



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on April 08, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Did the landlord act in good faith when she issued the tenant with a two month Notice to End Tenancy for landlords' use of the property?
- What repairs or renovations were carried out on the property?
- When did the landlord carry out the renovations and repairs to the property?

Background and Evidence

This tenancy started on June 01, 2007. The tenant testifies that early in January, 2009 the basement rental unit had a flood. The tenant asked the landlord to carry out repairs and to dry the carpet. The landlords used a wet vac to suck up the water but the

cupboards remained damp and the unit smelled of damp. The tenants' father is in the carpet repair business and they asked the landlord if he could carry out the repair of the carpet. The tenant testifies that the landlord was not willing for her father to do this. The tenant spent most of January living away from the suite. She asked the landlord to give her a Two Month Notice to vacate the unit. The tenant moved out on February 28, 2009 and the landlord gave the tenant February's rent free in compensation.

The tenant states that one month later she returned to the property and found that the rental unit had been rented to another tenant and no repairs or renovations had taken place which would have required vacant possession. The tenant testifies that she would have stayed in the rental unit if the landlords had carried out the repairs to the carpet in January when the flood happened.

The landlords' agent confirms the tenants' testimony about the flood and the fact that the carpets were wet and smelled of damp. The landlords' agent testifies that the tenant brought the form for the Two Months Notice, all ready filled in, to the landlord and asked her to sign this. The landlord speaks English as a second language and was not fully aware what she had signed. The landlords' agent testifies that the tenant indicated to them that she would be moving out of the rental unit at the end of February so they agreed that the work to repair and renovate the rental unit would be completed then. If the carpet could not be saved then it would be replaced with tiles which would require vacant possession. The landlords' agent testifies that the carpet had to be completely dried out on the driveway and then cleaned and sprayed with anti-fungicide. The carpet was saved and was re-laid in March. Additional work was carried out in the rental unit such as repairing dry wall and re-painting the unit.

Analysis

I find that the landlord took the necessary steps when the flood occurred to try to minimize the damage. They took steps to dry the carpet and later realized that this may have to be replaced. I also find that the tenant provided the landlord with the required form filed in for the two months notice and asked the landlord to sign this form. As the landlords English is as a second language I find that this form is invalid as the landlord was not aware what she was signing. The landlord did give the tenant one months rent free in compensation for moving out as required under s. 51 of the *Act*.

I find that there is sufficient evidence that the landlord made repairs to the rental unit during March when they knew the unit would be vacant. Whether vacant possession was necessary to do the repairs is irrelevant to this matter as the tenant had moved from the rental unit at the end of February but would have been relevant if the tenant had disputed the Notice prior to the end of the tenancy. I find the landlord acted in good faith when they waited to do the repairs and thought initially that they would have to replace the carpet with tiles.

Conclusion

I find the tenant is not entitled to claim the equivalent of two months rent in compensation from the landlord and I dismiss the tenants' application in its entirety

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 17, 2009.

Dispute Resolution Officer