Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and

- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord, the landlord's agent and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent (the landlord) and Tenant M.E. (the tenant) stated that they would be the primary speakers during this hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that the Tenant's Application for Dispute Resolution (the Application) and evidentiary package was served to the landlord by way of registered mail on September 20, 2017. The tenant provided the Canada Post Tracking Number to confirm this registered mailing and the landlord confirmed receipt of the Application and evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with these documents.

The landlord testified that they mailed their evidentiary package to the tenants on October 18, 2017. The tenant confirmed that they received the evidentiary package. In

accordance with section 88 of the *Act,* I find the tenants were duly served with the landlord's evidence.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The tenants gave written evidence that this tenancy began on December 15, 2016, with a monthly rent of $1,700.00, due on the first day of each month. The tenant also gave written evidence that a new tenancy agreement was signed by the landlord, her agent and the tenants on March 25, 2017, which raised the monthly rent to $1,750.00 and included utilities and internet.

The tenant testified that a security deposit of $850.00 was paid to the landlord. The landlord and tenant both provided written evidence that this tenancy ended on August 31, 2017, and that the security deposit was paid back to the tenants within 15 days of the end of this tenancy, on September 03, 2017.

A Monetary Order Worksheet was submitted into evidence outlining the monetary claim of the tenants:

Item	**Amount**
Loss of Parking	$112.34
Loss of Ability to Use Driveway	102.06
Loss of Quiet Enjoyment	943.50
Change of Address	87.31
Requested Monetary Order	**$1,245.21**

In addition to the above the tenant also submitted into evidence:

- detailed descriptions of the tenants' monetary claim and a timeline of events;
- copies of a series of e-mail exchanges between the landlord and Tenant M.E. from November 23, 2016, to September 03, 2017;

- a copy of an e-mail exchange with a by-law compliance officer from the city where the rental unit is located (City) from July 18, 2017 to September 07, 2017;
- copies of a series of text messages exchanged between the landlord and Tenant M.E. from December 10, 2016, to August 31, 2017
- copies of a series of text messages exchanged between the tenant and the lower occupant from April 10, 2017, to July 28, 2017;
- copies of a series of text messages exchanged between the two tenants from February 16, 2017, to July 07, 2017; and
- A USB memory stick with various pictures taken during the tenancy from March 09, 2017, to August 25, 2017, a copy of a rental advertisement that was posted to the internet for the rental unit, a screenshot of an aerial map showing the driveway in relation to the City property lines, a video related to the lower occupant's noise and other related images related to the tenants' monetary claim;

The landlord submitted into evidence:

- A copy of the original advertisement for the rental unit that was posted to the internet;
- a picture of the driveway at the residential premises showing three cars parked in the driveway side by side;
- copies of various pictures from the inside of the rental unit; and
- copies of a series of e-mail exchanges between the landlord and Tenant M.E. from July 17, 2017, to September 03, 2017.

The tenant stated that there are three key issues in the tenants' claim with the first issue being the lower occupant parking in the driveway. The tenant submitted that a new tenancy agreement was signed between the landlords and the tenants on March 25, 2017, to reflect another tenant moving into the lower rental unit. The tenant testified that they had a verbal agreement with the landlord that the lower occupant would park on the street. The tenant stated that the lower occupant parked in the driveway twice in May 2017 and that the tenant had to tell the lower occupant to park on the street. The tenant further stated that in July 2017, the Lower occupant parked in the driveway again due to road repairs being done.

The tenant recounted that she met with the landlord on July 07, 2017, to discuss compensation from the landlord for the lower occupant parking in the driveway. The tenant referred to an e-mail on July 11, 2017, where the landlord refused to give compensation to the tenants for the lower occupant parking in the driveway. The tenant

stated that they were frequently inconvenienced by guests parking behind the tenants' cars and blocking them in. The tenant referred to pictures on the USB memory stick to confirm her statement. The tenant stated that the landlord should have offered compensation and that there was no issue, previous to the new driveway being installed, with the lower occupant parking on the street. The tenant testified that the lower occupant is a good friend of the landlord.

