Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC RP RR FF

Introduction

This hearing convened on March 4, 2011 for 1 ½ hours and reconvened for the present session April 8, 2011 for 2 hours and dealt with an Application for Dispute Resolution by the Tenants to obtain: a) a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; b) to obtain an Order to have the landlord make repairs to the unit site or property; c) to obtain an Order to allow the Tenants reduced rent for repairs, services or facilities agreed upon but not provided; and d) to recover the cost of the filing fee from the Landlord for this application.

Neither party raised concerns about how service of the hearing documents was conducted. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearings, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The female Tenant was not present during the April 8, 2011 hearing.

Issue(s) to be Decided

1. Has the Landlord or their Agent breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach?
3. Does the rental unit require repairs pursuant to section 32 of the *Residential Tenancy Act*?
4. Have the Tenants met the burden of proof to establish there were services, repairs, or facilities agreed upon and not provided to entitle them to future reduced rent?

Background and Evidence

At the outset of the hearing the Tenants advised they received the Landlord's evidence late as it was left with their house guest on February 24, 2011 and they did not receive it until February 25, 2011. After a brief discussion the Tenants stated that they wished to proceed with today's hearing as they have had an opportunity to review the Landlord's evidence and are prepared to respond to it.

The parties entered into a fixed term tenancy agreement effective December 1, 2010 that is set to switch to a month to month tenancy after November 30, 2011. Rent is payable on the first of each month in the amount of $2,100.00 and on November 9, 2010 the Tenants paid $1,050.00 as the security deposit. A move in inspection report was completed December 1, 2010 in the presence of the Tenants.

The Tenants testified they were not provided a copy of the move-in inspection report until they received the Landlord's evidence package.

They clarified their application for dispute resolution and advised they are seeking $2,600.00 in compensation which is comprised of the following:

1. $1,050.00 for the return of their security deposit;
2. $325.00 for having to clean the interior of the house ($100.00), pressure wash the outside of the house and decks ($100.00), shovelling the driveway ($100.00), and disposal of the previous tenants' debris ($25.00);
3. $600.00 for loss of use of the garage for December 2010, January 2011, and February 2011, due to a foul odour in the garage;
4. $40.00 for not having a washer and dryer from January 1 to 8, 2011;
5. $75.00 for additional electricity for having to run the washer several times to attempt to clean it; to run the fans and heaters in the garage after a treatment to cure the product used to eliminate the odour;
6. $100.00 for the insect issue which prevented use of storage and furnace rooms for December 2010;
7. $200.00 for loss of quiet enjoyment due to constant interruptions to have the above mentioned issues attended to.
8. $362.50 (the actual costs) to cover the loss of contents of the refrigerator which had an electrical fire which resulted from a light bulb that was installed and was not a refrigerator light bulb.

A discussion took place where I explained how a security deposit is held in trust by a Landlord for the duration of a tenancy, after which the Tenants advised they were

withdrawing their request for the return of their security deposit as they wish to continue their tenancy.

The Tenants advised that when they attended the rental unit to conduct the move-in inspection and get the keys the garage door was wide open. There were several light bulbs burnt out and they had a hard time seeing everything. They could not smell the foul odour in the garage as the door had been open for awhile and the garage was airing out.

It was not until the door was left shut that they noticed the smell. Then when they began to unpack they noticed over 100 dead insects in the furnace room and storage area under the stairs. On December 1, 2010 the Tenants contacted the Agent's wife, as the Agent was out of the country, and informed her of the deficiencies. A carpenter was sent over December 2, 2010 to inspect the issues and the Tenants were told they would have to wait until the Agent returned. An email was sent to the Agent December 5, 2010. The Agent responded to this e-mail December 23, 2010.

The Tenants are of the opinion that they cannot park their vehicle in the garage or store any items in the garage as the rodent smell would be absorbed into those items. They feel the Landlord has not acted in an appropriate fashion to remediate the smell as they seem to be taking the least expensive route instead of taking action that would resolve the problem. The requirement for fans and heaters has increased the Tenants' hydro costs and the problem is still not fixed.

The Tenants state the insect problem has not been dealt with properly. The Agent attended the unit, vacuumed up the insects and spread a pebble type pesticide around the furnace and storage rooms and also placed the product inside a fresh air furnace duct. They are concerned that the product may not be safe and have requested, on numerous occasions, to have the house inspected by a pest control company. They are not convinced the insect problem has been resolved and they have now seen a few spiders in the house.

Since filing their application for dispute resolution the Tenants' fridge and some sort of electrical short on February 18, 2011, which caused the contents of the fridge to be blackened and burned so had to be thrown out. The Tenants confirm the Landlord had the fridge replaced the next day and told them they would be reimbursed for the items they lost if they created a list of items. They have still not received reimbursement for these items even though the Agent went through their garbage to ensure the list matched the items thrown out. They have replaced most of the food items however they have not yet replaced the dental trays that were damaged.

