



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, MNDC, O

Introduction

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

- a. An order authorizing the Tenants to change the locks;
- b. A monetary order in the sum of \$3100

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.

The tenants submitted 53 pages of photos and documents to the Branch. The landlord submitted 266 pages of photos and documents. Much of the evidence submitted was not relevant to the issues raised in this hearing.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord on June 26, 2017 as the landlord acknowledged service of the same.

Preliminary Matter:

In a hearing held on December 1, 2016 the tenants' application to cancel a one month Notice to End Tenancy was successful. In a hearing held on January 5, 2017 the tenants' application for repairs and the reduced value of the tenancy was dismissed with liberty to re-apply because the tenants failed to provide sufficient details of the nature of the repairs they felt were necessary.

The Application for Dispute Resolution filed by the Tenants did not make a claim for repairs or emergency repairs. There is a note in the Details stating "The tenants asked the landlord to make repairs which haven't been done." The note does not identify

which repairs are sought. At the hearing the solicitor for the Tenant said the Tenants wished to make a repair claim based on a letter dated September 16, 2016. While I was tempted to dismiss the tenants claim for the same reason set out in the January 5, 2016 the landlord stated he was prepared to deal with an Application for repairs. As a result I ordered that the tenants' Application for Dispute Resolution be amended to include an application for a repair order.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a repair order?
- b. Whether the tenants are entitled to a monetary order for the reduced value of the tenancy and if so how much?
- c. Whether the tenants are entitled to an order to change the locks.

Background and Evidence

The written tenancy agreement provided that the tenancy would start on August 1, 2014 and continue on a month to month basis. The rent was \$1200 per month payable in advance on the first day of the month. The tenants paid a security deposit of \$600 and a pet damage deposit of \$600 on July 8, 2014. The rent has been increased to \$1234.80 per month.

Analysis:

One of the major issues raised is what is included with the rental of the rental unit. The tenants testified the landlord orally agreed that the rental agreement included the rental of storage sheds and the yard surrounding the house.

The landlord disputes this stating the house only was rented.. He referred to the Addendum to the tenancy agreement that states "**The rent is \$1200 per month. This includes: House Only, water/sewer, fridge and stove.**" There is also a clause in the Addendum to the tenancy agreement that states: "Yard to be kept in good appearance and the responsibility of the Tenants"

After hearing the disputed evidence of the parties I determined the following:

- The house is included in the tenancy agreement.
- The rental of the sheds was not included.
- The parties have joint use of the property.

I do not accept the submission of the landlord that the tenants are not entitled to the use of the yard although the tenancy agreement provided they were responsible for

yard maintenance. Such a term would be unconscionable and not enforceable. I determined the parties have joint use of the yard.

Application for a Repair Order:

Section 32 of the Residential Tenancy Act provides as follows:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(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.

With regards to each of the repair claims made by the Tenants I find as follows:

- a. I determined the tenants are entitled to an order that the landlord repair the damaged rear siding that was caused by a fire in the neighbouring building. The landlord owned the neighbouring building. The damaged siding can put the integrity of the rental unit at risk and such an order is appropriate.
- b. I determined the tenants are entitled to an order that landlord inspect the faucets to the tap in the kitchen, bathroom and tub and if leaking make the appropriate repairs.
- c. I determined the tenants are entitled to an order that the landlord inspect the fridge and if leaking make the appropriate repairs.
- d. I dismissed the claim of the tenants that the landlord repair the sand and paint the sidewall to the staircase as the tenants have not proven this claim.

- e. I determined the tenants are entitled to an order that the landlord install smoke detectors. I ordered that the landlord determine the appropriate number of smoke detectors required by law and install them in the location required by law.
- f. I determined the tenants are entitled to an order that the landlord repair the two cracked windows. The arbitrator in the December 1, 2016 arbitration determined the landlord failed to prove the windows were damaged during the tenancy and dismissed the set aside the one month Notice to End Tenancy. On reviewing the photographs I determined the windows were in poor shape and in need of repairs.
- g. I dismissed the tenants' application that the landlord repair the front gate and replace the fence. The landlord testified he witnessed a friend of the tenant push the gate with his vehicle. The tenants did not dispute this evidence. I determined the tenants failed to prove that the landlord is responsible to repair this item.
- h. I dismissed the tenants' claim that the landlord repair side gate as the tenants failed to prove the side gate is in need of repair.
- i. I do not accept the submission of the landlord that the provision in the tenancy agreement that the tenants are responsible for yard maintenance obligates the tenants to remove the brambles. Policy Guideline #1 includes the following:

“PROPERTY MAINTENANCE

....

- 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
- 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
- 5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
- 6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.”

Both tenants are disabled. The overgrown brambles have been there since the start of the tenancy and it is getting worse. I determined this is a major project that is the landlord's responsibility. I ordered that the landlord remove the brambles and overgrown vegetation from the yard.

- j. I do not accept the submission of the landlord that there is an implied obligation on the tenants to keep the vents cleaned. Policy Guideline #1 includes the following:

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

I ordered the landlord clean the heating vents.

- k. I dismissed the tenants' application that the landlords repair the gap in the door frame. The first time the landlord became aware that a problem existed was when the tenants orally made the request at the hearing. If a problem exists the tenants must make a request to the landlord (preferably in writing) and give the landlord a reasonable opportunity to inspect the problem and if necessary make the alleged repairs.
- l. I dismissed the tenants' claim that the landlord deal with a mice problem as they failed to advise the landlord in a timely manner so that the landlord had an opportunity to investigate.

