Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE BENCHMARK TITUS REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order for compensation under the Act or tenancy agreement, for an order for the Landlord to make repairs to the rental unit and property, for an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee for the Application.

Both parties appeared at the hearing. 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 oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

This matter began on January 28, 2014, and was adjourned for the parties to address certain issues at the rental unit, as described below. On March 24, the hearing was adjourned again to allow the parties more time to address these issues. The hearing was to resume on May 22, and the Tenant appeared and requested a further adjournment as she had personal family matters that she had to deal with and was unable to prepare for or focus on the hearing. The hearing was adjourned to and was concluded on June 24, 2014.

I note that at the time of the last hearing, June 24, 2014, the Tenants had vacated the rental unit. The Tenant testified she would provide both the Branch and the Landlord with her forwarding address to send a copy of this decision to and for the Landlord to

correspond with. As of July 23, the date of completing this decision, the Tenant has failed to provide her address and therefore, this decision is lacking an address for the Applicant Tenants. They may receive their own copy by requesting one from the branch should they obtain a copy of this decision through other means.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation?

Should the Landlord be ordered to make repairs to the rental unit?

Should the rent be reduced until the repairs are completed?

Background and Evidence

On August 10, 2013, the parties signed a written tenancy agreement for a fixed term of August 15, 2013, to August 31, 2014. The monthly rent was $2,200.00, payable on the first day of the month. The Tenants paid a security deposit of $1,100.00 and a pet damage deposit of $1,100.00, on or about August 15, 2013. The tenancy agreement included a three page addendum including some 25 paragraphs.

The rental unit house, and a detached barn with workshop and shed (collectively the "shop"), are located on an acreage type of property, rural in nature. There is a road between the house and the shop.

The Tenants' main complaint throughout these proceedings was that the road between the house and the shop was not useable when it rained. The Tenants requested the Landlord put down gravel to make the road useable when it rained, or, that the rent be reduced to reflect they could not use the shop. The Tenant testified she had a "project truck", which she worked on as a hobby and had trouble accessing due to the muddy road.

The appearing Tenant submitted in evidence photographs of a portion of the road which appears to be mostly muddy ruts, although the Tenant did not provide evidence when the photos were taken.

The Tenant submitted in writing that they wanted the Landlord to reimburse them for the cost of fixing the shop doors in the amount of $375.00, and improving the living quarters above the shop.

They also wanted a kitchen light installed, the back sliding door stop included in the condition inspection report, the fridge fixed, the fireplace inspected and cleaned for use, closet doors to be repaired, and electrical wiring in the shop to be fixed. The Tenants also wanted section 24 of the tenancy agreement to be removed as it required the Tenants to run the exhaust fans, in order to prevent mold or mildew, since the Tenants did not want to be held responsible if mold occurred in the rental unit. She testified that when they did the incoming condition inspection report she saw a sump pump in the crawl through, and is concerned there is moisture there that will cause mold or mildew and the Landlord will blame the Tenants for this.

One of the terms of the tenancy agreement addendum explained that some space above the shop was not built to code and was not to be used for living quarters: “This space is not permitted for living quarters, and the Tenant will NOT ALLOW anyone to occupy this space for such use.”

Although the Tenants signed in agreement with this, they request that the Landlord be ordered to provide this as living space, or that the rent be reduced because they are not able to use it as such, and have trouble accessing it by road in any event.

In evidence the Tenant submitted her written recollection of what the advertisement for the rental unit had contained. The Tenant writes the ad included this statement, “It has an L Shaped hip roof barn with large 750 sqft shop wired for 220, with living quarters above.”

The Tenant further testified that the wiring in the shop is faulty. She claimed that each time she unplugs a device a blue arc comes from the power box.

Toward the end of the first hearing the Tenant testified that she wanted to be let out of the lease due to all these problems. She suggested the Tenants would stay until the weather is better then move out at the end of May or June first. In the meantime the Tenant wanted a rent reduction.

At the first hearing, in reply to the Tenants’ claims, the Agent for the Landlord explained that he did not get the Tenants’ evidence or their complete hearing package until four or five days before the hearing. He further explained that the Landlord did not want the tenancy to end.

The Agent testified that the first time he saw the Tenants complaints in writing was with their evidence. The Tenant agreed she had not put any of these requests in writing, although she alleged she spoke to him many times about these issues.

The Agent explained that the office above the shop had been used as living space at one time, although the local municipality informed the Landlord it could not be used for this. That is why the Agent included the portion regarding use of the space in the addendum.

