



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 the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on July 12, 2021. Both parties also confirmed the landlords served the tenants with the submitted documentary evidence in person on October 5, 2021. Neither party raised any service issues. Both parties also confirmed the tenants served the landlords with the amendment to the application for dispute lowering the monetary claim to \$20,907.80 from the original \$22,470.35.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation and recovery of the filing fee?

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.

This tenancy began on June 1, 2016 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 9, 2016. The monthly rent was \$765.00 payable on the 1st day of each month. A security deposit of \$350.00 was paid on June 1, 2016.

The tenants seek an amended monetary claim of \$20,907.80 which consists of:

\$13,140.00	Removal of Mold Framing
\$700.00	Clean Walls of Mold and Debris
\$450.00	Cracks in Wall Foundation
\$3,328.80	Blue Seal, Insul, V/Barrier
\$1,314.00	Cut and Install Drywall
\$400.00	Put up door and framing
\$1,575.00	Build Frame for Storage room
\$20,907.80	
\$100.00	Filing Fee
\$21,007.80	

The tenants filed an amendment on October 9, 2021 lowering the monetary claim to \$20,907.80 from \$22,371.00. The tenants provided written details which states in part,

This request is being made due to outstanding payment for work completed in the basement of... which was a verbal agreement as well as followed up emails made between us, the tenant, and landlord and for which the landlord has reneged on the agreement made after the work was completed.

The tenants stated that a verbal contract was made with the landlord to perform renovation/repair work on the basement for the filed claim and that this amount would be applied against a down payment for the purchase of the home.

The landlords dispute this claim arguing that there were discussions, but no actual agreement was made. The landlords did confirm that the tenants were offered the opportunity to purchase the home twice during the tenancy.

Extensive discussions took place with the tenants in which they confirmed that the verbal agreement to perform contract services to renovate/repair the basement was in lieu of the claim amount for a down payment for the purchase of the property. The tenants confirmed that the verbal agreement for services in lieu of a down payment were unrelated to rent.

Analysis

Residential Tenancy Branch Policy Guideline, #27 Jurisdiction under section 2. Transferring Ownership states in part,

A tenancy Agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- Money exchanged was rent or was applied to a purchase price.
- The agreement transferred an interest higher than the right to possession.
- There was a right to purchase in a tenancy agreement and whether it was exercised.

In this case the tenants seek a monetary claim for compensation for services in lieu of a down payment for the purchase of the property.

This application involves a verbal agreement in the form of a contract for services and the purchase of the home and the assumption of services for a down payment. The tenants did not provide any details of a purchase price or conditions of a contract for sale. It therefore raises a question as to whether it is a tenancy or an agreement to purchase something more than the right to possession of the premises. If the latter is the case, the agreement does not fall within the scope of a tenancy agreement under the *Act*.

The tenants have provided direct testimony that a verbal agreement was made for the tenants to perform renovation/repairs to the basement in lieu of a down payment for the purchase of the home. The landlords have disputed this claim arguing that discussion

did take place, but that no actual agreement made. The tenants were unable to provide any supporting evidence of this agreement or any further details of the agreement.

A general review of the terms as stipulated by the tenants show that this was a service in lieu of a down payment and unrelated to rent. The tenants therefore, have no recourse under the *Act* to recover any money owed under this agreement because the agreement is not confined to the right to possession of the premises but includes the right to ownership of the home and hence is not an issue of the tenancy as defined under the *Act*.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application

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 25, 2021

Residential Tenancy Branch