The second issue that the tenant testified about was the loss of use of the driveway. The tenant recounted that they notified the landlord of the driveway being in poor condition on February 22, 2017, and that the tenants were having difficulties in getting in and out of the driveway due to puddles and mud. The tenant testified that she asked the landlord to lay plywood down on the driveway as a temporary solution to the issue, which was not done. The landlord submitted that e-mails between the landlord and the tenant continued up until March 2017, with the landlords stating that they were looking for a quote to repair the driveway. The tenant testified that from February 22, 2017, until May 25, 2017, it was difficult to use the driveway due to the mud and puddles.

The tenant submitted that the third issue related to their Application is regarding the loss of quiet enjoyment that the tenants suffered due to renovations being completed during the day when their new baby was trying to nap from January 2017 until May 2017, and the lower occupant who moved into the lower rental unit in May of 2017. The tenant stated that on the very first day of the lower occupant's tenancy, she was very loud with her friends and that the tenants waited until after 10:00 p.m. to send a text to the lower occupant to tell them to be quiet. The tenants provided no indication in their submissions regarding an amount of compensation sought for any of these disturbances.

The tenant also applied to be reimbursed for charges incurred when changing their address with Canada Post. The tenant explained that she had concerns with work being done on the residential premises with no building permits, such as a wall that was built between the upper and lower rental units and renovations being done on the lower rental unit. The tenant submitted that they were concerned about potential building and fire code violations that put the tenants' safety at risk. The tenant stated that the potential fire code violation was the primary reason that the tenants felt compelled to move out of the rental unit and that the tenants are requesting compensation to be reimbursed for having the tenants' mail forwarded by Canada Post due to this reason.

The landlord submitted that the March 25, 2017, tenancy agreement was only amended for two parking spots as the tenants only had one vehicle when they originally

commenced the tenancy. The landlord testified that the driveway material at the start of the tenancy was dirt. The landlord stated that they did upgrade the driveway eventually but, due to extreme weather conditions during that time period, it was difficult to find a contractor to upgrade the driveway. The landlord stated that once the driveway upgrade was done they understood there to be ample space on the driveway for the tenants' cars and the lower occupant's car. The landlord referenced a picture that was submitted into evidence showing there is room for three large vehicles to park in the driveway.

The landlord testified that all of the landlords' belongings in the City were in the lower unit when the tenants moved in and that the landlord had advertised the upper rental unit with notification of the lower unit being owner occupied with work to be done throughout the spring. The landlord submitted that, in regards to the loss of quiet enjoyment the tenants are claiming as a result of the lower occupant's actions, that the tenant had already resolved the issue through a complaint made to the lower occupant at the time the disturbance happened. The landlord further submitted that the lower occupant remedied the situation, the situation was resolved and that there were no more issues after this incident. The landlord stated that there was no frequency, severity or duration in the loss of quiet enjoyment that the tenants are claiming in relation to the lower occupant.

The landlord testified that the renovations completed in the lower unit were for installing new cabinetry and that there was no plumbing or electrical work done. The landlord stated that the wall between the upper and lower units is not a wall but rather that the wall is actually a door that has been boarded up with two by fours and insulation. The landlord submitted that they contacted the City and that they did not need permits for the upgrades that were completed as they were not removing or altering any load bearing walls. The landlord further submitted that the deck they renovated utilized existing footings and did not require any permits. The landlord testified that they had contracted a third party to do this work. The landlord testified that they have not been contacted by the City about any complaints.

The landlord stated that the March 25, 2017, tenancy agreement was only adjusted to allow for two parking spaces for the tenants and did not give the tenants sole right to the driveway. The landlord referenced an e-mail exchange between the tenants and the landlords regarding use of the driveway and the tenants' unwillingness to share it with the lower occupant. The landlord testified that, as a result of this e-mail exchange, the landlords filed an application for dispute resolution with the Residential Tenancy Branch (RTB) to allow for the lower occupant to park in the driveway. The landlord further testified that they directed the lower occupant to park in the driveway until the hearing

took place for the landlords' application against the tenants. The landlord stated that the tenancy was over at the time that the hearing took place and that no findings were made by the Arbitrator.

