



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. The tenants appeared for the hearing; however, there was no appearance on part of the landlord.

I explored service of hearing documents upon the landlord. The tenants testified that the hearing package was sent to the landlord via registered mail on March 1, 2019 but it was returned because it was unclaimed by the landlord. The address used for service of the hearing package was the service address for the landlord that appears on the written tenancy agreement. The tenants provided a photograph of the registered mail envelope, including tracking number, that was returned to them as proof of service.

Section 90 of the Act deems a person to be served five days after mailing, even if the person refuses to accept or pick up their mail. Pursuant to section 90 of the Act, the landlord is deemed to have received the hearing documents and I proceeded to hear from the tenants without the landlord present.

Issue(s) to be Decided

Are the tenants entitled to compensation from the landlord for damages or loss under the Act, regulations or tenancy agreement as claimed?

Background and Evidence

The parties executed a written tenancy agreement on August 20, 2018 for a one-year fixed term tenancy set to commence on September 1, 2018 and expire on September 1, 2019. The tenancy agreement provides that the tenants would pay rent of \$2,300.00 on the first day of every month.

The tenants were given possession of the rental unit on or about August 29, 2018; however, the lower level renovations were not finished and the tenants were only able to use of the upper main floor of the house. The tenants testified that they had arrived on August 29, 2018 expecting to unload all of their possession at the rental unit but they could no without use of the lower level so they had to take additional time to take some possessions to the storage lockers they rented.

The tenants described how the rental unit was to include a finished lower level that included two bedrooms, a bathroom, laundry room, and living room but the landlord was having difficulty getting the proper permits and approvals and was unable to finish the renovations of the lower level. As a result, the tenants were left with only three bedrooms, one bathroom, kitchen and living room on the upper main floor for their family of five. The monthly rent was reduced to \$1,400.00 which the tenants paid for each of the months of October 2018, November 2018 and December 2018. For the month of September 2018 the tenants paid only \$700.00 for rent because of repairs, cleaning and blinds provided by the tenants.

The tenants testified that because they did have use of the lower level they had to store many of their possessions in two storage lockers. The tenants seek to recover the cost of the storage lockers plus the transportation of their possessions to and from the storage lockers in the sum of \$2,772.78. In support of this claim, the tenants provided copies of their bank/credit card statements.

The tenants moved out of the rental unit on December 31, 2018. The tenants describe mould in the rental unit and the inability to use the lower level as being the reason they moved out. In addition to the storage costs, the tenants seek return of the \$4,900.00 in rent they paid for September 2018 through December 2018 due to the mould and loss of use and enjoyment of the rental unit.

As for the mould, the tenants submitted that there was mould on the window sills and mould in the ceiling of the bathroom. The tenants stated they informed the landlord of the mould several times, via text message, email, orally and in writing on August 29, 2018 and December 12, 2018. The tenants provided a copy of a letter addressed to the landlord on August 29, 2018 and December 12, 2018. Also, the tenants had filed an Application for Dispute Resolution seeking repair orders and orders for compliance in October 2018 (file number referred to on the cover page of this decision). By the time a hearing was held on February 1, 2019 the tenants had already moved out and the tenants' requests for repair orders and orders for compliance were moot.

According to the tenants, the landlord's initial response to their complaints about mould was that he would paint over the mould but the landlord never did anything to address the cause of the mould or the mould that had formed and, eventually, the landlord suggested the tenants move. The male tenant claims to have suffered medical issues as a result of the mould and provided a doctor's letter that indicates the tenant has asthma and cannot tolerate mould in his environment. The tenants provided a video of the rental unit that appears to have been taken when they were moving out.

The tenants acknowledged that an upper three bedroom unit in the area typically rents for \$1,400.00 to \$1,500.00 per month depending on its condition. The tenants were of the position the rental unit was a "dump" except for the kitchen and bathroom that had been renovated; however, as it turned out the bathroom had a serious mould problem.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based upon the unopposed submissions of the tenants, I accept that when the tenancy formed the rental unit was to include a finished lower level and that was not provided to the tenants. As such, I accept that the tenants suffered a loss of use of that space and the landlord breached the tenancy agreement by failing to give the tenants the space they had bargained for.