The Agent submitted in evidence a written copy of the advertisement that he stated was placed on a well known website for renters. This version differs from what the Tenant recollects. The pertinent portion states, "Includes an L-shape hip roof barn with large 700 sq ft + shop wired for 220 V." This version does not refer to living space above the shop.

The Agent explained they did not want the Tenants using this area as living space, but they could use it as office space. In evidence the Landlord provided photographs of the space and one of the photos depicts a bed in the space. He testified he saw a toaster oven and a TV in there too. The Agent reiterated that the Tenants could use if for an office, but not for living space, which was clear in the tenancy agreement addendum.

The Agent stated the Landlord had been willing to reimburse the Tenants for the replacement of the hinges on the shop doors and testified the Landlord had agreed to reimburse the Tenant for the cost of railings, but wanted receipts for these.

The Agent further testified that an electrician had inspected the shop and found nothing wrong with the electrical wiring in the box. However, the Landlord and the Tenants agreed to split the cost of providing extra grounding apparently to improve phone and Internet service.

The Agent agreed he would look at the closet doors, and would have the chimney inspected and cleaned for the Tenants to use.

The Agent further agreed to investigate and bring in gravel to improve the road. The Landlord wanted to have the Tenants share the cost of this and the Tenant stated she was not comfortable agreeing to this, as it should be the entire Landlord's responsibility. The Agent for the Landlord explained he would investigate the issues with the Tenant and speak with the Landlord about costs.

As the Agent wanted to inspect the property for these items, and he had not had the Tenants' complaints in writing prior to January 20th, the first hearing was adjourned. At the end of the first hearing I explained to the parties that the issues brought forward by the Tenants, and in particular the $375.00 claim by the Tenants, were "still alive" and no

decision had been reached on these and determinations would be made on these issues in the next hearing.

On March 24, 2014, the hearing reconvened and the Tenant explained that the Landlord had someone come on February 12, 2014, and place gravel on the road, that the fireplace and closets had been dealt with, and that an electrician had inspected the wiring again.

The Tenant then disclosed that she had deducted $375.00 for their claim from the March 1, 2014 rent. She testified she thought she was able to do this.

The Agent for the Landlord testified that the gravel had been laid and it would take time to pack down and settle, but felt the access to the shop was much improved.

The Agent explained he had an electrician check the outlet the Tenant was complaining of but no blue arcing was detected and it was functioning correctly.

The Agent testified that he did see the Tenant remove a charger from the outlet and he did see a little arc, and would therefore have the outlet replaced, just in case.

The Agent testified that he was not convinced that the work done by the Tenants' contractor was worth $375.00 to repair the doors and hinges. In evidence he submitted pictures which shows the older hinges had just been screwed back in, wood was rotted around the hinges, and he testified that these were, "...on their last legs." The Agent testified it was hard to see where $375.00 had been spent. He alleged the invoice the Tenant had in evidence was from a relative of the Tenants.

The Tenant then testified that she wanted to end the tenancy. She testified that the rental unit now had rats, that the furnace was not heating the rental unit correctly and there were issues with the plumbing.

The Agent replied they had sent exterminators to the rental unit and that the Landlord was proposing to do all the other work the Tenants were requesting. The Landlord did not want the fixed term tenancy to end.

As the hearing time was running out, the hearing had to be adjourned once again. The parties agreed that three items remained to be dealt with were the electrical outlet, the loss of use of the road before the gravel and the $375.00 deduction from rent.

I note it was explained to the parties at the end of each of these adjourned hearings that it was an option and open to them to negotiate an end of the tenancy if they wished and to settle these matters between them.

When the hearing reconvened on May 22, 2014, the Tenants and the Landlord agreed that the Tenants' personal family matters were such that they would like a further adjournment. The parties agreed the gravel was no longer an issue and that the electrical outlet was not a priority.

However, the Agent for the Landlord testified that the Tenants had not paid the rent for May 2014. The Tenant testified she would pay the Landlord the rent on May 23, the day after the hearing. The Agent for the Landlord stated no Notice to End Tenancy had been issued by either party. The hearing was again adjourned.

On June 24, 2014, the hearing reconvened. The Tenant declared that they had vacated the rental unit as they did not pay the May rent and the Landlord had issued a 10 day Notice to End Tenancy. The Tenants testified that they vacated the rental unit on June 6, 2014. The Agent testified they still had not removed all their property on June 6,

The Tenant testified that they had to leave the rental unit as there had been multiple break-ins and they no longer felt safe in the rental unit.

The Agent for the Landlord testified that the Tenants had been avoiding him. He testified that they wanted to leave within five minutes of him starting the outgoing condition inspection report. He testified that they would not give him their forwarding address. He testified that the rental unit was left in a big mess and he questioned their story about break-ins.