They were seeking a repair Order to have the screen door and one window screen repaired, finish the remediation of the odour in the garage, have a professional pest control company attend the rental unit, and repair the rock steps or path on the side of the house. Prior to the reconvened hearing the Landlord assigned a different Agent to this property and the two screens have been repaired.

The Tenants are seeking a rent abatement of $400.00 per month for December 2010, January 2011, and February 2011, which is comprised of $200.00 for loss of use of the garage, $100.00 for screens not repaired, $100.00 for having to wait for a pest control company to assess and treat the house.

The Landlord and Agent testified and confirmed they had attended a dispute resolution hearing a few days ago and they were permitted to end the tenancy based on a 1 Month Notice and were awarded an Order of Possession. A discussion followed whereby the Landlord confirmed they will be proceeding with serving the Order of Possession to end this tenancy as of April 30, 2011.

The Landlords' response to the Tenants' claims was as follows:

1. $325.00 for having to clean the interior of the house – there is no indication on the move-in inspection report that the house required any additional cleaning. The report is very detailed and the Tenants did a thorough job in writing deficiencies yet there is no mention of cleaning required.
2. $600.00 for loss of use of the garage for December 2010, January 2011, and February 2011, due to a foul odour in the garage – The Landlord has done their due diligence in attending to this issue. The repair has been drawn out as a result of the Tenants refusing access, not being available for times the contractors wish to access the unit; the Tenants cancelling the Landlord's contractors and demanding contractors of their choice; which has all resulted in a breakdown of communication between the parties. They stated their evidence clearly displays their ongoing attention to this matter with only one period of a delay of ten days.
3. $40.00 for not having a washer and dryer from January 1 to 8, 2011; The Landlords hired a repair person as soon as they were told about the washer issue. There was never any problem with the dryer but the Landlord chose to purchase a matching washer and dryer to keep the rental unit looking nice. They stated their evidence supports there was no delay in getting the washer issue attended to.

4. $75.00 for additional electricity for having to run the washer several times to attempt to clean it; to run the fans and heaters in the garage after a treatment to cure the product used to eliminate the odour. They argued they have taken several avenues to attempt to resolve the garage odour issue. Their evidence supports they even had an air quality assessment completed where there was no odour present.
5. $100.00 insect issue which prevent use of storage and furnace rooms for December 2010. The storage room has not been banned from use. The Landlord was able to vacuum up the dead insects and spread the pesticide and the storage areas were ready for use. The Agent confirmed he does not have a license to use pesticides. The product which was used was a "Chem Free Insect gone" and is a health conscious product. The Landlords claim they have never heard a complaint about bugs since, until at today's hearing.
6. $200.00 for loss of quiet enjoyment due to constant interruptions to have the above mentioned issues attended to. The Landlords advised they normally have a good working relationship with all their tenants and if work is required they attempt to accommodate each other. It is not the case with these Tenants and they respect their right to have proper notice before entering. That being said, the Landlords are simply responding to the numerous complaints being raised by the Tenants' and are not intentionally interfering with their quiet enjoyment.
7. $362.50 to cover the loss of contents of the refrigerator. The Agent confirmed he requested the Tenants make a list of the items they lost from the fridge and advised them that he would submit it to the office to see if they could be reimbursed. He states he did not tell them they would be reimbursed for certain. This fridge was only 3-4 years old. A repair person attended that day and when it was determined that it could not be repaired a new fridge was purchased and delivered the next day.
8. The rock sidewalk or pathway was approved prior to the occupancy permit being granted. This house is only 3-4 years old and there was no issue with this sidewalk or pathway at that time.

In closing the Landlord(s) stated that their evidence supports they attended to every complaint within a reasonable timeframe and continued to work with the Tenants even after they turned away contractors or rescheduled appointments. The Landlords made their best efforts to deal with issues as they arose and have not breached the *Residential Tenancy Act.* They questioned what steps the Tenants took to mitigate their loss of quiet enjoyment. The Tenants still had full use of the property and the Landlord only attended to deal with issues raised by the Tenants, many of which were not listed on the move-in inspection report.

The male Tenant confirmed the house is a newer home. They do not understand why the Landlords would not have noticed the dead insects, the garbage or the smell in the garage if they had cleaned the unit like they said they had. The Landlords did not hire the proper professionals to deal with issues as they sent a carpenter to deal with the garage and dead insects and then the Agent dealt with the insects instead of a pest control company. The issue with the side stairs or path is not with the design rather it is an issue because some of the rocks have broken and are crumbling away leaving rough uneven edges. They never cancelled work ordered by the Landlord they only requested free quotes from other companies for comparisons.

