



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, OLC, FFT

Introduction

On September 1, 2016, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following:

- for an order that the Landlord make repairs to the rental unit.
- for an order that the Landlord to comply with the Act, regulations, or tenancy agreement.
- For money owed or compensation for damage or loss.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to an order for the Landlord to make repairs to the unit?
- Are the Tenants entitled to an order that the Landlord to comply with the Act, regulations or tenancy agreement?

- Are the Tenants entitled to compensation for damage or loss?
- Are the Tenants entitled to deduct the cost of repairs, services or facilities from the rent?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 16, 2018, on a month to month basis. Rent in the amount of \$1,400.00 is due by the 16th day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid by the Tenants to the Landlord. There is no written tenancy agreement.

Repairs

The Tenants testified that at the start of the tenancy the exhaust fan above the stove was not working and there was a broken door handle and dripping faucet in the bathroom. The Tenants testified that they asked the Landlord to repair these items.

The Tenants provided a copy of a letter dated January 25, 2019, sent to the Landlord asking her to repair the items.

In reply, the Landlord testified that the items were identified as needing repair at the start of the tenancy and the Landlord informed the Tenants that she would have the items repaired in January 2019. The Landlord testified that the Tenants asked her to repair the items on January 25, 2019. She testified that she hired a handyman and posted a notice of entry to enter the unit on January 29, 2019. The Landlord testified that when the handyman was delayed for an hour, the Tenant's refused to permit access to make the repairs.

The Landlord testified that she contacted another handyman who attended the unit but could not complete the repairs because the correct parts were needed. The Landlord testified that to avoid another notice of entry, she asked the Tenants to assist by providing information on the make/model of the taps; but she never heard back from the Tenants.

The Tenants provided testimony confirming that they prevented the Landlord from entering when the handyman was one hour late. The Tenant submitted that they feel more comfortable being present when the Landlord enters the unit and that the hour delay did not work for them.

The Tenants testified the Landlord had the items repaired on April 7, 2019.

Order for Landlord to Comply with the Act and Tenancy Agreement

The Tenants testified that a term and condition of the verbal tenancy agreement is that there is a no smoking rule that applies to the entire home; including the suite that the Landlord occupies. The Tenants testified that the Landlord informed them prior to entering into the tenancy agreement that she only smokes outside of the unit.

The Tenants testified that they raised the concern about smoking immediately after moving in. The Tenants provided a copy of a text message dated January 11, 2019, where they ask the Landlord to put a towel under the door. The Tenants testified that they sent a letter to the Landlord dated January 23, 2019, where they ask the Landlord to stop smoking in her home.

The Tenants testified that they created a tenancy agreement with the terms and conditions of the tenancy and provided it to Landlord; however, the Landlord refused to sign it.

The Landlord replied that the Tenants did not inquire about whether or not the home was a non –smoking home prior to entering into the tenancy agreement. The Landlord testified that there was no verbal or written agreement regarding whether or not the Landlord smokes in her home. The Landlord testified that only the rental unit was advertised as a non-smoking unit. The Landlord testified that she keeps the rental unit as a non-smoking unit. The Landlord testified that the Tenants raised the issue of the Landlord smoking in her home after entering into the tenancy agreement and after moving into the rental unit.

The Landlord submitted that the no smoking rule only applies to the rental unit.

Rent Reduction \$980.00

The Tenant's submitted that the presence of second hand cigarette smoke and the failure of the Landlord to promptly repair the hood fan caused a situation where there was a loss of service and a loss of quiet enjoyment of the tenancy. The Tenants are seeking compensation in the amount of \$980.00. The Tenants' provided a document which indicates they tracked the Landlord smoking in the home for the first 22 days of February 2019.

When asked to explain how the Tenants determined the amount of the claim, the Tenants testified that they looked up previous decision examples on the Residential Tenancy Branch website and noted that other Tenant's had been awarded 10% of the rent in similar circumstances.

In reply, the Landlord testified that she is not in agreement that the Tenants are entitled to any compensation. The Landlord testified that the Tenants are continually looking to reduce rent payments, utility payments, and attempted to reduce the pet damage deposit.

Air Purifier

The Tenants are seeking to recover the cost of purchasing an air purifier. The Tenant's testified that due to poor air quality in the unit they purchased an air purifier in February 2019. The Tenant's testified that they did not ask the Landlord to provide an air purifier prior to purchasing the purifier and they did not have the Landlords agreement that the Landlord would repay them for the purchase.