The Tenant testified she was not prepared to proceed with the hearing as it was all very upsetting to her as her personal family issues had got worse, as her son's father had passed away. She testified they tried to have a garage sale in order to pay for the May rent, but they hoped to pay the Landlord the rent due before the end of June.

The Agent for the Landlord testified that the Landlord had hired a pest control company and they found one or two rats. The Agent testified that they found food discarded around the property which was likely attracting the rats.

The Agent further explained that there was no issue with the electrical box. He had a licensed electrician inspect and it was functioning correctly. The Agent alleged that if the Tenant was pulling out the plug of an electrical appliance that was in the "on"

position this would likely cause a blue arc. He alleged the Tenant had done this in order to create the blue arc.

The Tenant testified that she had brought this all to arbitration because every time they asked for help at the rental unit they got a long story form the Agent. The Tenants alleged they still have problems with the gravel driveway and they allege the electrical problems still exist.

At the end of the hearing the Tenant agreed she would provide both the branch and the Landlord with her forwarding address to send the decision to. I note that the Tenants have not provided their forwarding address to the branch as of today, July 23, 2014.

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 civil standard, 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 acted reasonably 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 acted reasonably 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 the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants have established a small entitlement to compensation, for the problems they encountered with accessing the shop due to the road. I find the Landlord had breached 30 of the Act, as the access road to the shop was unusable when it was wet. However, I find the Tenants had little evidence to show what the value of this loss was. I will address this issue in further detail below.

I also find that the intentions of the Tenants in these matters were not completely altruistic. I find that the Tenant was often more interested in finding ways to end the fixed term tenancy agreement with the Landlord, rather than resolving these problems, which was the nature of the Application they brought before me.

Over the course of the hearings, the Tenant repeatedly brought up the issue of the Tenants wanting to be released from the tenancy agreement and end the tenancy. However, this issue was not brought forward as one of their claims in their Application.

The addendum to the tenancy agreement is clear regarding what uses the space was intended for, and the Tenants agreed to this when they signed it. I find that the Tenants lack sufficient evidence to show they were not informed of the uses for the space.

I further find on a balance of probabilities, that the Agent's version of the advertisement is likely more credible than that of the Tenants. If the Tenants had intended on using the space above the shop as living space they should not have agreed in writing to this agreement. The Tenant had testified that her mother, the co-Tenant, had intended on using this space for her business. Nevertheless, between the photograph of the bed in the space and the testimony of the parties as to what was done to improve the living space, I find it more likely the Tenants intended on using this space as living space, contrary to the tenancy agreement.

I also find that the Tenants' evidence contained several contradictions, which caused the credibility of much their evidence to be brought into question. For example, at the May 22nd hearing the Tenant testified under affirmation that she would be paying the rent the following day, on May 23rd. However the rent was not paid on the 23rd. The Tenant later testified she was going to conduct a garage sale to raise the money to pay rent. This leads me to conclude that the Tenant's testimony on May 22nd that she would pay the rent on May 23rd lacked veracity, as she knew she had no money to pay the rent and she would have to generate the rent money by conducting a garage sale.

I further find that the Tenants failed to provide sufficient evidence to prove that there were issues with the electrical system in the shop, or that the Landlord had misled them about use of the space over the shop, or that there was an infestation of rats, or any of

their other claims, including the $375.00 to repair the doors. Due to the insufficient evidence I dismiss all the other claims of the Tenants, without leave to reapply, with the exception of the gravel road.

I find that the Landlord should have provided better access to the shop from the beginning of the tenancy. With rain the road would and did become unusable. Nevertheless, the Tenants did not provide sufficient evidence to prove what their losses were due to the lack of the gravel road. Having considered the evidence before me and pursuant to section 67 of the Act, I find the value of this loss would approximately be $375.00, over the course of the tenancy up until the gravel road was installed.

I note this corresponds to the amount the Tenants deducted from one month of rent, for compensation for the supposed repairs to the hinges of the doors. Therefore, by reducing their rent by $375.00 for one month, I find the Tenants have been adequately compensated for the loss of use of the road.

All other claims of the Tenants in this Application are dismissed without leave to reapply.

Conclusion

The Tenants were compensated for loss of use of the gravel road by allowing a onetime reduction in rent of $375.00, which the Tenants had already done, prior to the end of the tenancy. All other claims of the Tenants in this application are dismissed without leave to reapply, including the filing fee for the Application.

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: July 23, 2014

Residential Tenancy Branch