



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC PSF RR FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement;
- an order that the landlords provide services or facilities required by the law or the tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlords for the cost of the application.

One of the tenants attended the hearing and also represented the other tenant. The landlords named in the tenancy agreement also attended and were represented by an agent. Another person also attended with the landlords, but observed only and did not take part in the hearing. The tenant and the landlords' agent each gave affirmed testimony and were given the opportunity to question each other and give submissions.

The parties consented to amend the Style of Cause in this matter to name the landlords as they appear on the tenancy agreement, and the frontal page of this Decision reflects that amendment.

At the commencement of the hearing, the parties agreed that the tenants have vacated the rental unit, and the keys that give access to the rental unit were returned to the landlords on March 23, 2019. Since the tenancy has ended, I dismiss the tenants' applications for:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement;
- and

- an order that the landlords provide services or facilities required by the law or the tenancy agreement.

The parties also consented to all evidence being considered.

Issue(s) to be Decided

The issues remaining to be decided are:

- have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- should the tenants recover the filing fee from the landlords?

Background and Evidence

The tenant testified that this fixed term tenancy began on July 15, 2017 and expired on February 1, 2018 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,200.00 per month was payable on the 1st day of each month, and the landlords collected a pro-rated amount for the first month of the tenancy. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$600.00, as well as a pet damage deposit in the amount of \$600.00 in October, 2017, both of which are still held in trust by the landlords. The rental unit is a basement suite, and the upper level of the home was also tenanted for a portion of this tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that no rent was paid to the landlords for the month of March, 2019, and the tenants began moving out on or about March 5, 2019. However, after the tenants had commenced moving out, the landlord gave a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the first page has been provided as evidence for this hearing, and it is dated March 13, 2019 and contains an effective date of vacancy of March 23, 2019 for unpaid rent in the amount of \$1,200.00 that was due on March 1, 2019. The tenants have not paid the rent for March, and the tenant testified that the rental unit was not habitable due to the landlords' failure to make sufficient repairs.

A pipe burst inside the wall of the garage next to the room that the tenant slept in. He called the landlord, who tried to turn the main water valve off, but it broke, and the parties managed to turn it off using the tenant's tools. The tenants didn't have water till the next day when the landlord had a fellow attend who opened up the wall and found that the pipe had no "stays;" meaning that the pipe was not fixed to a joist or beam to prevent it from moving. It had not been properly installed in the first place. The landlord said he didn't know there was a pipe there. It was repaired and water running again. The landlord

bought water and offered the tenants to shower at his place. The technician told the landlord that the boiler had to be replaced, which was located in the basement. It then took 4 more days of the landlord showing up, mostly announced to complete the repair. However, the landlord has no cell phone so if he left a message the tenant couldn't respond. The tenant didn't even know if the landlord would show up. The tenant wanted to be there because landlord constantly leaves the door open and the tenants have a cat. When the tenant asked when it would be done, the landlord yelled at the tenant and said that the tenant complained too much; that he wouldn't do it because he wasn't going to put more money into it and was going to sell.

A second flood happened in February, 2019 when the hot water tank burst a pipe and the tenants awoke to 2 ½ or 3 inches of water along the front room, kitchen hallway, and the room that the tenant slept in, and going into the garage. There was no drainage in the rental unit at all.

The landlord had a friend rip up the carpets in the front room, which is a foyer area with access to the bathroom, and put in a new hot water tank. The carpets were not replaced and the landlord said he didn't want to put anymore money into it. The tenants had to walk across bare concrete to get to the bathroom.

The tenants didn't feel safe because the hot water tank wasn't installed properly. It's supposed to go to a drainage point, but there was no drainage in the entire basement and no place for water to go. The tenant also discovered that there are 2 electrical panels, one of which the parties thought was not functioning, but discovered that it was connected. The landlord said it was good enough, and the tenants started looking for another rental.

The tenants were permitted by the landlords at the beginning of the tenancy to use a space under a porch which the tenants used as an outdoor area. New tenants moved into the upper level and the landlord said that it was an error and decided to take away that area from the tenants. It was boarded up for storage use for the new tenants in the upper level of the rental home.

Heating was supposed to be controlled by the new baseboard heaters, but the tenants in the upper level had to leave their thermostat on high and it was ridiculously hot for the tenants in the basement suite. Further, the landlord left all doors open while doing work in February, causing heat to escape. The tenant asked if the landlord would help with costs of heat while repairs were being made, but the landlord refused.

