



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, MNDC, ERP, RP, PSF, RR, FF

Introduction

In response to the tenants' application a hearing was previously convened on March 11, 2015. By Interim Decision dated March 12, 2015, the Adjudicator documented that female tenant "SJMW" and female landlord "BB" attended. The Adjudicator also documented in the Interim Decision that he adjourned the hearing "due to lack of time." Subsequently, a notice of adjourned hearing was mailed to the parties by the Branch.

The adjourned hearing was scheduled to commence at 9:00 a.m. on June 17, 2015. Female tenant "SJMW" and female landlord "BB" attended and gave affirmed testimony. At the outset, the parties were informed that as the previous Adjudicator had fallen ill, he would be unable to conduct this reconvened hearing. In the result, the parties were informed that a decision would be issued by me, exclusively on the basis of my consideration of the documentary evidence already before me, and the testimony given by the parties in this present hearing.

In their application the tenants seek cancellation of a notice to end tenancy for landlord's use of property / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / an order instructing the landlord to provide services or facilities required by law / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

During the hearing the landlord confirmed that she seeks an order of possession in the event the tenants' application for cancellation of a notice to end tenancy does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is a 3 story house which includes a basement. The landlord claims that the basement is below-ground, is not a “liveable space,” and that its practical value is limited mainly to storage. There is no written tenancy agreement in evidence for this tenancy which began in April 2013. Monthly rent is \$1,650.00. Neither a security deposit nor a pet damage deposit was collected. A move-in condition inspection report was not completed.

Pursuant to section 49 of the Act which addresses **Landlord’s notice: landlord’s use of property**, the landlord issued a 2 month notice to end tenancy dated February 04, 2015. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is May 04, 2015. The reason identified on the notice in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse.

During the hearing the landlord testified that when the notice was issued, it was her intention that her cousin would move into the unit. The tenants filed an application to dispute the notice on February 16, 2015.

There have been 3 incidents of flooding in the unit basement since tenancy began. The cumulative damage / loss and distress arising for the tenants from these 3 incidents form the basis of their application. Flooding occurred as follows:

- i) sometime during the Summer of 2013, when it is understood that the sump pump in the basement failed;
- ii) December 31, 2014 when the septic system backed up; and
- iii) January 23, 2015 when heavy rains fell in combination with another failure of the sump pump.

In each case, the landlord takes the position that all reasonable efforts were made to respond to the flooding and take remedial action in a timely manner. During the hearing the parties undertook to resolve certain aspects of the dispute.

Analysis

Section 63 of the Act addresses the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to partial resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenants will vacate the unit by not later than **6:00 p.m., Saturday, October 31, 2015**, and that an **order of possession** will be issued in favour of the landlord to that effect;

[the parties were advised that this mutual agreement to end tenancy does NOT trigger an entitlement by the tenants to compensation “the equivalent to one month’s rent payable under the tenancy agreement,” pursuant to section 51 of the Act which addresses **Tenant’s compensation: section 49 notice**]

- that the tenants **withdraw** the claim for reimbursement of \$1,650.00 which was rent paid for the first month of tenancy in April 2013;
- that the landlord does not dispute the tenant’s claim for compensation of **\$20.00** with regard to compensation for “fuel for gas pump;”
- that the landlord will compensate the tenants in the amount of **\$18.75**, which is $\frac{1}{2}$ the amount paid by the tenants for bank drafts purchased in aid of rent payment for 5 months $[(\$7.50 \times 5) \div 2]$;
- that the landlord will ensure that exposed electrical wires and the broken washing machine are attended to by appropriately qualified tradespersons; in this regard I hereby **ORDER** that the aforementioned work be completed by not later than **midnight, Friday, July 17, 2015**;
- that the landlord will deliver and remove a bin at no cost to the tenants, to be used by the tenants for the disposal of all belongings discarded as a result of flooding; in this regard, I hereby **ORDER** that the bin be delivered to the unit by not later than **midnight, Friday, July 31, 2015**.

At this stage the attention of the parties is drawn to section 32 of the Act which addresses **Landlord and tenant obligations to repair and maintain**:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on the testimony of the parties and the considerable documentary evidence which includes, but is not limited to, written submissions, receipts, and USB sticks, the various remaining aspects of the tenants' claim and my related findings are set out below. While all of the documentary evidence and testimony has been considered, only the relevant details will be documented here.

\$432.00: 16 hours @ \$27.00 per hour for "wage loss" on January 26 & 27, 2015

I find there is insufficient evidence to support this aspect of the claim. For example, such evidence might include but not necessarily be limited to such things as a letter from an employer, shift schedules, time cards, wage statements and so on. In the absence of any such evidence, this aspect of the application must be dismissed.

\$1,526.00: compensation for damage to personal property

The tenant claims that damage / loss of personal property occurred cumulatively over the course of 3 separate episodes of flooding in the basement. There is no evidence that the tenants undertook to mitigate potential losses as a result of events such as flooding by having insurance coverage. Further, there are no receipts to support the purchase cost of any items claimed, or information related to the age or condition of the items at the time when damage occurred. Pursuant to all of the above, I find that the tenants have established entitlement to nominal compensation of **\$250.00**.

\$1,000.00: *reduction in rent for "inconvenience" arising from flooding*

\$1,170.00: *78 hours @ \$15.00 per hour for "labour" & "pump monitoring" on January 23, 24, 25 & 26, 2015*

\$1,410.00: *2 persons / 8 hours each @ \$15.00 per hour for "cleanup / flood restoration" on January 27, 2015.*

I find on a balance of probabilities that the amount of time documented above, is in excess of the time actually spent. I also note that the hourly rate claimed is significantly in excess of the Provincial minimum wage.

Further to section 28 of the Act which addresses **Protection of tenant's right to quiet enjoyment**, Residential Tenancy Policy Guideline # 6 speaks to the "Right to Quiet Enjoyment," in part as follows:

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Additionally, Residential Tenancy Policy Guideline # 16 speaks to "Claims in Damages" and provides in part as follows:

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his / her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no

negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Having carefully considered the circumstances surrounding this dispute, I find that the tenants have established entitlement to compensation in the amount of **\$1,237.50**, or 75% of one month's rent. I find that this compensation reflects a breach of the tenants' right to quiet enjoyment of the premises, as well as inconvenience, disruption and distress arising variously from three separate occasions of flooding in the basement since the tenancy began.

\$100.00: *filing fee*

As the tenants have partially succeeded with their application, and as some of the matters in dispute have either been withdrawn or settled, I find that the tenants have established entitlement to recovery of **\$50.00**, or half the filing fee.

Total entitlement: \$1,576.25 (\$20.00 + \$18.75 + \$250.00 + \$1,237.50 + \$50.00)

Conclusion

2 specific **ORDERS** are issued against the landlord in the **RECORD OF SETTLEMENT**.

I hereby further **ORDER** that the tenants recover the above entitlement by way of withholding **\$1,576.25** from the next regular payment of monthly rent.

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: June 22, 2015

Residential Tenancy Branch