In reply, the Landlord testified that she understands that smoke can travel and she agrees to repay the Tenants for the cost of purchasing an air purifier. The Landlord submitted that her agreement to repay the cost will mean that the air purifier becomes the Landlord's property.

The Tenants submitted that they are actively looking to find another rental unit and end the tenancy.

Analysis

Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides that under section 7 of the Residential Tenancy Act:

- *a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and*
- *the party who claims compensation must do whatever is reasonable to minimize the damage or loss.*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment provides the following information:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Repairs

I find that the Landlord attempted to have the repairs to the dripping faucet, broken door handle and broken exhaust fan made on January 29, 2019. I find that the Landlord provided proper notice of entry into the rental unit and had the right to enter for the purpose of repairs whether or not the Tenants' were home. I find that the Tenants refusal to allow the Landlord entry to complete the repairs after a one hour delay is not reasonable. The Tenants actions caused a delay in having the repairs made. In addition, while the Tenants are under no obligation to provide the information regarding the taps as requested by the Landlord, their lack of cooperation may have contributed to the delay in having the repairs made.

Based on the testimony before me I find that the repairs were completed on April 7, 2019.

Tenancy Agreement

The Landlord breached the Act by failing to prepare a written tenancy agreement.

I have considered whether or not there was a term or condition of the tenancy agreed upon at the start of the tenancy that the Landlord would not smoke in her home.

I have reviewed the Tenants' documentary evidence and I find that there is insufficient evidence from the Tenants to prove that when the parties entered into the agreement, the Landlord agreed to not smoke in her part of the home. I accept the testimony provided that the rental suite is a non-smoking unit.

While I find that there was no initial agreement that the Landlord would not smoke in her home, I find that the parties entered into an agreement during the tenancy. I find that on January 11, 2019, the Landlord agreed that she will smoke outside only going forward. I find that this agreement regarding smoking became a new term of the tenancy as of January 11, 2019.

I find that when the Landlord continued to smoke in the unit after January 11, 2019, she was breaching an agreement that she made with the Tenants. I order the Landlord to comply with the agreement that she will not smoke inside the rental home.

Rent Reduction

I have considered the Tenant's application requesting a rent reduction due loss of services and facilities and for a loss of quiet enjoyment caused by second hand smoke.

I accept the Landlord's testimony that the Tenants were aware the exhaust fan was not working at the start of the tenancy. I have found that the Tenants actions contributed to a delay in having the repairs completed. While there were items that needed repair, I find that the items were not essential to the Tenants use of the rental unit and did not present any significant loss to the Tenants. I find that the Tenants are not entitled to compensation due to the temporary loss of these items.

The agreement that the Landlord would only smoke outside was reached on January 11, 2019. The Tenants' own evidence shows that the Tenants reduced the second hand smoke by blocking a vent and placing towels under the door. The Tenants purchased an air purifier to improve the air quality in mid-February 2019. The Tenants determined the amount of their claim by relying on awards given to other Tenants. I find

that the Tenants are required to prove the value of their own loss and I find there is insufficient evidence to justify the amount of compensation they are seeking with their actual loss. I find that the Tenants' experienced a loss; however, the value of loss is not proven. Since I find that the Landlord breached an agreement regarding smoking, section 7 of the Act requires that the Landlord must compensate the Tenant for the loss. I award the Tenants a nominal monetary award in the amount of \$250.00 due to the Landlord's breach of the agreement.

Air Purifier

While the Tenants did not request the Landlord to provide them with an air purifier, and did not seek pre-approval to have the cost of purchasing an air purifier refunded, the Landlord agreed at the hearing to reimburse the Tenants for the cost of purchasing the purifier.

I order the Landlord to pay the Tenants the amount of \$233.95.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants' a monetary order in the amount of \$583.95 comprised of \$233.95 for the cost of the air purifier; \$250.00 for the Landlords breach of the agreement; and \$100.00 for the filing fee. I authorize the Tenants' to withhold the amount of \$583.95 from one (1) future rent payment.

Conclusion

The Tenant's application was successful. The repairs to the rental unit are complete.

The Landlord breached an agreement to not smoke in the rental home. The Landlord agreed at the hearing to pay the Tenants for the cost of an air purifier.

I grant the Tenants the amount of \$583.95. I authorize the Tenants to deduct the amount of \$583.95 from one (1) future rent payment.

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 15, 2019

Residential Tenancy Branch