In summary I ordered that the landlord do the following by September 30, 2017:

- a. Repair the damaged rear siding.
- b. Inspect the faucets to the tap in the kitchen, bathroom and tub and if leaking make the appropriate repairs.
- c. Inspect the fridge and if leaking make the appropriate repairs.
- d. Determine the appropriate number of smoke detectors required by law and install them in the locations required by law.
- e. Repair the two cracked windows.
- f. Remove the brambles and overgrown vegetation from the yard.
- g. Clean the heating vents

Tenant's Application for a Monetary Order:

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

...

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

With respect to each of the tenants' claims for compensation I find as follows;

- a. I dismissed the tenants claim in the sum of \$250 for monies allegedly paid to a friend PVDM for garbage removal. The tenants failed to obtain the landlord agreement that he would pay this sum or obtain an order from the arbitrator ordering the landlord to remove the garbage. They rely on a handwritten receipt dated August 27, 2014. They failed to produce any receipts from the garbage dump. The person who allegedly did the work did not testify or provide evidence under oath. I determined tenant tenants failed to prove this claim
- b. I dismissed the tenants claim in the sum of \$450 to RS for money allegedly paid to a friend of theirs for yard work. The tenants failed to obtain the landlord's agreement that he would pay this sum. There are insufficient particulars as to what work he did. He did not attend the hearing or provide evidence under oath. I determined the tenants failed to prove this claim.

- c. The monetary order worksheet filed by the tenants sought a monetary order in the sum of \$2500 for breach of the covenant of quiet enjoyment. It became apparent at the hearing that this compensation claim was for breach of the covenant of quiet enjoyment and also a claim for the reduced value of the tenancy caused the landlords failure to make repairs in a timely manner in contravention of section 32 of the Act..

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.

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.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

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.

The solicitor for the tenants gave the following submission in support of the claim of the Tenants for compensation:

- The tenants seek compensation of \$140 a month for 18 months.
- The landlord failed to do the repairs in a timely fashion.
- The landlord has limited the tenants use of the storage sheds and the yard.
- The landlord has come on the property without giving notice.
- The landlord has made inappropriate comments about the female tenant's breasts on at least 3 occasions.
- There is a mouse problem.
- The landlord has come on the property 4 to 5 times a week often after 8:00 p.m. to do work and the noise is disturbing the tenants. The tenant is ill and needs proper rest.

The landlord denies much of the evidence presented by the tenants. He gave the following testimony:

- He denies making excessive noise.
- He repaired the bathroom within a short period of receiving notice.
- He has completed other repairs within a short period of receiving notice.
- The tenancy agreement provides the rental of the house only.
- He denied he swore at the tenants or made inappropriate comments.

Landlord's Witness #1 testified as follows:

- He and his wife rented a room from the tenants for about 5 months. They vacated the rental unit about a year ago.
- The landlord was helpful and supplied paint, drywall materials etc. when he made improvements to the rental property.
- The landlord came to the rental property around 3 times during the 5 month period he lived there.
- The problems started to occur when the female tenant started to feed feral cats.
- The landlord thanked him when he cut the grass.
- He left the property on bad terms with the tenants.

The tenants responded by saying Witness #1 lived there for 3 months and Witness and his wife left after she stole medication from his wife. ,

Analysis

All of the evidence was carefully considered. I do not accept the submission of the solicitor for the Tenants that a reduction of rent of \$140 per month for 18 months is an appropriate sum for the following reasons:

- I accept the tenants' submission the landlord failed to make repairs in a timely fashion. However, they bear some responsibility in failing to identify their repair claims thus resulting in the dismissal of the claim in the January arbitration.
- The tenants have not been successful with many of their repair claims. Other claims did not significantly affect their enjoyment of the property.
- I determined the tenants have a right to joint use of the property surrounding the house. I determined their enjoyment of the property has been limited by the conduct of the landlord in failing to remove the brambles and overgrown vegetation. I also determined their enjoyment of the property has been limited by the failure of the landlord to clean the vents.
- The determined the landlord breached the tenants' legal right when on occasion he accessed the property without giving proper notice. Section 29 of the Act provides as follows:

“Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).”

- I determined the tenants have joint use of the yard and they are entitled to notice if the landlord is going onto the yard.
- The tenants failed to prove the landlord has harassed or made inappropriate comments to the tenants.

In the circumstances I determined the tenants are entitled to compensation in the sum of \$300 for the reduced value of the tenancy and breach of the covenant of quiet enjoyment such sum may be deducted from future rent. .

I dismissed the tenants' claim authorizing the change of locks as the tenants failed to present sufficient evidence to establish such an order was appropriate.

Conclusion:

In conclusion I ordered that the landlord do the following by September 30, 2017:

- a. Repair the damaged rear siding.
- b. Inspect the faucets to the tap in the kitchen, bathroom and tub and if leaking make the appropriate repairs.
- c. Inspect the fridge and if leaking make the appropriate repairs.
- d. Determine the appropriate number of smoke detectors required by law and install them in the locations required by law.
- e. Repair the two cracked windows.
- f. Remove the brambles and overgrown vegetation from the yard.
- g. Clean the heating vents

I further ordered that the landlord pay to the tenants the sum of \$300 such sum may be deducted from future rent.

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: August 25, 2017

Residential Tenancy Branch