



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the Application for Dispute Resolution filed by the Tenants, seeking monetary compensation for losses under the Act or tenancy agreement.

Both parties appeared at the hearing. The Tenants were assisted by Advocates at both hearings. The Landlord was assisted by one of their adult children. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

The first hearing in this matter occurred on December 17, 2013. The hearing was adjourned as more time was required for both parties to present their testimony and evidence. The hearing concluded at the end of the second hearing, on February 17, 2014.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation from the Landlord?

Background and Evidence

This tenancy began on May 1, 2013, with the parties having entered into a written tenancy agreement, for a month to month tenancy. The Landlord has supplied a copy of the tenancy agreement; however, the last four pages including the signature page were not submitted into evidence. The rent was \$1,050.00 per month, due on the first day of the month. The Tenants paid a security deposit to the Landlord; however, at the end of the tenancy the security deposit was returned to the Tenant by the Landlord and therefore, has been dealt with.

The Tenants submit they did not get a copy of the tenancy agreement, although they received a copy of an addendum to the agreement.

The Landlord did not perform incoming or outgoing condition inspection reports.

The possession date for the rental unit was May 1, 2013. The Tenants were allowed to move some of their possessions into the rental unit on or about April 28, 2013.

The rental unit consisted of a basement suite in a house, with a different renter occupying the upper floor of the house.

The Tenants claim that when they viewed the rental unit they noticed a smell of cat urine in the carpets, mold in the master bedroom closet, and no thermostat was in the rental unit. The Tenants allege the Landlord promised them that these issues would be addressed before they moved in. The parties then completed the tenancy agreement.

The Tenants claim that when they moved into the rental unit none of the issues had been addressed.

The Landlord testified they informed the Tenants that the thermostat that controlled the heat for the basement suite was situated in the rental unit above. They had not cleaned the carpet or the mould but, according to the testimony and evidence of the Landlord, offered to do this after the Tenants had moved in.

The Tenants testify they had to clean the carpets themselves. They testified that when they moved in the carpets still reeked of cat urine. They wanted the Landlord to clean the carpets but the Landlord refused. The Tenants were also concerned it appeared that someone had been entering the rental unit when they were not there. The Tenants called the Landlord and sent emails.

The Landlord testified they had entered the rental unit to check on the possessions of the Tenants on two occasions and to clean the carpets.

An email from the Landlord, submitted in the Landlord's evidence, addresses the complaint of the Tenants that the carpets still smelt like cat urine and the heat control,

“... we did clean the carpets already. There were no complaints when you first viewed the suite. Also, theres one control [thermostat] in the house but the heat is set to come on at a temp (don't know what) but because its summer it would be off...”

[Reproduced as written.]

The Tenants claim \$45.00 for carpet cleaner rental.

The Witness presented by the Tenants viewed the rental unit with the male Tenant prior to the beginning of the tenancy. The Witness explained she was the mother of the male Tenant and that he had experienced some difficulties in life, so she had to watch out for his best interests. She testified that at the initial viewing they noticed a smell of cat urine and that there was mold in a cupboard. She testified that the Landlord promised this would be addressed before the Tenants moved in. She testified that when the Tenants moved in she was there and there was still a strong stench of cat urine and the mold had not been cleaned.

The Tenants also claim for loss of quiet enjoyment of the rental unit due to a number of floods that occurred in the rental unit.

In or about late May of 2013, the Tenants experienced a flood in the rental unit. They claim the renter in the suite above the subject rental unit left a hose running outside in the yard, and the water entered into the basement suite. The Tenants testified they called the Landlord to request the water in the suite be addressed. The Tenants testified the Landlord did not reply to these and they had to rent a carpet cleaning machine to remove the water themselves.

The Landlord denied the Tenants had ever contacted them about this flood.

