



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, PSF, MNDCT, FT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to have the landlord provide service or facilities required by the tenancy agreement or law, to reduce rent for repairs, services or facilities agreed upon but not provided and for compensation for money loss or owed, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

This matter commenced on April 24, 2020 and was adjourned by consent. The interim decision should be read in conjunction with this decision.

Issues to be Decided

Should the landlord be ordered to provided services required by law?

Are the tenants entitled to a rent reduction for repairs, services or facilities agreed upon, but not provided?

Are the tenants entitled to a monetary order?

Background and Evidence

The parties agreed that the tenancy began on September 15, 2017. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00.

At the outset of the hearing the landlord agreed that they will have the septic system serviced in accordance with the Provincial Regulation. Therefore, I find I do not need to make any orders on this matter.

The tenant claims as follows:

a.	Reduce rent \$750.00 x 24 months	\$18,000.00
b.	Aggravated damages	\$17,000.00
c.	Filing fee	\$ 100.00
	Total claimed	\$35,100.00

Reduce rent \$750.00 x 24 months

The female tenant testified that they discovered that the rental unit was on a septic system on October 7, 2019, when the toilet had overflowed. The tenant stated that they specifically asked the landlord if the property was on municipal sewer when they rented the property. The tenant stated they would never have move to the property had they have known there was a septic system. The tenant stated they paid for moving costs and had to buy furniture for the property, which these costs would not have incurred.

The female tenant testified that often they would smell “rotten eggs” when outside and thought it was the smell of gas.

The landlord testified that there was never a discussion whether the property was on sewer or septic system at the start of the tenancy. The landlord stated that when they purchased the property, they did not know it was on a septic system and they only discovered this on October 7, 2019, when it was inspected by the plumber.

Aggravated damages

Counsel for the tenants submit that the tenants are entitled to aggravated damages for failure to comply with the tenancy agreement, failure to maintain the septic system and the surge of sewer that entered the residence on October 7, 2019, causing a health hazard, stress and effecting the tenants’ mental health.

The female tenant testified that on October 7, 2019, the toilet overflowed, and septic backed up into the rental premise. The tenant stated that they were told by the plumber that it was caused by the septic tank overflowing.

The female tenant testified that they were hospitalized for respiratory problems, which they have not determined the cause and believe they could be related

The female tenant testified that their daughter uses wipes, which they have always used. The tenant stated that wipes were not used when the toilet overflowed.

The landlord testified that when they were notified of the overflowing toilet, that is when they found out they were on a septic system as it was not disclosed when they purchased the property. The landlord stated that the plumber attended on October 7, 2019 and cleared the pipe and they found wipes and other debris clogging the pipe.

The landlord testified that it was not the septic system that malfunction although it was recommended by the plumber to have it cleaned. The landlord stated that the septic company attended on the 8th and there was no malfunction of the system; however, they came back on the 9th and pumped the tank as normal maintenance. The landlord stated that the tenants were able to use on October 8th, 2019.

The landlord testified that the health department also attended on November 22, 2019 and found no health or safety issues as the septic system was operating correctly.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Reduce rent \$750.00 x 24 months

In this case the property was on a septic system. While I accept the tenancy agreement says sewer this is a preprinted form created by the RTB. Further, even if the landlord stated that it was on a sewer system, as that is what they truly believed at that time; however, the evidence of the landlord was that it was never a discussion with the tenants.

I do not find the landlord has failed to provide a service or facility. A septic system and a sewer system both primarily do the same thing, which is to dispose of waste. Further, simply because the tenant “smelled rotten eggs” from time to time does not prove it was the septic field and even if the smell was from the septic system, it does not justify a rent reduction of \$750.00 per month.

Further, the landlord’s obligation start when they are aware that a problem exists and to make any necessary repairs. The incident occurred on October 7, 2019 and the repair was made on the same date, when the blockage was removed by the plumber and subsequently on October 9, 2019, the septic tank was pumped. I find the landlord did what was reasonable and is in compliance under the Act.

Therefore, I find the tenants’ claim for a rent reduction must be dismissed as they did not suffer any loss as the rental premise was fully used and the repair was made within a reasonable time.

Aggravated damages

In this case, I accept the landlord did not know the property was on a septic tank, this is supported by the written information on the plumber’s invoice. While I accept this was not disclosed when the landlord purchased the property; however, the landlord should have done their due diligence to fully inspected the premise.

I have reviewed the invoice of the plumber filed in evidence. The invoice in part states the following.

“Removed toilet once onsite and cabled. Removed debris and **wipes**, but line was still not drained. Used camera to locate concrete septic tank. ... we **recommended** emptying the tank”

[My Emphasis Added.]

In this case the invoice supports that there were wipes and other debris blocking the pipe. It does not say the septic tank was overflowing. I find it more likely than not that the overflowing of the toilet was a result of the tenant's daughter flushing wipes down the system. It is common knowledge that feminine products or such products such as wipes should not be use on any type of sewer or septic system.

Although I accept the septic tank was required to be cleaned as it was not on a proper maintenance schedule. However, there is no supporting evidence from the tenants to prove that the lack of maintenance was the cause. The plumber only recommend that the septic tank be cleaned. This does not support the tenant's testimony that they were told that the overflowing of the toilet was directly related to the septic tank overflowing.

Further, the invoice from the septic company shows the septic tank was pumped. There was no evidence to supported it was not working correctly. Further the health department attended on November 22, 2019 and administer dye into the system and there was no evidence that the tank or the septic field was malfunctioning creating any health issues for the tenants.

While I accept the female tenant may have health issues, there is no supporting evidence that this is any way related to the septic system.

I accept the incident was unfortunate and may have been stressful at the time; however, I find it is no more than what can be expected when a toilet overflow. I do not find it was a direct result of the landlord not maintaining the septic system, and the landlord rectified the problem as soon as they were made aware of the issue.

In light of the above findings, I find the tenants application must be dismissed without leave to reapply. As the tenants were not successful with their claim, I decline to award the cost of the filing fee.

Conclusion

The tenants' application is dismissed.

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, 2020

Residential Tenancy Branch