



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the tenants to cancel a Notice to End Tenancy for Unpaid Rent, for a monetary order for money owed or compensation for loss or damage under the Act, to recover the security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on July 24, 2009. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing

Having given the parties the opportunity to give their affirmed evidence orally, to provide written and documentary evidence, to cross-examine the other party, and to make submissions to me, I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Are there arrears of rent and if so, how much?
- Are the tenants entitled to compensation for damage or loss and if so how much?
- Are the tenants entitled to the return of their security deposit at this time?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on July 01, 2009. This was a month to month tenancy and rent for this suite was \$1,250.00 per month due on the 1st of each month. The tenants paid a security deposit of \$625.00 on May 20, 2009. The landlord did not carry out a Move in condition inspection with the tenants at the start of the tenancy.

The tenants testify that when they viewed the house to rent it had been up for sale and they were assured by the landlord that it had been taken off the market. The tenants claim that when they moved in the house had not been thoroughly cleaned by the previous tenants. They contacted the landlord who was away on holiday and she told them she would do it when she returned. However, as this was moving day the tenants decided to clean the property themselves. They claim this took two people a total of 14 hours at a cost of \$30.00 per hour to the sum of \$775.00. They claim the areas requiring cleaning were the fridge, baseboards, drawers and cupboards, patio door frame, bathroom vanity, oven door, stove, wall and removal of garbage.

When the landlord returned on July 06, 2009 she notified the tenants that the suite had been sold and they would have to leave when the sale was completed.

On July 28, 2009 the landlord issued the tenants with a Two Month Notice to End Tenancy as the property had been sold. They were asked to vacate by September 30, 2009. The tenants' agreed to move out of the property on September 15, 2009. Due to this Notice the tenants paid \$625.00 on Aug 12, 2009 for the rent for August 01 to August 15, 2009 as they believed the last months rent would be compensation for moving out of the suite as per the Residential Tenancy Act. The tenants admit that they were late paying this rent as they were in the process of seeking advice from the Tenancy Office. On August 12, 2009 the landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent.

The landlord disputes the tenants claim for cleaning the suite she said it was newly renovated and would not have required cleaning. She admits that she did not carry out a move in condition inspection to determine if the suite was clean after the previous tenants had vacated. The landlord claims she issued the 10 Day Notice to End Tenancy due to the tenants not having paid their rent on the day it was due.

Analysis

Having reviewed the evidence and testimony of both parties I find the tenants are entitled to cancel the Notice to End Tenancy for unpaid rent. The Notice states that a tenant has five days to pay the outstanding rent, apply for dispute resolution or the tenancy will end. As the tenants paid the outstanding rent on the same day the Notice was issued the Notice to End Tenancy is no longer valid. The tenants are entitled to withhold their rent from August 15 to September 15, 2009 in compensation due to the landlords Two Month Notice to End Tenancy because the property has been sold. As the tenants have already withheld this amount pursuant to section 51(1) of the *Act* no further order will be made concerning this portion of their claim.

I find that the tenants did carry out some additional cleaning of the rental suite when they moved in. As the landlord was not available to carry out a move in condition inspection I find she has no indication as to the amount of cleaning that was required. The tenants have produced some close up photographs concerning the areas that they cleaned and therefore I prefer their evidence as to the cleaning that took place and uphold their claim for a monetary order pursuant to section 67 of the *Act*. However, I find the amount they have claimed to be excessive and reduce their claim accordingly to a more reasonable figure of \$210.00.

The tenant's application states that they seek the return of their security deposit. However, as they tenancy has not yet ended this claim is premature. I suggest they

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provide the landlord with their forwarding address when they leave the property and conduct an inspection of the property together at the end of the tenancy.

As the tenants have been largely successful with their claim they are entitled to recover the cost of filing their application pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount.

Cleaning costs	\$210.00
Total amount due to the tenants	\$260.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$260.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: September 10, 2009.

Dispute Resolution Officer