



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNDC FF O

Introduction

This hearing dealt with monetary applications by the landlord and the tenants. The landlord and the tenants participated in the teleconference hearing.

The hearing first convened on September 9, 2014, pursuant to the tenants' application. On that date, issues arose regarding service of evidence, and the landlord confirmed that they intended to file their own monetary claim. I determined that it was appropriate to adjourn the hearing.

The hearing reconvened on October 31, 2014. On that date, each party confirmed that they had received the other party's evidence. Both parties were given full opportunity to give testimony and present their evidence and witnesses. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on June 1, 2014 as a fixed term tenancy to end on May 31, 2015. The landlord and the tenants signed the tenancy agreement on June 3, 2014. Rent in the amount of \$1100 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$550. The rental house was newly constructed, and the construction was not completed at the outset of the tenancy. Some of the construction work was being done by volunteers. The landlord and one tenant carried out a move-in inspection and signed a condition inspection report. The report indicates several areas of the house that needed to be finished. The landlord allowed the tenants to occupy the unit for free for the month of June 2014, while work on the unit and property were to be completed.

The tenants did not pay rent on July 1, 2014, and on July 2, 2014 the landlord served the tenants with a notice to end tenancy for unpaid rent. The tenancy ended on July 14, 2014.

Landlord's Evidence

The landlord stated that they did not want the tenants to move in to the house in June. Rather, they wanted the house to be completely finished when the tenants moved in, and they gave the tenants the date of Fall 2014. The landlord stated that they were totally open and honest with the tenants, including regarding safety issues. The landlord stated that the tenants were completely aware of the unfinished condition of the house and property when they signed the lease. The landlord stated that they gave the tenants three opportunities to change their minds before signing the lease. The landlord stated that the Occupancy Inspection Notice was not a permit, and that document was never a secret. The landlord stated that from the engineer's point of view, only one working bathroom and kitchen were required for occupancy.

The landlord stated that the property was not unsafe. They stated that they did what they worked to complete outstanding items, but some items took priority over others. The landlord stated that the tenants wanted the dishwasher hooked up before the stair railing, and at first the tenants were only occupying downstairs. As soon as the tenants said they wanted to move back upstairs the landlord installed railings.

The landlord stated that when the tenants moved out they left the house dirty and damaged. A witness for the landlord stated that she observed that there was a lot of clean-up to do after the tenants had occupied the house for six weeks, including greasy edges on the windows that had not been wiped down. The landlord stated that they did not recall giving the tenants permission to put holes in the walls. The landlord stated that they believed that gouges in the walls were caused by the tenants, not contractors, because the gouges were where the tenants' furniture was.

The landlord stated that the tenants began taking pictures of the house and property 36 hours after they moved in, and the landlord believed that the tenants were already looking for a way to break their lease. The landlord stated that by the time the tenants moved out, all of the tenants' concerns were addressed except the trench.

The landlord claimed the following compensation:

- \$235 for cleaning and repairing damage to the property (no receipt);
- \$38.99 for paint to repaint damaged walls (no receipt);
- \$124 for repainting damaged walls;
- \$72.88 for shower head replacement – the tenants removed the showerhead and drywall plate when they vacated, and the landlord had to replace it;
- \$2200 for rent for July and August 2014;

- \$71 for vacant dwelling insurance;
- \$41.26 for gas hook-up and monthly fee; and
- \$57.20 for mailing costs – the landlord stated that they mailed two packages to the tenants at an address indicated as a return address for the tenants on mail sent to the landlord, and the landlord's two packages were returned so they had to re-send them.

Tenants' Evidence

The tenants stated that at no time did the landlord inform them that the house would not be safe for them to move in on June 1st. The tenants stated that it became immediately apparent that there were several deficiencies with the house and property, including:

- open pits and trenches;
- exposed electrical wires;
- no septic field, and raw sewage being pumped into the neighbour's property;
- stair boards not secured and no railings;
- no heaters; and
- no washer and dryer.

