



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants, the landlord and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the tenants withdraw their application to cancel the Notice to End Tenancy.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on November 01, 2013 for a month to month tenancy. Rent for this unit was \$1,650.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$825.00 on October 21, 2013

The tenants testify that their tenancy agreement states that water and garbage are included in the rent however heat and electricity are not included. The tenants testify that they had not agreed to pay a predetermined amount for these utilities. They had discussed utility payments with the landlord and as there is only one meter for three units the amount of utilities paid by each of the three units was to be determined by the square footage of each of the units.

The tenants testify that on December 04, 2013 the landlord requested the tenants pay \$120.00 for utilities. This payment was made however the tenants requested a copy of the utility bills. The landlord declined to provide these bills to the tenants. The tenants testify that they continued to request that the landlord provide copies of all utility bills and many emails and phone calls were sent and made concerning this. The tenants testify that in one phone call the landlord responded in an aggressive manner to the tenant CCR and stated to that tenant that it was none of the tenants business how the landlord runs his business, the tenant is not bright enough to figure this out and for the tenants to find somewhere else to live.

The tenants testify that they found dealing with the landlord extremely stressful and so the tenants again wrote to the landlord about his comments and again requested copies of the utility bills. The tenants testify that the landlord did not respond to the tenants. However on December 30, 2013 the landlord agreed to send the tenants an invoice for utilities. On January 02, 2014 the tenants received this invoice and found it contained amounts for water and sewage, garbage, an annual sewer clean out fee and an annual furnace clean out fee. The tenants testify that as the water and garbage are included in the rent the landlord was not entitled to payments for these utilities and the clean out

fees were never mentioned on the tenancy agreement. The tenants again wrote to the landlord to discuss these extra charges and sent the landlord an e-mail transfer of \$52.80. The tenant testifies that they deducted from that months utility payment the amounts charged for the extra utilities for the October bill payment for these extra amounts. The tenants testify that the landlord did not accept this email transfer and so the tenants wrote to the landlord and included a cheque for \$52.80.

The tenant testifies that the landlord requested a meeting on January 14, 2014 to discuss the utilities however on January 15, 2014 the landlord suggested that the tenants pay \$102.50 a month for utilities. The tenants testify that they want to pay for utilities used by them during their tenancy however all they requested were copies of the utility bills so they could determine the amounts owed to the landlord based on their square footage of their unit. On January 21, 2014 the landlord rescinded this latest offer. On February 04, 2014 the landlord served the tenants with a 10 Day Notice for unpaid utilities. This Notice has been provided in evidence and is unsigned and undated.

The tenants testify that the day the landlord served the 10 Day Notice the tenant was at home and heard a knock on the door. The tenant ignored it and then found that the landlord had opened the door and was standing in the doorway with the Notice. The tenant testifies that she had not given the landlord permission to open their door and this has violated the tenants' right to quiet enjoyment of their rental unit. The tenant testifies that due to the stress of the emails and conversations and due to the landlords unlawful entry of their rental unit, the tenants decided to give the landlord notice to end their tenancy on February 28, 2014 effective March 31, 2014.

The tenants seek compensation from the landlord for the following amounts
\$120.00 paid for utilities at the start of the tenancy without a copy of the utility bills
\$1,269.00 for a partial loss of quiet enjoyment for a period between December 19, 2013 and February 04, 2014
\$3,000.00 for a complete loss of quiet enjoyment for a period between February 04, 2014 and March 31, 2014

\$12.50 for the cost of registered mail

\$50.00 for the filing fee.

The landlord disputes the tenants' claims. The landlord's agent refers to the tenants' documentary evidence in which the tenants have sent a letter to the landlord and states in that letter that the landlord did mention that utilities would be \$120.00 a month. The tenant has also documented that it was agreed if there was any discrepancies between the estimated and actual usage of utilities that the difference would be refunded or charged to the unit.

