Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, MNDC, FF

Introduction

This hearing dealt with the tenant's 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 to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via registered mail. Both parties also confirmed the landlord's agents (the landlord) served the tenants with the submitted documentary evidence via XpressPost on August 31, 2018. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation and recovery of the filing fee?
Are the tenants entitled to an order authorizing a reduction in rent for repairs, services or facilities?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy originally began on March 1, 2017 on fixed term tenancy and was subsequently renewed on a new signed tenancy agreement starting March 1, 2018 ending on February 28, 2019 as per the submitted copy of the signed tenancy agreement dated February 8, 2018. The monthly rent is $2,000.00 payable on the 1st day of each month. A security deposit of $975.00 was paid. A condition inspection report was completed by both parties on February 25, 2017.

The tenants seek a monetary claim of $20,950.00 which consists of:

$17,700.00	$11,700.00	50% rent reduction (February 2017 to February 2018)
	$6,000.00	50% rent reduction (March 2018 to August 2018)
$3,250.00	Compensation, 50% of hydro (February 2017 to July 2018)	

The tenants claim that the landlord failed to notify them that hydro was shared with the commercial farm business. The tenants claim that the landlord failed to address a “Rat problem” in a crawlspace that was unusable due to flooding, mold and dust. The tenant described the space equal to approximately 500 square feet. The tenants claim that yard work was not completed by the landlord and that constant repairs and electrical issues resulted in the loss of some electronics. The tenants argued that the landlord had promised the use of this crawlspace as additional storage. The tenants claim that the landlord harassed the tenants and suffered from excessive noise from a farmer and family.

The landlord disputed the tenants’ claims stating that the shared hydro was discovered by the landlord’s agent(s) and has been resolved through the addition of a separate meter. The tenants’ have no basis for their monetary claim, but also argued that the amount claimed far exceeds any usage by the farm tenant. The landlord bases these calculations on page 26 of the landlord’s submissions which detail the hydro readings from June 2016 and June 2018 for the entire meter, the sub-meter (farm only), the whole property and the blueberry tenant. The landlord calculates that it the tenant paid in excess at approximately 7%, but has allowed for compensation at approximately 10%. The landlord has provided attached emails detailing the calculations provided by the landlord to the tenants on pages 27 -30 of the landlord’s submissions for a total of $655.94.

The landlord argues that the crawlspace is not a useable living space and noted that there is no mention of any crawlspace as per the signed tenancy agreement or the completed condition inspection report for the move-in providing it as additional storage space. The landlord has submitted copies of invoices for pest control services retained for the rats, but also provided undisputed evidence that the tenants had requested the removal of the rat traps against a continued rat program.

The landlord claimed that lawncare/landscaping was not included in the signed tenancy agreement.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 65(1) (f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

I accept the disputed testimony of both parties and find that the tenants have failed to establish a claim as applied. Although both parties have confirmed that the tenants' hydro was inaccurately divided between the tenants and the farm tenants, the tenants base their request on "an arbitrary amount" not based upon any actual losses or calculations for compensation. The tenants stated that they were told to ask for approximately 50% of the monthly rent in return as compensation. The landlord has provided undisputed affirmed testimony that the rented usable living space does not include the crawlspace. The tenants have not provided sufficient evidence that this crawlspace was promised to the tenants as additional storage. The tenants have failed to provide sufficient evidence of a loss of use, quiet enjoyment or any losses as a result of the overpayment of hydro. As such, the first portion of the tenants' claim for $17,700.00 is dismissed. I also note for the record that the tenants' had made as part of this portion of the claim the loss of electronics, but has provided no details or amounts to substantiate this portion of the claim. I also make a finding that as per section 2.4 of both the initial the second signed tenancy agreements that the tenants are responsible **to keep the flower beds, gardens and lawns on the Premises properly cultivated and maintained**.

On the tenants' second portion of the monetary claim of $3,250.00 for 50% of overpaid hydro, I find that the tenants have failed. The tenants' submissions are that an overpayment of hydro was made equal to 50% of the hydro paid. The tenants referenced in their evidence submissions copies of hydro invoices for this period of time, but provided affirmed testimony that the calculations were not possible. A review of these submissions show the email correspondence in which a hydro invoice was provided in the email, but no attachments were available for review in this hearing. However, the landlord provided a detailed calculation using submitted copies of hydro invoices for the during the summer months that the farm is active led to the landlord's claim that the tenants are only entitled to compensation equal to approximately 7%, but has rounded the compensation to 10% for $655.94. On this basis, I find that the tenants have established a claim for the amount of $655.94 as provided by the landlord.

As the tenants have been successful in their application for dispute, I find that the tenants are entitled to recovery of the $100.00 filing fee.

Conclusion

The tenants are granted a monetary order for $755.94.

This order must be served upon the landlord. Should the landlord fail to comply with the 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 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 24, 2018

Residential Tenancy Branch