



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF, MND, MNDC, MNR

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

Tenant's application:

This is a request for an order for the return of the \$650.00 security deposit. The tenants are also requesting that the landlord bear the \$50.00 cost of the filing fee that they paid for their application for dispute resolution.

Landlord's application:

This is a request for a monetary order for \$4360.00, and a request of the respondents bear the cost of the \$50.00 filing fee that they paid for their dispute resolution application.

Decision and reasons

Tenants application

The landlords have not returned the tenants security deposit and did not apply for dispute resolution to keep the security deposit within the time limit set out in the Residential Tenancy Act.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

This tenancy ended on July 2, 2009 and the landlords admitted that they had a forwarding address in writing by July 15, 2009, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore even though the tenants have not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenants.

The tenants paid a deposit of \$650.00 and therefore the landlords must pay \$1300.00, plus interest of 83 cents, for a total of \$1300.83.

I further ordered that the landlords bear the \$ 50.00 cost of the filing fee paid for the tenant's application for dispute resolution.

Total amount allowed in the tenants claim is **\$1350.83**

Landlord's application

Background and Evidence

The landlords testified that:

- The tenants failed to give any Notice to End Tenancy, vacating on July 2, 2009 without paying any July rent.
- They were unable to re-rent the rental unit in the months of July 2009 or August 2009, due to the damages caused by the septic backup and the time needed to facilitate the repairs, and therefore they lost the rental revenue for both months.
- It is their belief that the septic backup was caused by the tenants, and therefore they believe the tenant should be liable for the cost of pumping the septic, the cost of the labour to dig up the pipe, the septic tank, and drains, and the insurance deductible that they paid on the major repairs that had to be done in the rental unit due to the septic backup.
- The tenants also failed to pay the water utility bill.
- The tenants also left the carpets in the rental unit dirty and in need of cleaning.

The landlords are therefore asking for an order as follows:

two months lost rental revenue	\$2600.00
Labour to data pipes etc.	\$500.00
Deductible on insurance claim	\$500.00
Water utility bills	\$110.70
Carpet cleaning	\$200.00
Filing fee	\$50.00
Total	\$4410.70

The tenants testified that:

- They moved without proper notice because the landlord failed to maintain the rental unit properly and they believe this resulted in the death of their dog due to poor air-quality from mould build up.
- They don't feel they should have to pay any rent because the landlord gave them a 10 day notice, on the same day they were vacating, for non-payment of rent.
- They did not caused the septic problems and in fact had attempted to contact the landlord to inform them of problems, however had been unable to do so until June 24, 2009.
- At no time did they flush any abnormal items down the toilets of the rental unit.
- They were told by the plumber who came to resolve the septic problem that there was a normal build up in the sewer line due to the age of the septic system.
- They agreed the tenancy agreement does not say that water is included; however the landlord had told them that he would cover the water bill.
- They steam cleaned the carpets when they vacated, and have provided witness letters to verify such.

Analysis

Lost rental revenue

It is my decision that I will allow the landlords claim for one month lost rental revenue, because the tenants did not give proper notice before vacating the rental unit and I'm not convinced that the landlords failed to maintain the rental unit when they were informed of problems.

I will not allow August 2009 lost rental revenue, because the landlord stated that part of the delay in re-renting was due to having to do the repairs from the septic backup.

Lost revenue allowed- \$1300.00

Sewage backup

I deny the landlord's full claim for anything related to the sewage backup, because the landlord has not met the burden of proving that the backup was a result of any wilful or negligent actions on the part of the tenants.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent's that burden of proof is not met.

In this case it is basically just the landlord's word against that of the tenants and since this septic system was put in, in the 1970s and has not been upgraded since I am not convinced that the backup was not due to normal wear and tear.

Unpaid utilities

I will allow the claim for unpaid utilities, because the tenancy agreement does not include water and therefore the tenant must pay the water utility bill.

The tenants claim that the landlord told them that he would pay the water utility bill (a claim that he denies) however in this case the tenants have not met the burden of proving their claim.

Carpet cleaning

I deny the landlords claim for carpet cleaning. Again it is basically the landlord's word against that of the tenant, and since the tenants claim to have cleaned the carpets and have even supplied witness letters supporting that claim, it is my decision that the landlords have not met the burden of proving that the carpets were in need of cleaning.

Further, Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

Filing fee

I allow the landlords claim for the \$50.00 filing fee, as they still had a substantial claim against the tenants.

Therefore the total amount I have allowed in the landlords claim is--- **\$1460.70**

Conclusion

I have allowed \$1350.83 in the tenants claim, and I have allowed \$1460.70 in the landlords claim.

I therefore set off the \$1350.83 against the \$1460.70, and have issued an order for the tenants to pay \$109.87 to the landlords.



Dispute Resolution Services

Page: 7

Residential Tenancy Branch
Ministry of Housing and Social Development

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: October 21, 2009.

Dispute Resolution Officer