The landlord agrees that he did not provide copies of the utility bills to the tenants as requested as the landlord was unfamiliar with the *Act*. However, the landlord testifies that he did provide copies of the utility bills with his evidence package. These utility bills show that utilities were higher than \$120.00 a month. The landlord acknowledges that he should not have charged the tenants for the extra amounts of water, sewage, garbage and the sewage and furnace clean outs. The landlord's agent testifies that based on the square footage the tenants share for utilities each month would be 45 percent of each of the bills.

The landlord disputes acting in an aggressive or intimidating manner and disputes having the conversation with the tenant CCR in which CCR alleges the landlord said the above mentioned remarks. The landlord disputes breaking the covenant of quiet enjoyment for the tenants and disputes that he entered the tenants' unit. The landlord testifies he had gone to the tenants unit to serve the tenants with the 10 Day Notice to End Tenancy. The landlord stood in the common area and knocked on the tenants' door. The door was not closed and so swung open. The landlord testifies that he did not enter the unit at any time. The landlord's agent testifies that the email correspondence between the landlord and tenants cannot be considered intimidating and has not disturbed the tenants' quiet enjoyment.

The tenant acknowledges that the landlord was standing in the hallway on the day he came to serve the 10 Day Notice however the tenant argues that if the door had swung open the landlord should have closed it. The tenants argue that they found the emails and conversations with the landlord to be unnecessary had the landlord adhered to the term of their tenancy agreement and the Act and provided the tenants with utility bills as requested. The tenants argue that due to this the tenants spent a lot of time and energy dealing with this issue.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for compensation for \$120.00 for a utility bill; the landlord did not put a percentage amount on the tenancy agreement for the tenants to pay each month. However I am satisfied from the evidence before me that the parties had some kind of a verbal agreement as to the payments of utilities based on the square footage of their unit against that of the other two units. The landlord is however required to provide copies of the utility bills to the tenants each month with a written demand for payment within 30 days when the utility bills are in the landlords name and the landlord receives these bills from the utility companies.

However, in light of the evidence presented concerning the total amounts of the utilities and the tenants portions of these bills I am not prepared to issue the tenants with a monetary award to refund the amount they have paid of \$120.00 as the total amount is greater. I strongly suggest the parties work out exactly how much the tenants owe for utilities during the term of the tenancy and that the landlord send copies of the utility bills to the tenants with a breakdown of the tenants share and a written demand for payment within 30 days. This section of the tenants claim for compensation is therefore dismissed.

With regard to the tenants claim for compensation for a loss of quiet enjoyment of their rental unit; I refer the parties to s.28 of the *Act* which states:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Having reviewed the evidence and testimony before me I am not satisfied that the landlord has broken the covenant of quiet enjoyment. I find the tone of the emails to be mostly professional and business like and although I accept that the landlord should have provided copies of the utility bills as requested to the tenants; in not doing so the landlord may be considered to have breached the *Act* but I do not find this is significant enough to have breached the tenants quiet enjoyment. Furthermore as the landlord disputes that he acted in an aggressive or intimidating manner to towards the tenant CCR I have insufficient corroborating evidence from the tenants to show that this occurred and when it is one persons word against that of the other then the burden of proof is not met.

With regard to the tenants claim that the landlord acted unlawfully when serving the 10 Day Notice. The tenants have not shown that the landlord actually entered their unit. A landlord is entitled to enter common areas of the property and may knock on the tenants' door to service documents upon the tenants. The landlord has testified that the door swung open when he knocked on it and the tenant argues that the landlord should have closed the door if that had happened. Without corroborating evidence to show that the landlord actually entered the tenants' unit then the tenants claim for compensation

for a loss of quiet enjoyment based on these circumstances cannot succeed. Consequently the tenants claim for compensation is dismissed.

With regard to the tenants claim for the cost of registered mail; there is no provision under the *Act* for an award of this nature to be made. This section of the tenants claim is therefore dismissed.

As the tenants have been unsuccessful with their claim the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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 01, 2014

Residential Tenancy Branch