The Tenants submitted that they had significant problems with the renter in the rental unit above, which included excessive drinking, disturbing them with excessive noise, and not removing his dog's feces from the backyard, where the Tenants' two year old child was to play. The Tenant wrote a letter explaining his complaints about the renter upstairs to the Landlord in August of 2013.

In July of 2013, the Tenants experienced another flood in the basement suite. The washing machine in the suite above the subject rental unit malfunctioned, and water flooded from it. In evidence the Tenants provided photographs of the water leaking from the ceiling into the rental unit. The photograph depicts a nearly steady stream of water dropping into the rental unit. There is water everywhere on the floor of the rental unit and a bucket and towels are being used to clean up. Significant water damage to the ceiling and walls of the rental unit is depicted in the photographs.

The Tenants testified they immediately contacted the Landlord. According to the Tenants, the Landlord informed them they were going on holidays and would look at the problem in a weeks' time.

The Tenants testified they informed the Landlord that the damages from the water were significant and needed to be addressed quickly.

The Landlord sent over a handyman. According to the testimony and evidence of the Tenants the handyman removed sections of the drywall to air out the water damaged portions of the rental unit, however, no dryers or dehumidifiers were used.

During the December 17, 2013, hearing the Landlord agreed that no dryers or dehumidifiers were used. The Landlord thought the water would be dry in two days.

The Tenants submit that due to the damage they had to stay out of the rental unit for a few days.

The Witness had testified earlier in the hearing that the Tenants or the young child had to stay with her for one week on this occasion and then for a few days on other occasions, following the flood and the application of a deck sealer.

The Tenants testified when they returned they were not happy with the repairs the handyman was doing and they negotiated with the Landlord to do some of the repairs themselves in exchange for a payment.

The Landlord replaced the washing machine in the rental unit above.

According to the submissions of the Tenants the Landlord supplied the renter above with a container of industrial deck sealant in order to seal the floor under the wash machine in the rental suite above. The Tenants claim this adhesive was extremely toxic and should not have been used inside. The female Tenant was pregnant and her and the two year old son were forced to leave the subject rental unit due to the fumes.

The Landlord testified that the renter upstairs had only used a small amount of the adhesive to seal the floor, about the size of a dime coin. The Landlord testified it was only a small portion about three feet square, and only a small amount was used. The Landlord explained under cross examination that he had given the adhesive to the renter upstairs for use outside and not inside.

On August 31, 2013, the Tenants gave the Landlord their one month written notice they were ending the tenancy at the end of September 2013. The Tenants filed this Application on September 10, 2013, seeking compensation for their losses.

At the end of September 2013, the Tenants were moving out of the rental unit and had much of their possessions packed. They experienced two additional floods in the rental unit during this time, due to heavy rains. In the first September flood, the Tenants contacted and informed the Landlord about the problem, and the Landlord brought a shop vacuum for them to use to take up the water.

The Tenants submit that they had to apply for emergency social assistance to replace some of the family belongings. They submit the Landlord did not offer to compensate them for damages to their property or assist in the clean up.

According to the evidence of both parties, the Landlord called a company that specializes in floods and drains. This company made some repairs to downspouts and used a camera to determine the driveway drain should be replaced. According to the

Tenants this company informed them and the Landlord that the house required a new foundation and weeping tiles.

A day or two later, on or about the last day when the Tenants were vacating, there was another flood. The Landlord called a plumber. In evidence the Landlord submitted a hand drafted receipt from "Bob" who "rooted" the drains. According to the receipt he found roots and a plastic bag in the drain of the driveway, which was cleared. There are other notes about a tile being broken and a leader tee off the driveway being broken.

At the time of this second flood in September, the Tenants, the Landlord and the plumber had an argument and the police were called. The Landlord and the plumber were asked to leave

In compensation, the Tenants request a 25% rent reduction for the last four months of the tenancy due to the loss of quiet enjoyment and the unresolved maintenance and repair issues, in the amount of \$1,500.00.

