



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking a monetary order for unpaid rent, compensation for cleaning the rental unit, to keep the security deposit in partial satisfaction of the claim and to recover the filing fee for this Application.

Both parties appeared, gave 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.

Issue(s) to be Decided

Did the Tenants breach the Residential Tenancy Act, and therefore, is the Landlord entitled to compensation?

Background and Evidence

This tenancy began on August 1, 2004, with the Tenants initially paying \$1,450.00 a month in rent. A security deposit of \$500.00 was received by the Landlord on July 1, 2004. The rent was increased to \$1,500.00 in 2007, and this is the rent payable during the relevant time period of this dispute.

The Landlord testified that the September and October rent cheques were returned due to insufficient funds. The Tenants apparently gave him another cheque later in September to cover the September rent, however, that cheque was returned for insufficient funds as well. In support of this the Landlord supplied photocopies of three cheques, dated September 6, 2008, September 26, 2008, and October 1, 2008. Each are stamped indicating they were not honoured by the bank.

On November 3, 2008, the Landlord received a phone call from another resident informing him that the Tenants were preparing to move out of the unit. He testified that he went to the rental unit and the Tenants denied they were moving out. He returned the next day and the Tenants were in the process of moving out.

The Landlord is claiming \$3,000.00 for rent for October and November, and partial rent for December of \$400.00, since he was able to find Tenants for a portion of December.

He is also claiming \$500.00 in compensation for cleaning and repairing the unit. He claims the Tenants left the unit in a terrible mess. They painted the walls in the unit, but this was done haphazardly, as they painted around furniture leaving portions of the wall in its original colour. He alleges the Tenants built a sundeck at the rear of the property without permits. He submitted photographs of the painting and deck in support of this claim.

At the outset of the hearing, one of the Tenants explained she was representing both Tenants as the other Tenant was not available. She testified that she had evidence to prove she had paid the rent due in the form of a money order receipt. She testified that her and her husband had built the deck with the Landlord's permission. She testified that when she went to the Residential Tenancy Branch, that her evidence was refused. She also alleged that the Landlord had threatened her with a gun.

When questioned about the alleged threat from the Landlord she testified that she had made a report to the police about this incident and they said she should move.

When questioned about her documentary evidence the Tenant said she went to the Branch and it was refused. The Tenant testified that she received the Notice of Hearing and Application for Dispute Resolution of the Landlord sometime last year by registered mail, though she was uncertain of the date. A check of the Canada Post tracking information indicates she received the Notice of Hearing and Application for Dispute Resolution on November 27, 2008.

I note the hearing package provided to the Landlord to serve on Tenants would have contained the rules of procedure regarding exchanging evidence with the other party and the Branch. The Tenants would have had from November 27, 2008, until January 6, 2009, to provide evidence for the hearing. The Notice of Hearing they used to dial into the teleconference hearing also contains information on the exchange of evidence between the parties. Despite this, the Tenants did not submit any documentary evidence.

I note that at this point the other Tenant took the phone from his wife and entered the hearing. He simply began to hurl accusations at the Landlord. I cautioned this Tenant that I had to affirm him into the hearing and he refused to cease talking. I had to mute his phone line in order to explain to him that he would have to be affirmed prior to giving evidence, despite the fact that his wife had said he was not available for the hearing.

This Tenant again repeated the accusations that the Landlord had threatened the Tenants. When questioned about these threats and reporting them to the police, he said these events occurred in 2006. Despite this he repeated that the police

had told them to move out of the unit, and then they moved out in November of 2008.

He also repeated that the Tenants had evidence but were not allowed to submit it. He wanted to submit the evidence today. I tried to explain that there were rules about the time frames for submitting evidence.

The Tenant then accused me of having accepted money from the Landlord to find in his favour. Of course this is not true.

Throughout his evidence this Tenant was rude and antagonistic. He repeated several times that he had rights as well. I tried to explain to the Tenant that I understand he does have rights under the Act, however, he must also abide by the rules and the Act in order to enforce his rights properly. This would mean submitting evidence in accordance with the Act and the rules of procedure.

Lastly, I note that the usual practice of the Branch is to accept all evidence when offered by a party. The date of acceptance is recorded on the evidence and it is in the discretion of the Dispute Resolution Officer to accept or refuse the evidence, after having examined the circumstances and relevancy of the tendered evidence. Persons submitting evidence late are cautioned that the evidence may not be accepted.

Analysis

I find that the Tenants provided insufficient evidence to support any of their claims. They provided insufficient evidence to show they had paid the rent when due to the Landlord.

I further find that the Tenants left the rental unit without having provided a proper Notice to End Tenancy to the Landlord, as required under section 45 of the Act.

I find that the Tenants are responsible for the Landlord's loss of rent for October, November and a portion of December and award the Landlord the sum of \$3,400.00 for rent.

I also find the Landlord did not provide sufficient evidence regarding cleaning the unit or in regard to the dispute about the sundeck.

I do find the Tenants painted a portion of the unit improperly, and I award the Landlord \$200.00 for this claim.

I find that the Landlord has established a total monetary claim of **\$3,650.00** comprised of the above described amounts and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$517.71** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,132.29** . This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent when due and left the unit without giving the Landlord the Notice required under the Act. The Tenants will pay the rent due and also a portion of the Landlord's claim for damages. They had insufficient evidence to show they had paid the rent as they had claimed.

The Landlord may keep the security deposit and interest in partial satisfaction of the claim, and is granted an order for the balance due from the Tenants.