



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided testimony. The tenants stated that the landlords were served with the notice of hearing package via Canada Post Registered Mail. The landlords confirmed receipt of this package. The tenants stated that the submitted documentary evidence (16 photographs) was served to the landlords by placing it in the landlord's mailbox on September 26, 2019. The landlords confirmed receipt of this package. Extensive discussions resulted in the landlords confirming that only 4 photographs were submitted to both the Residential Tenancy Branch and tenants. The landlords clarified that the majority of their evidence was submitted by uploading it into their own application for dispute related to another issue. Neither party raised any service issues. I accept the evidence of both parties and find that both parties have been deemed served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the tenants' application was clarified. The tenants stated that possession was no longer an issue as they have vacated the rental unit on August 12, 2019 in compliance with a 10 Day Notice. As such, this portion of their application is withdrawn. The hearing shall proceed on the tenants' monetary claim for \$12,900.00 only.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation?

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.

The tenants seek a monetary claim of \$12,900.00 which consists of recovery of 6 months of rent at \$2,150.00 per month. The tenants state that the entire downstairs of the rental house was flooded with water in December 2017 and had to be renovated. Renovations began in December 2017 and subsequently asbestos was found that required removal. Asbestos removal began in February 2018 and all work was completed in June 2018. The tenants stated that they suffered the loss of use of the downstairs and were unable to live in the unit for a 6 month period despite paying full rent of \$2,150.00 per month during the entire period. The tenants stated that this claim was based upon an arbitrary amount, not based on any actual losses or expenses.

The landlords dispute this claim stating that the basement was flooded with water in December 2017 and renovation work began immediately. The landlords stated that asbestos was found by the renovation contractors in February 2018 which required removal prior to the completion of any renovation work which began in March 2018. The landlord claims that all work was completed in July 2018. The landlord also claims that during this time, the tenants stated that no money back was required, but only wanted to know when the work would be completed. The landlords also claim that renovation work was delayed due to the tenants' dogs feces throughout the basement. The landlords' contractors refused to work until this was resolved.

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.

In this case, I accept the evidence of both parties that a water flooded the basement of the rental house in December 2017 which required renovation work. This caused an inconvenience to the tenants, despite continuing to live in the rental property. Based upon the evidence of both parties, asbestos was found in February 2018 and removal began in March 2018 which required the rental to be vacant. Both parties stated that all work was completed in July 2018. The tenants seek compensation equal to the entire monthly rent for a 6 month period despite having access and living in the unit from December 2017 to the end of March 2018. The tenants also provided undisputed evidence that I find that the tenants were ultimately only impacted for the period from the end of March to July 2018 for a period of 3 months approximately. I find that the tenants have failed to establish a claim as filed for the \$12,900.00. However, based upon the evidence of both parties I find that a loss did occur in which the tenants were unable to use the rental for a period of 3 months approximately. On this basis, I grant a monetary award of \$6,450.00 for the loss of use of the rental unit for the period of April 2018 to July 2018 when all work was completed.

Conclusion

The tenants are granted a monetary order for \$6,450.00.

This order must be served upon the landlords. Should the landlords fail to comply, this 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: October 10, 2019

Residential Tenancy Branch