The Landlord testified that they did not feel these were major floods, that there were just small amounts of water in the rental unit. Under cross examination the Landlord testified that the water entering from the wash machine was not a flood, it was just a small malfunction. The Landlord testified it had nothing to do with the other house problems.

The Landlord testified that the repairman who came to work on the wash machine was also the person who was to perform the restoration to the rental unit. The Landlord testified this person was an electrician who worked for a company that repaired lots of things. When the Tenants were not happy with the work being done the Landlord agreed to use the Tenant to make some repairs and paid him \$200.00.

The Landlord testified they had used this person before at another house. The Landlord testified they used mold resistant drywall. Under cross examination the Landlord testified he did not get a receipt or a bill from this person.

The Landlord testified there was only one flood in September and that occurred on the 24th. The Landlord testified they had a large wet/dry vacuum they used to draw up the water. The Landlord testified they used a moisture fan to pick up the water as well. Under cross examination it appeared the Landlord was still referring to the wet/dry vacuum, and not a dehumidifier.

The Landlord then testified they were not informed of any of the earlier floods, and only of the one flood from the washing machine. The Landlord testified they were not informed of most of the issues the Tenants had in the rental unit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Landlord has breached section 32 of the *Act* by failing to provide and maintain the rental unit in a state of decoration and repair that made it suitable for occupation by the Tenants. Although the Landlord claims not to have been informed of the first flood, once the Landlord became aware of the second flood from the washing machine, the Landlord had an obligation to immediately have the rental unit properly restored. The Landlord failed to do this.

Although the Tenants agreed to perform some of this work, it was only because the Landlord had initially supplied someone apparently unqualified to do the restoration. I find this as the Landlord failed to provide any evidence that would support this first repair person was, or was working for, a professional restoration company.

I found that much of the Landlord's evidence highlighted the fact that the Landlord was unaware of their duty to provide and maintain the rental unit. It appeared the Landlord had very little understanding of their obligations under the *Act* or the tenancy agreement.

For example, I do not find the Landlord acted in a timely or effective manner in addressing the problems at the rental unit. I find the Landlord did not provide the rental unit as promised to the Tenants, as the carpets and mold still needed cleaning. I also find it significant that the basement suite had no separate controls for heat, although this was not a factor in awarding compensation to the Tenants, as they proved no losses on this, likely because the tenancy endured only during the warmer months of the year.

As a result of the Landlord's failure to properly maintain the rental unit and in a timely manner, I find the Tenants did suffer a loss of quiet enjoyment of the rental unit and to some degree a loss of use of portions of the rental unit. However, I am unable to determine, based on the Tenant's evidence and submissions, exactly how many days they had to leave the rental unit and thereby experienced a total loss of use of the rental unit. I find the Tenants had insufficient evidence on the total days they were out of the rental unit and therefore, I do not allow them the entire sum requested.

Nevertheless, I find the Tenants did establish they had to clean the carpets at the outset of the tenancy and I award them the cost of **\$45.00** for the carpet cleaning.

I further find the Tenants have shown that the issues with the rental unit began in May and went on until the day they left the rental unit during another instance of flooding. Having found they did suffer a loss of quiet enjoyment of the rental unit and to some degree a loss of use of portions of the rental unit for much of four months, I award them \$250.00 per month for a period of four months, totalling **\$1,000.00** for their losses.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Having made the above findings, I find that the Tenants have established a total monetary claim of **\$1,045.00** comprised of \$45.00 for carpet cleaning and \$1,000.00 for loss of quiet enjoyment and loss of use of portions of the rental unit.

I grant the Tenants an order under section 67 for the balance due of \$1,045.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants have proven that the Landlord breached the Act and that they suffered a loss due to the breaches. The Landlord is ordered to pay the Tenants \$1,045.00 in

compensation for their losses arising from the Landlord's breaches of the Act and tenancy agreement.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 07, 2014

Residential Tenancy Branch