The landlord referenced e-mails exchanged between the landlord and the tenants in July of 2017 regarding complaints from the tenants about the quality of the home, fire hazards and laundry. The landlord stated that they felt these complaints were frivolous and that the landlords suffered a loss of quiet enjoyment in having to respond to these e-mails.

The landlord submitted that they did contact the lower occupant to take steps when necessary and if the frequency and severity continued, the landlord would have taken action. The landlord further submitted that the lower occupant did not continue with their noise when given notice about its impact on the tenants. The landlord stated that they kept the tenants informed of dealing with complaints regarding lower occupant.

In response to the landlord's testimony, the tenant submitted that it does not explain why plywood was not laid down on the driveway. The tenant further submitted that they were not notified of reasons for no building permits being issued for the renovations until the landlord explained at this hearing.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Loss of Parking

The tenants are claiming for a loss of parking that was suffered from July 11, 2017 until the end date of their tenancy on August 31, 2017, due to the lower occupant parking in the driveway. The tenants claim that the lower occupant started to regularly park there

from July 11, 2017, as per the landlords' directions that the lower occupant could share the driveway with the tenants.

I find that the March 25, 2017, tenancy agreement accounts for two parking spaces for the tenants but does not refer to the tenants' exclusive use of the driveway. I further find that the verbal understanding that the tenants feel that they had for exclusive use of the driveway is not supported with any written evidence other than a vague reference in a text between the two co-tenants. I find that the driveway was upgraded and expectations regarding use of the driveway would change with the expanded space provided due to the upgrade. It might have been unreasonable for the tenant to park in the driveway before the upgrade was done but, as of July 11, 2017, when the tenant started to regularly park in the driveway, the upgrades were completed and the tenants were still able to park their two cars in the driveway during this period.

I find that the issue of whether the upgraded driveway is too wide and complies with City by-laws would only be relevant if there was an order issued by the City or a City by-law governing the use of the driveway, which impacted the tenants' use of it. I find that the tenants have not provided any orders from the City or a copy of the specific City by-law that the landlord is in alleged contravention of from the City by-law department restricting the use of the driveway in any manner that has impacted the tenants and caused them a loss.

I find that the tenants have not demonstrated that they were unable to park their two cars in the driveway due to the lower occupant parking there as well, and that the tenants have not suffered a loss of parking. For this reason, I find that the tenants have failed to prove that the landlords did not comply with the *Act*, regulations or the tenancy agreement and the tenants' claim for loss of parking is dismissed.

Loss of Ability to Use Driveway

The tenants are claiming for a loss of ability to use the driveway, due to an unreasonably wet spring, that was suffered from March 22, 2017, until the upgrades to the driveway were completed on May 25, 2017. The tenants state that they notified the landlords regarding the conditions of the driveway via e-mail on February 22, 2017, and the tenants are allowing 30 days from March 22, 2017, for the landlords to have rectified the issue.

I find that the tenants have failed to provide sufficient evidence that they were not able to use the driveway during this period, and that damage or loss exists under the *Act*,

regulation or tenancy agreement. I find that the tenants indicate in their evidence that they were inconvenienced by having to navigate through mud and puddles and having clay and mud on their shoes, not that they were unable to use the driveway. It may be that there were parts of the driveway that were inaccessible due to excess water and mud but the tenants have not indicated or provided any evidence that they were unable to park their car(s) in the driveway during this time.

I find that, as the landlord testified, the tenants knew the material of the driveway was composed of dirt when they signed both tenancy agreements and that there was no misrepresentation of what the driveway was supposed to be. I find that when the tenants signed the second tenancy agreement on March 25, 2017, in the midst of the unreasonably wet spring, that the tenants would have had first-hand knowledge of the conditions of the driveway at that time. If the tenants wanted action taken regarding the state of the driveway, they could have negotiated it when they signed the March 25, 2017, tenancy agreement as they had already notified the landlord about this issue via e-mail on February 22, 2017.

