



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, RR, OLC, RP, FFT

Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit pursuant to sections 33 and 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord 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. Tenant A.W. (the tenant) indicated that he would be the primary speaker for the tenants.

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 Application for Dispute Resolution (the Application) and an evidentiary package was sent by registered mail to the landlord on September 05, 2018. The landlord confirmed receipt of the Application and the evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with these documents.

The landlord testified that she was only able to serve the tenants with her evidence on October 15, 2018. Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing. I find that the landlord did not serve the tenants with their evidence and that the tenants

may be prejudiced by this as they did not have a sufficient chance to respond to the landlord's evidence. For this reason the landlord's evidence is not accepted for consideration.

Preliminary Matters

At the outset of the hearing the parties confirmed that the landlord had performed the requested repairs and had reimbursed the tenants for repairs completed by the tenants.

For the above reasons I dismiss the tenants' Application for repairs to be completed and for compensation for emergency repairs, without leave to reapply.

I will now consider the remainder of tenants' Application.

Issue(s) to be Decided

Are the tenants entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

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 landlord and the tenant agreed that this tenancy began on December 09, 2017, with a monthly rent of \$1,900.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$950.00

The tenants provided in evidence:

- a copy of a description of circumstances and evidence which states that the tenants advised the landlord of a stain on the ceiling and other repairs required in the rental unit on April 28, 2018. The description goes on to submit that the landlord cut a hole out of the ceiling on May 01, 2018, and that the landlord did not fix the hole or compensate the tenants for the repair of a garburator as of August 10, 2018 despite verbal and written requests;
- A series of text message exchanges between the landlord and the tenants regarding the repairs to be made and the landlord stating that they are formally asking the tenants to start looking for a new place in two months due to repairs that need to be completed at the rental unit;
- A copy of a tenancy agreement; and

- A copy of a Monetary Order Worksheet showing the tenants' claim of a rent reduction equal to two months' rent.

The tenant submitted that they are seeking a rent reduction equal to two months' rent due to a hole that was cut in the ceiling in May 2018 and that was not repaired until October 2018. The tenant stated that the landlord ignored multiple written and verbal requests for the repair to be completed until the tenants got municipal by-law enforcement involved.

The tenant testified that the landlord sent an illegal notice of eviction to them on July 27, 2018. The tenant indicated that they felt intimidated by the illegal eviction attempt by the landlord. The tenant stated that on September 21, 2018, the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) on the approved form but the tenant did not indicate that they had or were planning to dispute the Two Month Notice. The tenant stated that the landlord wants them out of the rental unit and this has caused the tenants stress.

The landlord testified that she is disappointed that she trusted what she thought was a perfect couple and she gave the keys to her rental unit to the wrong people. The landlord stated that she did many things for the tenants in the rental unit including paying for the tenants' insurance. The landlord testified that the tenancy agreement submitted by the tenants was created by the tenants, that is not signed by her and that she had never seen it before.

The landlord stated that since the tenants have moved into the rental unit they have been very demanding but that she responded to most of the repairs requested. The landlord submitted that she felt the hole in the ceiling was the responsibility of the management company of the building that the rental unit is located in. The landlord maintained that this is the reason why it took so long to get the hole repaired as she was in discussions with the management company about them doing the repair.

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*, *Residential Tenancy Regulations (the Regulations)* 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.

I find that the tenants bear the burden to prove that they have suffered a loss due to the actions or neglect of the landlord in not completing the repair to the hole in the ceiling and giving an illegal notice of eviction as well as proof of the actual amount required to compensate for the tenants' claimed loss.

I have reviewed all documentary evidence and affirmed testimony. Although there is no dispute that there was a hole in the ceiling for a number of months, I find that there is no evidence that the tenants actually suffered any type of loss due to it. The hole in the roof may have not been pleasant to look at but I find that there is no actual documentary evidence provided by the tenants which proves the actual amount that would be required to compensate the tenants for looking at a hole in the ceiling for a few months.

I find that the tenants had full access to the facilities and services associated to the rental of the unit such as running water, a space for living as well as appliances for storing and cooking food among other things. I find that the tenants did not provide any evidence that their useable living space was reduced due to the hole in the ceiling.

Regarding the illegal notice, I find that the text messages and correspondence do not indicate that the tenants are at all intimidated as they seem to be well versed in their rights under the *Act*. I find that the tenants responded to the landlord's text message immediately to request official notice to end the tenancy and they made it clear to the landlord that text messages were not sufficient to end the tenancy.

Although the landlord may have not been versed in the *Act*, I find that the landlord is not using any type of threatening language or any giving any indications that there will be repercussions if the tenants do not move as requested by the landlord in the text messages. The landlord is simply requesting the tenants to move and the tenants were in their right to request a notice on the approved form as per sections 49 and 52 of the *Act*.

For the above reasons, I find that the expectation of the equivalent of two months' rent reduction for a discussion regarding a notice to end the tenancy and a hole in the ceiling for a few months is unreasonable. I find that the tenants have not demonstrate any actual monetary loss due to these circumstances or evidence that the use of their rental unit was limited in any way. Therefore the tenants' Application for a rent reduction is dismissed, without leave to reapply.

Section 62(3) of the *Act* allows the director to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

The tenants were requesting that the landlord provide official notice to end the tenancy on the approved form, which they testified that the landlord recently did on September 21, 2018. For this reason the tenants' request for the landlord to comply with the Act is dismissed, without leave to reapply.

As the tenant has not been successful in their Application, I dismiss their request to recover the filing fee from the landlord without leave to reapply.

Conclusion

The tenants' Application is dismissed in its' entirety, 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: October 24, 2018

Residential Tenancy Branch