The water heater was installed by someone who is not a professional, and told the tenant he was not a professional, and should not be installing a hot water tank, but was the father

of the owner of the company retained by the landlord. He is also the fellow who sold the house to the landlords in the first place.

The tenants have provided a Monetary Order Worksheet claiming 4 days of lost wages to be at the rental unit, for a total of \$582.36, and the tenant testified that he took it as vacation time so as not to lose wages, but as a result lost vacation time. The tenant further testified that the landlord would not have re-rented, and given that neither flood was dealt with properly by the landlords, and the rental unit was not livable, the tenants were justified in not paying rent for the last month of the tenancy.

The landlord's agent is the landlords' son-in-law and is aware of the facts respecting this tenancy. He testified that both move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy and copies were provided to the tenants.

The landlord's agent agrees that there is no drainage in the basement, so water pools. The home was built in 1957 and building codes apply from that era. To bring it up to current code is not required, and would require tearing out the entire concrete of the basement suite. All electrical is done to code, and the landlords have proved an Invoice showing that it has been upgraded to 200 amp service with baseboard heating and new outlets. The hot water tank pipe broke at 2:00 a.m. and was repaired within 12 hours. The pipe in the garage was fixed within 24 hours. Invoices for the work performed have been provided as evidence for this hearing.

The flooring removed from the front room was not replaced because the tenants had installed a washer and dryer in that area and the landlord felt that concrete flooring in a laundry room was sufficient. The carpet in the other room was not replaced, but linoleum which matched the flooring in the hallway was under the carpet.

The fellow who installed the hot water tank is a professional and has been doing it for decades. It's safe and to code, which the landlord's agent checked personally.

The tenancy agreement specified that the garage and use of the shared back yard were included in the tenancy, but not the area under the porch.

With respect to hydro usage, the tenancy agreement specifies that the tenants pay 50% and the landlord paid 50% during the time that the upper level of the rental home was vacant. Further, the tenant didn't need to be there when repairs were made. It would have been less costly for the tenants to put their cat in another room rather than to lose 4 days of work.

The landlord's agent submits that rent should not be reduced; repairs were completed and there were only 4 days that work was done, which should be expected for emergency repairs.

The rental unit was re-rented for May 1, 2019, and the landlord's agent testified that the landlords have no intention of selling and that the rental is a primary source of income for the landlords.

The landlords have made an Application for Dispute Resolution which is scheduled to be heard on June 10, 2019 seeking a monetary order for unpaid rent and other claims as well as an application to keep the security deposit and pet damage deposit.

Analysis

A tenant is required to pay rent even if the landlord fails to comply with the *Residential Tenancy Act* or the tenancy agreement. In this case, there is no dispute that the tenants did not pay rent for the month of March, 2019.

A tenant may apply for an order reducing rent for repairs, services or facilities agreed upon but not provided, and may apply for monetary compensation resulting from the landlord's failure to maintain the rental unit. However, in order to be successful, the onus is on the tenant to establish that the tenancy was devalued as a result of the landlord's failure to maintain, or that facilities that were intended to be part of the tenancy were removed. In this case, there is no indication in the tenancy agreement that the area under the porch was part of the tenancy. Since the landlords dispute that, and the tenancy agreement does not reflect that, I am not satisfied that the area under the porch was part of the tenancy and the tenants' application to reduce rent for loss of that area cannot succeed.

Further, I am not satisfied that the persons who completed work in the rental unit were not qualified to do so. I have reviewed the Invoices provided by the landlords. One is a very generic Invoice, which is for the pipe repair in the garage, and the other appears to be from a legitimate company for installing the hot water tank, among other things. I also consider the testimony of the landlords' agent who testified that they were qualified contractors. Regardless of what one of those contractors told the tenant, there is no evidence to satisfy me that the work completed was not completed in a professional or safe manner or that the tenants had any reason to be concerned about safety.

There is no dispute that carpeting and other flooring was removed and not replaced, however I am not convinced that the tenants suffered any loss as a result, or that the tenancy was devalued.

In the circumstances, I am not satisfied that the tenants have established that the rental unit was not habitable, or that the tenants have suffered any loss as a result of the landlord's failure to comply with the *Act* or the tenancy agreement. More specifically, I find that the tenants have failed to establish that the tenants were justified in withholding rent for the month of March, 2019, the last month of the tenancy, or that rent should be reduced.

Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

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: May 07, 2019

Residential Tenancy Branch