Certainly, a breach of a material term in a tenancy agreement, which would include loss a significant portion of the rental unit, would put the tenants in a position to end the fixed term tenancy early, which they did. The landlord reduced the monthly rent from \$2,300.00 to \$1,400.00, or \$900.00 per month, in recognition of the loss of use of the lower level. Therefore, it is before me to determine whether the tenants are entitled to

recovery of storage fees and transportation costs in addition to the rent reduction they have already received.

The reduced monthly rent obligation of \$1,400.00 appears to be in line with the rents payable for an upper main floor three bedroom unit in the area and I note that the rent reduction more than offsets the tenant's storage costs which were approximately \$608.00 per month. I would consider awarding the tenants the transportation costs to move their possessions from the rental unit to the storage facility; however, the tenants did not provide sufficient documentation for me to differentiate between the storage costs versus the transportation costs or verify the transportation costs are associated to moving possessions from the rental unit to the storage facility. I would have expected to see the storage contract and truck rental contract to support the claims rather than bank/credit card statements that only provide the total amounts charged by the storage/truck rental company without other any other specifics or details.

In light of the above, I find the tenants have already been compensated for the loss of use of the lower level of the rental unit by way of the reduced monthly rent and I make no further award for the storage fees/truck rental costs based on the limited evidence presented to me.

As for the mould in the rental unit and lack of adequate repairs by the landlord, I find the tenants' video demonstrates to my satisfaction that there was a serious water leak above the bathroom and that significant mould formed on the ceiling of the bathroom. In the tenant's letter to the landlord of December 12, 2018 the tenant refers to a leaking roof that the landlord was notified about in September 2018 and I find a leaking roof to be consistent with the mould formation in the bathroom ceiling that I see in the video taken at the end of the tenancy. Considering this was the only bathroom the tenants had use of I accept that the mould resulted in a loss of use and enjoyment of the rental unit that was more than temporary or minor. I also accept the unopposed submissions of the tenants the landlord was notified of the mould issue several times and the landlord did not take adequate action to rectify the situation. Also of consideration is that the tenants did make an Application for Dispute Resolution in October 2018 seeking repair orders and I find they took reasonable steps to mitigate their losses. Therefore, I accept the landlord violated section 32 of the Act with respect to adequately repairing and maintaining the water leak and mould issue in the bathroom and I find a monetary award for loss of use and enjoyment is warranted in this case.

With respect to the allegation of mould around the windows, I find the tenants' evidence is much less compelling. In the video provided to me by the tenants, I briefly see what

appears to be an older metal framed window and mould along the bottom of the window frame. This type of mould is not uncommon when older single pane windows have condensation and the condensation is not wiped up frequently. This type of mould is usually the result of inadequate ventilation, heat, and/or circulation and lack of housekeeping by a tenant. Therefore, I decline to find the landlord at fault for failure to maintain the window sills.

The tenants seek compensation of \$4,900.00 or the equivalent to all of the rent they paid for the rental unit due to the condition of the rental unit; however, I find that request very unreasonable in the circumstances because if I were to grant the tenants' request the result would be that the tenants have had use and occupation of a rental unit for a number of months at no cost. Accordingly, I deny their request for recovery of \$4,900.00. However, in recognition of the serious repair issue that was not addressed in the bathroom and the loss of use and enjoyment of this key room I find it reasonable to award the tenants compensation of \$200.00 per month.

The tenants' claim had some merit and I award the tenants recovery of the \$100.00 filing fee they paid for this application.

In light of all of the above, I provide the tenants with a Monetary Order in the sum of \$900.00 which represents a rent abatement of \$200.00 per month for four months and recovery of the filing fee.

Conclusion

The tenants were partially successful in their application and they have been provided a Monetary Order in the sum of \$900.00 to serve and enforce upon the landlord.

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: June 12, 2019

Residential Tenancy Branch