350 plus the sum of \$50 in respect of the filing fee (reduced to reflect the limited success of the tenants) for a total of \$1400.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 29, 2017

Residential Tenancy Branch