The tenants provided a copy of an Occupancy Inspection Notice dated May 29, 2014, which indicated that the rental unit had failed the inspection because several items needed to be completed:

- complete installation of plumbing system;
- complete roofing for conditional occupancy;
- have electrician complete work and certify as safe;
- have heating system functional or have viable alternative in place until complete;
- have septic system connected and functional for conditional occupancy;
- have stairs complete with handrails;
- other items such as siding, backfilling of water line and electrical line plus final grading of ground around house for final inspection; and
- restrict access from rear upper door until deck is complete.

The tenants stated that on June 1, 2014 the male tenant fell into a trench on the property and as a result he was unable to work or engage in activities such as childcare, and that as of the time of the hearing he was awaiting surgery.

The tenants stated that the time they occupied the house was very stressful, as there were volunteers and contractors coming through most days, early in the morning, and there was very short notice of electrical cut-offs. There were also days where the driveway was chained off and the tenants were trapped on the property with their vehicles.

The tenants stated on June 30, 2014 they gave the landlord written notice that they were looking for emergency housing. The tenants stated that the last day they stayed in the house was July 10, 2014, the effective date of the notice to end tenancy for unpaid rent, and they had removed all of their possessions by July 14, 2014. The tenants indicated that they exhausted options for alternate rental units and short-term housing suitable for their family, and although they stayed with family for the majority of time to keep costs down, they had to stay in a hotel for a few nights and have their dogs boarded from July 12 to 25, 2014.

A witness for the tenants stated that he attended at the house when the tenants were moving out, and in his opinion at that time the house was clean and in good repair. The tenants acknowledged that when they vacated, they removed the showerhead that they had purchased.

The tenants seek recovery of their security deposit and monetary compensation of \$1340.81 for hotel and dog boarding expenses.

Analysis

Landlord's application

I find that the rental unit was clearly not ready for occupation in June 2014. As indicated in the Occupancy Inspection Notice dated May 29, 2014, there were several outstanding issues that made the house unfit for occupation at that time. Under section 32 of the Act, a landlord must provide a residential property that complied with health, safety and housing standards required by law and makes it suitable for occupation by a tenant. I find that the landlord's disregard of the failed occupancy inspection and their failure to comply with section 32 of the Act amounted to a fundamental breach such that the tenancy agreement was void before it commenced. I therefore find that the landlord is not entitled to rent for July and August 2014 or the gas fees. Further, as the unit ought to have remained vacant while it was unfit for occupation, neither is the landlord entitled to the amount claimed for vacant dwelling insurance.

I am not satisfied that the landlord is entitled to costs for cleaning, repairs or painting. There were builders in and out of the rental unit on an ongoing basis, and any of them may have caused damage or dirtied the unit while it was still being completed.

I find that the landlord is not entitled to the amount claimed for replacing the showerhead, as there was not showerhead prior to the tenants purchase and installation of the showerhead, and the landlord would have had to incur a cost to purchase and install a showerhead otherwise.

I find that the landlord is not entitled to recovery of their mailing costs, as they mailed the returned packages to an address that the tenants did not provide as a written forwarding address or indicate as their service address on their application.

Tenants' Application

I find that the tenants are not entitled to the hotel and dog boarding costs claimed. I am not satisfied that the condition of the house and property presented such a hazard that the tenants had to vacate the unit in haste. The tenants had clearly been prepared to move into the house despite its obvious unfinished condition, and once moved in they took steps to have the landlord complete the work that needed to be done. The tenants expressed that they vacated the unit on the effective date of the notice to end tenancy for unpaid rent; it appears that their decision to vacate at that time was related not to safety issues but rather their desire to not pay the rent for a deficient unit.

Filing Fees

As neither party's application was successful, they are not entitled to recovery of the filing fees for the cost of their respective applications.

Conclusion

The applications of the landlord and the tenant are dismissed.

The tenants are entitled to recovery of the security deposit, and I grant the tenants a monetary order for \$550, the amount of the deposit. This order may be filed in the Small Claims Court and enforced 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: November 10, 2014

Residential Tenancy Branch