I further find the tenants have failed to provide evidence to demonstrate that the condition of the driveway during this period was due to the actions or neglect of the landlord. As the tenant states in their evidence, the unreasonably wet spring was an “Act of God”. I find that there is no clause in the tenancy agreements or a signed agreement between the landlords and the tenants requiring the landlords to lay plywood down on the driveway when the conditions of the driveway are muddy.

I find that the tenants have failed to provide evidence that they were unable to use the driveway for the period being claimed for or that the limited use of the driveway due to poor conditions was due to the actions or neglect of the landlord. For the above reasons, I dismiss the tenants’ claim for inability to use the driveway from February 22, 2017 until May 25, 2017.

Loss of Quiet Enjoyment

Although the tenants, in their written evidence and affirmed testimony, describe various circumstances which occurred during their tenancy that they claim affected their quiet enjoyment, the calculation the tenants use for compensation is based on the date when the tenants notified the landlords that no building permits were issued for the property by the City.

In the tenants' Monetary Worksheet Calculation the tenants' claim begins on July 19, 2017, when the landlords were given notice of potential building and fire code violations. The tenants are claiming $25.50 per day, from July 19, 2017, until the end of their tenancy on August 31, 2017, (25.50 X 37 days = $943.50).

I find that the starting date for compensation being claimed by the tenants is directly related to the timing of the tenants' notice to the landlord about the issue of potential building and fire code violations, and is the only basis of calculations for the tenants' claim for loss of quiet enjoyment. For the above reasons, this is the only issue I will address as I find the tenants' calculations for compensation are not based on any disturbances from construction activities or the lower occupant.

I find that the tenants have failed to prove that they suffered any loss of quiet enjoyment due to their concerns about building and fire code compliance with the City for the rental unit, and that damage or loss exists under the *Act*, regulation or tenancy agreement. I find that the tenants' claims that the rental unit does not meet building or fire codes are not supported with any orders or documentation from the City.

I find that the landlord's testimony that building permits were not required due to load bearing walls not being affected by the renovations is supported by the e-mail provided, by the tenants, from the City that " a permit would not necessarily be required for moving a door or removing a wall (depending on if the wall is load bearing)." I accept the landlord's testimony that they have not been contacted by the City regarding complaints related to any of the work that has been done on the upper or lower rental units.

I find that issue of whether the lower rental unit is legal or illegal is not necessarily relevant to whether the rental unit is in compliance with building or fire codes. I further find that the tenants have not demonstrated the relevance of the legality of the lower rental unit and how it relates to violations in building and fire codes.

I find that the tenants' claims that the back deck was constructed without building permits is refuted by the landlord's affirmed testimony that the deck utilized existing footings and did not require permits. I find the tenants' claims that the landlords' renovations were illegal are not supported with any documentation from the City regarding the alleged violations claimed above. I accept the landlord's testimony that they have not received any complaints or orders from the City. I find that the tenants have failed to provide sufficient evidence there were actual building and fire code violations which put the tenants at risk living in the rental unit. For the above reasons I

dismiss the tenants' claim for loss of quiet enjoyment due to potential building and fire code violations.

Change of Address

The tenants are claiming for charges incurred from having to have their mail forwarded by Canada Post as a result of moving from the rental unit due to concerns regarding building and fire code violations. As I have found that the tenants' claims about building and fire code violations are not proven and have been dismissed, I dismiss the tenants' claim for Canada Post Mail forwarding charges due to the fact that the reasons cited by the tenants for moving have been dismissed. I find that this tenancy ended in accordance with section 45(1) of the *Act,* based on the tenants' notice given to the landlords of their own volition.

I have reviewed all documentary evidence and affirmed testimony. Based on the above and a balance of probabilities, I find that the tenants have not demonstrated that they have suffered any damage or loss due to the violation or neglect of the *Act,* regulations or tenancy agreement by the landlords.

For the above reasons I dismiss the tenants' Application it is entirety.

Conclusion

The tenants' Application is dismissed, without leave to reapply.

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: November 22, 2017

Residential Tenancy Branch