Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

What is the part of the residential property which was included in the rental agreement?

Are the tenants entitled to a monetary order for loss of quiet enjoyment of the property?

Are the tenants entitled to a monetary order compensating them for a restriction in services or facilities?

Background and Evidence

The parties agreed that the tenancy began in 2005. The rental unit is a single-family home which the landlord estimates is more than 70 years old and is located on acreage. The tenants testified that they rented the home in response to an advertisement advertising a house and a garage on 2 acres. The tenants testified that at the outset of the tenancy they discussed with the landlord that they would have access to parking for a truck and use of an area to garden. Although the tenancy agreement is silent as to the extent of the acreage to which the tenants were to have access, the tenants understood that they had exclusive use of the property. The landlord took the position that 75% of the acreage was comprised of trees and bush with the remaining 25% being comprised of the house and cleared area and that the cleared area was the only area to which the tenants were to have access. The parties agreed that at some point in the tenancy the tenants were cutting deadwood in a wooded area of the acreage and when the landlord asked them to stop the cutting and stop accessing that part of the property, the tenants complied.

The tenants testified that the locks on the doors were broken and left unrepaired by the landlord. The landlord testified that the tenants did not complain about the broken locks until work was being done on the property and that up until that point, the tenants had said they were not in the habit of locking the doors. The tenants testified that a washing machine in the rental unit did not work and the tenants had to use their own machine. The landlords testified that the tenants had always intended to use their own washing machine. The tenants testified that although the tenancy agreement specifies that the rental unit includes a dishwasher, there was never a dishwasher in the rental unit. The landlord testified that the box indicating that a dishwasher was included must have been checked in error.

The tenants testified that there were electrical problems in the house which were not addressed by the landlord until January 2007 and further testified that the septic alarm went off 2-3 times per week early in the tenancy. The landlord testified that the electrical issues were repaired when it was apparent that there was a problem and that the septic tank was pumped several times and the pump replaced. The parties agreed that the septic system was repaired in February of 2008.

In the Spring of 2008 the landlord commenced work clearing an area of the acreage and putting in a new home. The tenants testified that they frequently woke up to machinery outside their bedroom window and that the garage and driveway were frequently blocked with no notice. The landlord testified that the driveway was only blocked for short periods of time and that the tenants always had access to that part of the driveway which was immediately adjacent to the side of the rental unit. The landlords acknowledged that the garage was blocked occasionally. The landlords further testified that the work on the new house was not continuous throughout the Spring and Summer but was somewhat sporadic.

Analysis

The parties did not provide a copy of the tenancy agreement as part of their evidence but agreed that the tenancy agreement simply indicated the address of the house. The tenants were told midway through the tenancy that they did not have access to the unimproved area of the acreage. The fact that the tenants accepted this restriction

apparently without question and without an application for dispute resolution to order the landlord to allow them access to and exclusive use of the unimproved area of the acreage leads me to find that the tenancy was to include only those areas of the acreage which were improved at the beginning of the tenancy.

The tenants claim that locks in the rental unit were broken throughout the three year term of the tenancy and seek compensation for that loss. Although the tenants mentioned the broken lock to the landlord early in the tenancy, I find that the tenants did not complain to the landlord of the problem and request a repair until the last months of the tenancy when the relationship between the parties had broken down. The tenants cannot claim compensation for compromised security throughout when they failed to request that the problem be addressed as soon it was discovered. The tenants' claim for compensation for compromised security is dismissed.

The tenants claim that a dishwasher and washing machine were supposed to be provided as a term of the tenancy agreement, but did not bring an application for dispute resolution to compel the landlord to provide these items. While the tenancy agreement may have specifically stated that a dishwasher was to be included, I find that the lack of action of the tenants throughout the tenancy coupled with the fact that a dishwasher was not installed in the rental unit at the beginning of the tenancy leads me to accept the landlord's testimony that the box was checked in error and that a dishwasher was never intended to be part of the tenancy agreement. As for the washing machine, I find that the tenants' failure to act during the tenancy shows that there was no intention by the parties that the landlord provide a washing machine. The tenants' claim for compensation for failure to provide services or facilities is dismissed.

