



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNDC & FF

Introduction:

This hearing dealt with an application by the tenants seeking compensation for loss or damage under the *Act*. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issue to be Determined:

Have the tenants' suffered loss or damage under the *Act* due to a breach of the tenancy agreement or *Act* by the landlords?

Background and Evidence:

This tenancy began on February 1, 2008 for the monthly rent of \$1,100.00 and a security deposit of \$550.00 paid on January 15, 2008. The tenancy ended effective November 30, 2008. The monthly rent included all the utilities.

The tenants approached the landlords in July 2008 about having a roommate move into the rental unit with them for a short period of time. The rental unit is comprised of two bedrooms and one bathroom. This third individual was a friend of the tenants' who needed a place for a few months.

The landlord did not agree with the tenants having a third occupant unless that person signed their own tenancy agreement and paid their own rent. The landlord stated that all parties were present and aware of the tenancy agreement he signed with this third party. The tenancy agreement with the third party was for three months beginning August 1, 2008 and ending November 1, 2008. The monthly rent was \$400.00. The landlord stated that he normally charges \$1,500.00 a month in rent for this rental unit if there are three tenants.

The landlord questioned why the tenants were now in dispute with this arrangement when they were aware of the agreement from the start. The landlord stated that the tenants always had the option of not having a third occupant.

The tenants claim that they are entitled to compensation due to the loss of their second bedroom for the period that the third party lived in the rental unit. The tenants are seeking \$400.00 for the three month period, or the amount this individual paid in rent.

Analysis:

Under normal conditions a tenancy agreement is only between those who originally entered into the contract. Typically, to have an additional occupant a tenant must have the written consent of the landlord and at times the tenancy agreement will include a term which will allow for an increase in the rent to reflect the additional occupant. In circumstances where a tenant does not have the consent of the landlord for an additional occupant this can be grounds for ending the tenancy.

It is clear from the evidence that the tenants expected that they could have a short term roommate who would cover a portion of their monthly rent. It is apparent that the landlords were not willing to accept this proposal and alternatively they wanted the additional occupant to have their own, separate agreement.

This is type of circumstance is know as “tenants in common” where individuals share the same premises or portion of premises under separate tenancy agreements with the landlord. I have clear evidence before me that the additional occupant entered into her own tenancy agreement with the landlord.

The tenants have now claimed damages due to loss of the use of their rental unit. This claim is problematic, because it was the tenants’ themselves who initiated the inclusion of the third tenant. I have difficulty accepting the tenants’ claim that they have lost use of the rental unit when that was exactly what they were intending originally. The loss that the tenants are actually seeking through this application is that the landlord apparently profited from the arrangement, rather than themselves.

I accept the landlords evidence that all parties were involved in, and aware of, the agreement to allow this third party into the rental unit on the basis that she enter into her own tenancy agreement with the landlord. This had benefits for all parties involved. For example, the tenants benefited because they carried no liability for any loss or damage that could have been the result of this third occupant. As well, the landlord had a contract with this individual which defined the term of the tenancy, the monthly rent and a means to enforce the contract.

Since I find that the tenants were aware of, and involved with, the negotiations coming to this agreement to be “tenants in common”, it was incumbent on them to negotiate a reduction in their own rent due to the loss of use of a portion of the rental unit. It was not a realistic expectation of the tenants that they could bring in a third occupant without some increase of rent to the landlord, especially given that utilities were included in the rent.

I deny the tenants’ application for loss or damage under the *Act*. I find that the tenants have failed to establish any loss of use of the rental unit as they accepted this loss when they initiated the negotiations to have an additional occupant in the rental unit.

Conclusion:

I dismiss the tenants’ application as having no merit.

Dated January 13, 2009.

Dispute Resolution Officer