



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND ORDERS

Dispute Codes MNR, MNDC, ERP, LRE, LAT, RR, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking monetary orders for the costs of emergency repairs, money owed or compensation under the Act or tenancy agreement, for orders for the Landlord to make emergency repairs for health and safety reasons, to suspend or set conditions on the Landlord's right to access the rental unit, to authorize the Tenants to change the locks, to allow the Tenants to reduce rent for repairs not provided, and to recover the filing fee for the Application.

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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. I have also allowed the Landlord's late evidence to be heard, which was reviewed with him during the hearing. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Are the Tenants entitled to the relief sought?

Background and Evidence

This tenancy began on May 1, 2005. The Landlord provided a hand drawn, two sentence tenancy agreement in evidence, which both parties had signed.

The Tenants began the hearing by explaining some of the medical problems they have been having. The Tenants attribute this to the condition of the rental unit.

The Tenants testified that there was a leak of water around the taps of the clothes washing machine for some period of time over the past years. In late October of 2010, the leak seemed to get worse. The male Tenant began using a shop vacuum to pick up the water, and tried tightening the taps feeding the wash machine.

On or about October 26, of 2010, the male Tenant noticed that the basement floor had flooded with approximately ½ inch of water all around and he testified that the water had a really bad smell. He called the Landlord and the Landlord came to the rental unit and concluded that the septic tank needed to be pumped out.

On October 27, 2010, a septic service was called by the Landlord and a truck came to pump the tank out. The Landlord testified he had the tank pumped out every two or three years. The Tenants testified that in the five years of the tenancy, this tank had never been pumped out.

During the course of the septic truck visiting the property, an electrical pole was knocked out and the rental unit lost power. While the Landlord did supply the Tenants with a generator, the Tenants testified that this generator stopped during the night. As a result of the loss of electrical power a freezer full of food was spoiled. The male Tenant testified he warned the Landlord two years ago that the pole was rotten.

The Landlord provided the septic company invoice in evidence. This invoice indicates the septic company had to make two different trips to auger out the water and sewer lines in the rental unit. Despite this, the kitchen sink is still not draining properly, as the Tenants have to put a bucket under the sink drain and empty it when they use it.

The Tenants testified that the Landlord has not had the basement or rental unit cleaned following the leak of septic fluid in the basement.

The Landlord testified he had the septic company there to clean the rental unit, but the Tenants were not allowing the septic company into the unit.

The female Tenant testified that she contacted her insurance company for advice. According to her testimony, her adjuster phoned the Landlord and explained he needed a restoration company to come in and professionally clean the rental unit due to the septic discharge. According to the Tenant's testimony the Landlord told her adjuster he was not going to do this. The Landlord did not dispute this testimony.

The Landlord testified that he thought the Tenants were vacating the rental unit at the end of October.

In evidence the Landlord also provided a cheque from November of 2009, claiming the Tenants had been late paying their rent.

The Tenants provided evidence that they have given their written notice to end the tenancy on January 31, 2011.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 32 of the Act by failing to maintain the rental unit in a state of repair which complies with health, safety and housing standards, and by failing to ensure it remains suitable for occupation by the Tenants.

The discharge of septic waste into the interior of the rental unit is a very serious matter and required the Landlord to take immediate restoration measures, which I find he failed to provide. I find the Landlord's evidence lacked credibility, and I find he failed to comply with section 32 of the Act.

Therefore, I Order the Landlord to **immediately make emergency repairs to the rental unit** by:

1. Hiring a professionally qualified restoration company to enter the rental unit and clean up all septic waste and contamination from the rental unit; and
2. Hiring a professional, certified plumber to inspect and repair or replace (as necessary) all sinks and other water fixtures, such as drains and toilets, in the rental unit.

I also Order that if the above restoration and plumbing repairs are not completed by December 31, 2010, that the Tenants' rent for the month of January 2011, shall be reduced to zero amount owing to the Landlord, due to the loss of quiet enjoyment of the rental unit. The parties have agreed that the tenancy is ending on or before January 31, 2011.

I also Order that the rent for November and December of 2010, be reduced by 50%, or to **\$525.00** per month, due to the Landlord's breaches and the Tenants' loss of quiet enjoyment of the rental unit. The parties shall account for rents paid and or owed for these two months and a refund or payment will be made by the appropriate party. In addition, the Tenants may also deduct or be reimbursed the sum of **\$50.00**, the filing fee for the Application, from this rent accounting.

I also Order that the Tenants may not prevent the restoration company or plumber, as described above, from entering the rental unit.

Regarding access to the rental unit by the above trades people the Landlord shall contact the female Tenant by cellphone, which the Landlord confirmed having the number for at the hearing, to make these arrangements. The Landlord may not enter the rental unit without providing the Tenants a Notice to enter the rental unit which strictly complies with the requirements of the Act.

I dismiss the claims of the Tenants on the other issues, as I find they had insufficient evidence, such as receipts of invoices to support their claims, or evidence that they had informed the Landlord in writing about the power pole and other problems at the rental unit early than late October of 2010. As I have limited the Landlord's right to enter the rental unit, I do not authorize the Tenants to change the locks.

I also find the Tenants had insufficient evidence to prove their current medical conditions were caused by the septic discharge, such as a medical report linking their symptoms to the septic discharge. Nevertheless, I acknowledge their medical conditions are certainly not made any easier by the condition of the rental unit, and that is why I have ordered the Landlord to make immediate repairs, on an emergency basis.

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: December 09, 2010.

Dispute Resolution Officer