

DECISION

Dispute Codes CNR, FF, MNDC, MNSD, O

Introduction

A substantial amount of documentary evidence, photo 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 is an application have a section 46, 10 day Notice to End Tenancy Notice to End Tenancy cancelled, and a request for a monetary order for \$417.74.

The tenants at also wanted to increase their claim by \$476.58; however they did not file an amendment of their claim and therefore they were given the choice of having this application dismissed with leave to reapply so they could increase their claim, or abandoning the increased \$476 58 amount they wanted claim. The tenants chose to abandon the claim for the \$476.58.

Also by the date of the hearing the tenants had vacated the rental unit and therefore are no longer requesting the Notice to End Tenancy be cancelled.

Background and Evidence

The applicants claim that:

- They were having problems with the furnace in the rental unit, as well as ongoing noise issues from surrounding units, and the landlord had failed to deal with either of these issues.
- At the end of October 2009 the landlord agreed to lower their rent by \$100.00 per month until the issues had been dealt with.
- As of December 2009 the landlord went back on her word and raised the rent back to the original amount, even though the issues were still unresolved.
- After numerous attempts to get the issues resolved they eventually gave up and gave written one months notice to vacate the unit on March 15, 2010, due to landlords breach of their tenancy agreement and of the Residential Tenancy Act.
- Fearing they would not have their security deposit returned, they signed over their security deposit to the landlords to cover rent for March 1-15, 2010.
- On March 2, 2010 the landlord served them with a Notice to End Tenancy for non-payment of rent for the entire month of March 2010, even though they had given notice to vacate on the 15th and had allowed the landlord to keep the majority of security deposit towards this.

The applicants are therefore requesting an order as follows:

\$100.00 per month rent reduction for December 2009, January 2010, February 2010, and ½ of March 2010	\$350.00
Filing fee	\$50.00
Total	\$417.74

The respondent claims that:

- She had agreed to a \$100.00 per month rent reduction due to complaints of noise from adjoining units; however when the strata manager investigated the complaints, noise levels were found to be normal and therefore the rent was reinstated to its normal amount.
- The tenants did not cooperate with the landlord when the landlord attempted to replace the furnace filter, claiming that furnace filter can only be changed by a licensed furnace technician.

- The tenants gave insufficient Notice to End Tenancy, as there was no breach of the tenancy agreement or the Residential Tenancy Act, and therefore any notice given in the month of February 2010 was valid for the end of March 2010.
- This was a fixed term tenancy that went to September 30, 2010 however the landlords had agreed to allow the tenants out of the tenancy early but only if they paid rent to the end of March 2010.
- The tenants failed to pay any rent for the month of March and instead told the landlord to keep a portion of the security deposit to cover rent to the 15th of the month.
- Since the tenant does not have the right to use their security deposit for rent without the landlord's permission, the landlord served a 10 day notice for non-payment of rent on the tenants.

The landlord therefore believes that the tenant's full claim should be dismissed.

Analysis

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

In this case it is my decision for the tenants have not met the burden of proving that the landlord breached the tenancy agreement or the Residential Tenancy Act. With both the claims for loss of the use and enjoyment, and failure to do repairs, it is basically just their word against that of the landlords and therefore that burden of proof is not met.

As far as the security deposit is concerned the tenants did not have the right to unilaterally tell the landlord to use the security deposit towards the rent however they have done so and the tenancy is now over and so it is a moot point however they did not sign over the full security deposit to the landlords, only \$532.26 leaving a balance of \$17.74.

If a tenant does not give the landlord written permission to keep a portion of the security deposit, the landlord must either return that portion of the security deposit or file an application for dispute resolution to get an order allowing the landlord to retain that portion

of the security deposit. In this case the landlord failed to do either and therefore the tenants do have a claim for the \$17.74.

Since the only amount of the claim that I have allowed \$17.74 it is also my decision that the tenants must bear the \$50.00 cost of the filing fee that they paid for the application for dispute resolution.

Conclusion

I have issued an order for the respondent to pay \$17.74 to the applicants

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: April 20, 2010.

Dispute Resolution Officer