



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* (the "Act") for:

- a monetary order for compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

Issues

Are the tenants entitled to a monetary award for compensation for loss?

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

Background & Evidence

The tenancy for this house began in February 2010. The current monthly rent is \$2614.00 payable on the 1st day of each month.

The tenants are claiming compensation for loss of quiet enjoyment in the amount of \$6700.00 for loss of use of the yard and sundeck area and on-going disruption from construction and \$500.00 for the unauthorized removal of a vehicle from the property resulting in stress, aggravation and disruption.

In support of their claim the tenants submit as follows:

- On November 3, 2014 a rainstorm flooded the rear patio of the rental property and two large trees in the front yard became uprooted crashing to the ground.
- The tenants submit they had made consistent efforts to notify the landlord of the flooding problem but their concerns were ignored.

- A pump was installed to deal with the flood and the tenants were advised that repair to the drainage and the yard would commence in beginning of Spring.
- Work did not begin until June 11, 2015.
- The construction crew would show up sporadically sometimes only 1 day per week.
- They suffered loss of use of the sundeck for one full month during the summer as the stairs were removed.
- The work to complete the driveway and drainage was completed early November 2015.
- The grass was not reseeded until May 9, 2016.
- The claim ends in June 2016 when the grass was put in.
- In addition to the above, while away on vacation in July 2015 they were informed by a neighbor that contractors had towed their vehicle from the driveway to the street.

The landlord submits the tenants' application should be dismissed as it is similar to previous cases filed by the tenant which were dismissed as the tenant failed to provide particulars. The landlord submits damage was caused by an exceptionally heavy rainstorm and the area is known for potential flooding. The landlord had someone visit the rental unit annually and clean out any drainage issues. The landlord submits it took the appropriate action to repair extensive damage caused by the flooding incurring up to \$40,000 in expenses. The landlord submits the tenants have still had full use of the inside of the rental property. The outside repairs have now all been completed satisfactorily. With the exception of seasonal delays and delays as a result of the complexity of the drainage work required, the repairs were for the most part completed in a timely manner.

Analysis

I have reviewed the previous decisions relating to this tenancy and the tenants' previous applications relating to the same subject matter were dismissed with leave to reapply so this application is valid.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and

- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 “Entitlement to Quiet Enjoyment” provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation 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.

I find the tenants have not provided sufficient evidence that there was a breach to their entitlement to quiet enjoyment beyond a temporary discomfort or inconvenience. There was no dispute that the excessive damage and subsequent repair work was necessitated as a result of a severe rain storm and not the negligence of the landlord. The tenant provided insufficient evidence that the landlord’s alleged failure to take preventative action could have avoided the ensuing damage caused by the rainstorm. I find that although the repair work took approximately 20 months to complete the landlord took appropriate actions to repair the damage in a reasonably timely manner. I find the repair work was extensive and seasonal delays contributed to the delay in timely repairs. In addition, if the tenants were concerned with the landlord unreasonably delaying the repair work, the tenants could have mitigated any losses by filing an application requesting an order for the landlord to make the necessary repairs. The tenants did in fact make such an application but failed to follow through on it after their application was dismissed with leave to reapply in a decision dated September 8, 2015. Further, the tenants claim for loss of quiet enjoyment due to the construction noise also has to be balanced against the landlord’s right and responsibility to maintain and repair the rental property. I find the landlord had a responsibility to repair damage and drainage issues and any construction related noise and disturbance resulting from this is not a breach of quiet enjoyment.

Although I find the landlord did not breach the tenants' right to quiet enjoyment, there was no dispute that the tenants did suffer a loss of use of the yard area for a period of 20 months as well as the sundeck for a 1 month period. As per Policy Guideline #6, a tenant may still be entitled to compensation for loss of use even if the landlord took reasonable steps to minimize disruption in making repairs. As the tenants continued to occupy and otherwise make use of the rental unit during the period in question, it is difficult to quantify the reduction in the value of their tenancy. The tenants did not provide any basis for how they arrived at a figure of \$250.00 per month for loss of use of the yard area or for the figure of \$700.00 per month for loss of use of the yard and sundeck for 1 month.

I find the yard and sundeck areas are neither essential to the tenants use of the rental unit as living accommodation nor a material term of the tenancy. As such, I find the tenants are entitled to the nominal amount of \$100.00 per month as compensation for loss of use of the yard for the 20 month period from November 2014 to June 2016 and an additional \$50.00 for the month in which they suffered loss of use of the sundeck for a total award of \$2050.00.

The tenants claim for loss as a result of the vehicle being towed is dismissed as the tenants failed to provide any evidence of how they suffered a loss as result of the alleged stress and anxiety caused by this.

As the tenants were partly successful in this application, I find that the tenants are entitled to recover one half (\$50.00) of the filing fee paid for this application from the landlord for a total monetary award of \$2100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$2100.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 11, 2017

Residential Tenancy Branch