



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF, O

Introduction

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

The tenant served the landlord in person on September 02, 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 witnesses, 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

- Are the tenants entitled to compensation for damage or loss and if so, how much?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on November 30, 2007. The tenants testify they moved from the rental unit on February 28, 2009. The landlords dispute this stating the tenants did not move out until around March 15, 2009. Both parties do agree that the rent for this unit was \$800.00 per month

Residential Tenancy Branch
Ministry of Housing and Social Development

and this was due on the first of each month. The tenant paid a security deposit of \$400.00 on November 30, 2007.

The landlord issued the tenants with a two month notice to end tenancy on December 19, 2008 for the landlords' use of the property. The reason given on the notice was that the rental unit will be occupied by the landlord, the landlords spouse or a close family member of the landlord or the landlords' spouse. The tenant applied to cancel this notice but his application was dismissed because he did not file within the allowable time frame.

The tenants claim the landlord has not used the property for its intended purpose as stated on the two month notice. The landlord or a close family member did not move into the property and the property has not been used for its intended purpose for six months. The tenant has applied for compensation equivalent to two months rent.

The tenants received compensation of the equivalent of one months rent at the end of his tenancy and did not pay rent for February, 2009. The tenant testifies he did not owe the landlord any rent. The tenants have applied for two months rent for compensation for this notice.

The tenants also requests a Monetary Order for compensation for their moving costs, fees to transfer the utilities, an amount for an increase of rent for the new rental property and an amount for stress, related health issues and punitive damages to an amount of \$10,000.00.

The tenant also claims he did not receive his security deposit back and has given the landlord his forwarding address on the application for this hearing. The tenant has not applied to recover his security deposit as part of this application.

The landlord claims that the two month notice was given to the tenant but he did not move from the rental unit until around March 15, 2009. The tenant did get one month free rent for February in compensation for the two month notice. The landlord testifies that he used the rental property for storage for four months and then it was rented to new tenants. The new tenants signed a tenancy agreement on June 16, 2009 and their tenancy started on July 01, 2009.

The landlord claims the tenants did not pay rent from October, 2008 to February, 2009. The landlord claims the tenancy agreement in place indicates that this was a fixed term tenancy and the tenant has provided a tenancy agreement which has been falsified by adding a month to month agreement.

Analysis

The residential tenancy Act s. 51 states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

Residential Tenancy Branch
Ministry of Housing and Social Development

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Due to the above I find the landlord did not use the residential property for the purpose stated on the two month notice to end tenancy and therefore find the tenants are entitled to receive compensation from the landlord equivalent to two months rent to an amount of \$1,600.00.

I find the tenant is not entitled to recover an additional months rent in compensation for the notice as he received the month of February, 2009 rent free in compensation as stated in the Act. Therefore this section of the tenants' application is dismissed without leave to reapply.

I find the landlords argument that the tenant has falsified the tenancy agreement has some merit however, the landlord or tenant did not initial the boxes indicating that the tenancy would end at the end of the fixed term and I find that as the landlord has not provide any evidence to support his claim that the tenant did not pay rent from October to February (February being the tenant rent free month) then by accepting rent the landlord agreed that the tenancy had continued on a month to month basis.

I find the remainder of the tenant's application has no merit. No evidence has been provided to support this section of the tenants claim and therefore this section is dismissed without leave to reapply.

As the tenants have been partially successful with their monetary claim I find they are entitled to recover the cost of filing their application of \$50.00. A Monetary Order has been issued for the following amount: **\$1,650.00.**



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenants have requested the landlord return their security deposit to them. I find that the tenants did give the landlord an address on the application for dispute resolution however this states that this address is for service of documents. It does not state that it is the tenants forwarding address. As the tenant have confirmed to the landlord at today's hearing that this is their forwarding address I accept that as from today's date (October 27, 2009) the landlord has received the tenants forwarding address in writing. As such the landlord has 15 days from today's date to return the tenants security deposit or apply for dispute resolution to keep it.

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 **\$1,650.00**. 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: October 27, 2009.

Dispute Resolution Officer