

DECISION

Dispute Codes MNDC, RR, RP, FF, O

Introduction

This matter dealt with an application by the tenants to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (Act), for an Order for the landlord to make repairs to the unit, site or property, an Order to allow the tenants to reduce their rent for repairs, services or facilities agreed upon but not provided, other issues and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the Act, and was hand delivered to the landlord on August 18, 2010. The landlord confirmed receipt of these.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to make repairs to the unit, site or property?

Residential Tenancy Branch
Ministry of Housing and Social Development

- Are the tenants entitled to reduce rent for repairs services or facilities agreed upon but not provided?
- What are the tenants other issues?

Background and Evidence

This tenancy started on April 01, 2010. This is a fixed term tenancy which is due to expire on March 31, 2011. The tenancy agreement shows that the monthly rent for this unit is \$800.00 which is due on the first of each month. The tenants paid a security deposit of \$450.00 on April 01, 2010 and a pet deposit of \$450.00 at the end of April, 2010.

The tenants testify that the advertisement for the unit stated that rent was \$800.00 per month. They viewed the unit and agreed to rent it. When they signed the tenancy agreement with a female agent for the landlord they claim that she had put the rent at \$900.00 on the tenancy agreement. They state they had no choice but to sign the agreement as they had nowhere else to go. They state they went to the landlords' agent attending the hearing and he altered the tenancy agreement to show rent was \$800.00 and both Parties initialled this alteration.

The male tenant testifies that later the agent forced his wife to sign a letter that the rent was in fact \$900.00 and that a mistake had been made because the landlord/owner of the unit had increased the rent before the tenants signed the agreement. The tenant states his wife felt intimidated by the agent into signing the letter or face eviction. The tenants seek to have this rent increase returned to them and seek to have their rent reduced back to \$800.00 per month.

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlords' agent testifies that the agent who did the original rent agreement with the tenants told them that the owner had increased the rent to \$900.00 before they signed the agreement. The agent states he was not aware of the facts when he altered the tenancy agreement to \$800.00 but when he found out that the owner had increased the rent to \$900.00 he told the tenants they could either pay \$800.00 rent for May, 2010 and then move out or agree to pay \$900.00 from June 01, 2010. The landlords' agent states the tenant agreed to this and signed the letter. He claims she was not forced to sign it.

The tenants testify that heat was supposed to be included in their rent. When they moved into the rental unit the house was being renovated and the heat was turned up to maximum. The tenants state they turned down the thermostat in their unit but this did not work. They claim the downstairs tenant turned off the heat completely from her unit and they were without heat for six months. The tenants state the landlords' agent told them it would be fixed in May, 2010 and a new thermostat would be placed in their unit. However, they state, this was not done until September 24, 2010. The tenants seek to recover compensation of \$1,500.00 for this period.

The landlords' agent does not dispute that the tenants did not have heat throughout the summer months with the exception of the first week of their tenancy.

The tenants testify that they were missing some kitchen cupboard doors. They state the landlord said they were on a back order and would be replaced. The tenants claim these were not replaced until after they filed their application for dispute resolution.

The tenants testify that they are missing closet doors in the unit. They state none of the bedrooms have closet doors but they have not notified the landlord of this during the tenancy. The tenants testify that at the start of the tenancy the fireplace had not been cleaned and was full of garbage. They state they were advised not to use it until it had

Residential Tenancy Branch
Ministry of Housing and Social Development

been cleaned but the landlord has failed to do so. They state they have not notified the landlord of this issue during the tenancy.

The landlord states he was not aware that the tenants did not have closet doors or that the fire place required cleaning and states he would not know this unless he had read the move in condition inspection report carried out by another agent or if the tenants had notified him of the problems.

The tenants state they have issues with the landlords' landscaper who turns up to cut the grass at the unit without notice to the tenants. They claim this does not give them opportunity to pick up any dog feces left in the yard. The tenants state the landlord has billed them for the landscaper having to pick up dog feces himself.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim that the landlord has overcharged them rent each month of \$100.00. I find that the female tenant did sign an agreement that the rent would be \$900.00 from June 01, 2010. The tenants argue that the female tenant was intimidated into signing this agreement by the landlords' agent, however I find she could have made an application at that time for an Order for the landlord to comply with the tenancy agreement rather than sign it if she disputed the amount of rent. As the tenants did not dispute it I find they have agreed to pay \$900.00 per month. I strongly suggest the landlord and tenants amend the tenancy agreement accordingly to avoid any further confusion.

With regard to the tenants claim for a Monetary Order for the loss of their heating for six months, The landlord does not dispute that the tenants were without heating for some

Residential Tenancy Branch
Ministry of Housing and Social Development

time during the tenancy he does argue however that the first week they did have heating. Both parties agree that the first week the heating could not be regulated and was 90 degrees. Consequently, I find the tenants are entitled to compensation for a loss of heating and for the unregulated heating from April 01 to September 24, 2010 as it is the landlords' responsibility to ensure a rental unit is fit for occupation and this also includes excessive heat and no heat. It is therefore my decision that the tenant's application for compensation of **\$1,500.00** is upheld pursuant to section 67 of the *Act*.

With regard to the tenants claim for an Order for the landlord to make repairs to the unit; I find the kitchen cupboards have since been repaired so no Order will be necessary for this item. The tenants agree that they had not notified the landlord of the missing closet doors or cleaning required to the fireplace. Consequently, I find the landlord was not aware that these items required attention and could not therefore take steps to remedy these problems. However, as of today's date the landlord is aware of these issues and he must act accordingly to replace the closet doors and have the fireplace cleaned within one month of receiving this decision. If the landlord fails to comply with this the tenants are at liberty to reapply for an Order for the landlord to make repairs.

With regard to the tenants issues concerning notice when the landscaper is to cut the grass at the unit; I would strongly advise both Parties to draw up a schedule or agree a day of the week when this work will take place to allow the tenant's time to clear any dog feces from the grass before the landscaper arrives.

As the tenants have been partially successful with their claim I find they are entitled to recover the **\$50.00** filing fee paid for this application from the landlord pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the tenants to the sum of **\$1,550.00**

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,550.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application for an Order for the landlord to make repairs is dismissed with leave to reapply.

The tenants application to allow them to reduce rent for services or facilities agreed upon but not provided 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: October 05, 2010.

Dispute Resolution Officer