Analysis

Each participant submitted a voluminous amount of documentary evidence to the *Residential Tenancy Branch,* all of which has been carefully considered, along with the testimony, in making my decision.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Based on the foregoing, the relevant submissions, and on a balance of probabilities, I find as follows:

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The move-in inspection report was completed, in accordance with the Act, and provides a very detailed listing of the condition of the rental property. There is no indication that the rental property required extensive cleaning. I find there to be insufficient evidence to support the Landlord breached the Act, regulation or tenancy agreement, or that the Tenant's mitigated their loss by indicating the condition of the property on the inspection report. Therefore I dismiss the Tenants' claim of $325.00 for having to clean the rental property, without leave to reapply.

After careful review of the evidence I accept the Tenants' testimony that the Agent and or his wife attempted to air out the garage to eliminate the odour, by leaving the door open prior to the Tenant's arrival. I accept that this action prevented the Tenants from noticing the foul odour until the next day, after which they promptly reported the issue to the Agent's wife.

Given the absence of the Agent, I find his wife acted accordingly to have the odour investigated by their contractor, in a timely fashion. I find the delays in resolving this issue are a direct result of the breakdown in communication which can be attributed to the Tenants continued involvement and lack of cooperation with the contractors who needed to access the rental property.

Section 33 (4) of the Act states that a Landlord may take over a repair at any given time; there is no provision in the Act which states a tenant may take over the repair. Therefore I find there to be insufficient evidence to support the Landlord breached the Act relating to the odour in the garage, and I dismiss the Tenants' claim of $600.00 for loss of use of the garage for December 2010, January 2011, and February 2011, without leave to reapply.

The evidence supports the Landlord did what was reasonable in hiring a repair person to come in to attempt to repair the washer and when the repair did not work a new washer and dryer were purchased within a reasonable amount of time. There is insufficient evidence to support the Landlord breached the Act, regulation or tenancy agreement; therefore I dismiss the Tenants' claim of $40.00 for not having a washer and dryer from January 1 to 8, 2011.

In the absence of hydro bills I find there is insufficient evidence to support the Tenants suffered a loss of $75.00 for additional electricity costs for having to run the washer several times to attempt to clean it and to run the fans and heaters in the garage after a treatment to cure the product used to eliminate the odour. Therefore I dismiss the Tenants' claim of $75.00 without leave to reapply.

I accept the Tenants evidence that the refrigerator electrical fire was caused by an improper light bulb being installed in the fridge which caused them to suffer a loss of $362.50 for the contents of the refrigerator. The onus lies with the Landlord to ensure the rental property, including appliances, are maintained in accordance with section 32 of the Act, as listed above. Therefore I find sufficient evidence to support the Tenants' claim and award them **$362.50** for the cost of items lost due to the electrical fire in the fridge.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction based on Section 27, I find they have provided no evidence indicating that the Landlord had breached this section of the *Act*.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental units suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the Landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

I accept the Landlord's evidence and testimony that they took all reasonable steps to ensure requested repairs were attended to in a reasonable amount of time. I find there to be insufficient evidence to support the value of the tenancy has been reduced; therefore I dismiss the Tenants' claim of $200.00 for loss of quiet enjoyment, without leave to reapply.

The evidence supports the Agent applied a pesticide and refused to hire a qualified pest control company which is a breach of section 32 of the Act which requires a landlord to comply with health, safety and housing standards required by law. While there is no evidence to support any negative effects resulted by the Agent's actions, I do find his refusal to seek professional assistance caused the Tenants unnecessary worry and concern. Therefore, in accordance with section 62 of the Act, I award the Tenants **$100.00** ($31.25 x 3.2 months which is up to the first hearing date).

After careful review of the evidence I find there to be insufficient evidence to support the Tenants informed the Landlord of their request for repairs to the screens and the rock stairway, prior to their application for dispute resolution. While the move-in inspection report indicates the screens were damaged this does not constitute a request for repair. Therefore I find there to be insufficient evidence to warrant issuing Orders for repairs and I dismiss the Tenants request for Orders to repair the unit.

The Tenants have only been partially successful in their application; therefore I award them partial recovery of the filing fee in the amount of **$20.00.**

Monetary Order – I find that the Tenants are entitled to a Monetary Order as follows:

Reimbursement of lost contents of fridge	$362.50
Compensation for lack of professional pest control	$100.00
Filing fee	20.00
TOTAL AMOUNT DUE TO THE TENANTS	**$482.50**

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **$482.50.** The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

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: April 11, 2011.

Residential Tenancy Branch