As for the tenants' claim that the landlord failed to maintain and repair the property, section 32 of the Act requires the landlord to maintain the rental unit having regard for the age and character of the rental unit. I interpret this to mean that a tenant living in a 75 year old home must expect that a home built to meet the building code in existence at that time will not meet the standards one would expect in a recently built home. The electrical and plumbing problems described by the tenants appear in my view to be in keeping with the age of the rental unit. I find that the landlord acted within a reasonable

time to address problems as they arose and find that the problems with the electric and plumbing are not sufficient to attract a damage award. I note that although the tenants claim that the landlord failed to repair a wood stove and chimney creating a potential fire hazard, it is clear that the tenants used the stove and chimney throughout the tenancy without incident and therefore suffered no compensable loss. The tenants' claim for compensation for failure to maintain the premises is dismissed.

Section 28 of the Act addresses the tenants' right to quiet enjoyment. The Act provides that tenants are entitled to reasonable privacy and exclusive possession of the rental unit, which does not include the yard. I find that neither the tenants' right to privacy nor their right to exclusive possession have been encroached upon. The Act further provides that the tenants are entitled to freedom from unreasonable disturbance and significant interference. As I have already found that the tenancy agreement included only those areas of the property which had improvements at the beginning of the tenancy, I find that the noise created by clearing the property and building the other house cannot attract compensation as it was the landlord's right to access and develop this part of their property which was not part of the tenancy agreement. The landlord's counsel referred me to several authorities. I find that *Wilson v. Neufeld*, *Tucker v. Scott* and *Han v. Wilson* are irrelevant as they exclusively address noise complaints, which on the facts of case I have already found cannot form the basis for a claim. *Firth et al v. B.D. Management Ltd. et al*, 1990 73 DLR (4th) 375 (BCCA) is a case involving a commercial tenancy in which Wallace, J.A. writing for the court found that a breach of quiet enjoyment required more than a mere temporary inconvenience, but that the interference must be of a grave and permanent nature. A fifth authority, *Evergreen Building Ltd. v. IBI Leaseholds Ltd.*, 2008 BCSC 235, cites a number of other authorities addressing commercial tenancies in which a breach of the covenant of quiet enjoyment was found to have occurred with such events as seepage of malodorous fluids, putting a tenant out of possession and interfering with power and water supplies.

Black's Law Dictionary, Sixth Edition, 1990 at p. 1248 states that the covenant of quiet enjoyment "promise(s) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from

serious interferences with his or her tenancy." It is clear that the common law as expressed in Black's Law Dictionary and in the aforementioned authorities requires that a *serious* interference take place in order to find that the covenant of quiet enjoyment has been breached. The parties agreed that clearing and construction began in the Spring of 2008 and continued until tenants moved into that house in July 2008. The landlord testified that the garage was blocked for a short period of time and that the roof for the new house was placed on the tenant's lawn for a period of time as well, but that otherwise there was nothing occurring on the residential property itself other than the driveway being used for access to the property under development until such time as the separate driveway for the new house could be utilized. The tenants testified that the driveway was frequently blocked but that when workers were asked to move their vehicles they did so, albeit reluctantly on occasion.

I find that there was interference which took place on the residential property, which included blocking the driveway and garage and having a roof on the front lawn. However, I find that this interference can be characterized as a temporary inconvenience, particularly in light of the tenants' testimony that drivers blocking the driveway moved when requested to do so. While the tenants stated that the garage was blocked, I am not satisfied that the blocking of the garage was so lengthy or extreme that it can be characterized as a serious interference. I find that the tenants have not proven that the landlord seriously interfered with or unreasonably disturbed their quiet enjoyment of the rental unit and accordingly dismiss the tenants' claim.

Conclusion

The tenants' claim is dismissed in its entirety.

Dated October 09, 2008.