



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, MND, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant filed her Application requesting monetary compensation under the Act or tenancy agreement, for return of double her security deposit and interest accrued, and to recover the filing fee for the Application.

The Landlords filed their claim seeking monetary orders for alleged damages to the rental unit, for alleged unpaid rent, to keep the security deposit and for monetary compensation under the Act or tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that this is the second hearing between the parties. The first involved a monetary claim by the Tenant for personal property damaged during a flood at the rental unit. The Tenant received a monetary order in the first hearing, however, the Landlords had not paid this order at the time of the hearing.

Issues(s) to be Decided

Is the Tenant entitled to the monetary relief claimed?

Are the Landlords entitled to the monetary relief claimed?

Background and Evidence

This tenancy began on or about December 15, 2005. The Tenant paid a security deposit of \$450.00 on January 1, 2006. At the end of the tenancy the monthly rent was \$950.00 and the Tenant vacated the rental unit on October 31, 2009.

On September 1, 2009, the Landlords issued the Tenant a two month Notice to End Tenancy, pursuant to section 49(6) of the Act. The reason the Landlords gave to end the tenancy was that they wanted to convert the rental unit for use by a caretaker. The Tenant received the final month rent free as required by the Act, however, the Landlords did not return her security deposit and interest to her. The Tenant claims that the unit is not being used by a caretaker, as set out in the Notice to End Tenancy. The Tenant provided evidence, such as a newspaper ad, showing the unit for rent with no mention of a caretaker position.

In addition to these claims, the Tenant is also claiming for loss of quiet enjoyment, and return of, or compensation for, her personal property at the rental unit.

As to the loss of quiet enjoyment, the Tenant claims one of the Landlords entered the rental unit 22 times after the Notice to End Tenancy was issued to her. She testified that this Landlord did not give her the required written Notice to enter the rental unit and was continually entering the rental unit for a variety of reasons, such as measuring the window frames for replacement. She testified on one such visit, toward the end of the tenancy, one of the Landlords told her she could stay and continue to rent the property if she paid a higher rent of \$1,250.00, as they still had not found a new renter.

In response to this, the Agent for the Landlord for the Landlord explained there are three rental units at the property and that it is not uncommon for the elder Landlord to go there two or three times a day.

The Tenant claims that the Landlords removed her personal property from the rental unit and either it was damaged or removed to the dump with garbage from the property. She further claims some of her items are still in the rental unit. The Tenant testified she made nine trips to remove her possessions from the rental unit when she was vacating.

The Landlords are claiming for the last month rent, as they say it was not paid to them. They are also claiming for loss of rent for one month, as they allege the rental unit was not inhabitable. The Landlords provided a letter from the current renter who they allege is a caretaker and she explains her job consists of writing down the license plate

numbers of vehicles which enter the property. She writes in this letter that she moved into the rental unit in early November of 2009.

The Landlords have claimed for six windows at the rental unit, which they say the Tenant broke, in the amount of \$3,897.91. They are also claiming for \$750.00 to remove garbage they allege the Tenant left at the property. The Landlords also claim \$1,685.25 for painting the rental unit and \$247.74 for a new door.

The parties both agreed that no incoming or outgoing condition inspection reports were done.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Landlords breached the Act by not taking steps to accomplish the stated purpose for ending the tenancy with the Tenant. I find it more likely they simply wanted to evict the Tenant in order to charge a higher rent for the unit. I do not accept their evidence that the new renter is a caretaker. There is no evidence to prove they made any effort to employ a caretaker. Under section 51, I order the Landlords to pay the Tenant for two months of rent in compensation, amounting to **\$1,900.00**.

The Landlords also failed to return the security deposit and interest to the Tenant in accordance with section 38 of the Act. They performed no incoming or outgoing condition inspection reports (which constitutes a bar to any claim against the security deposit), and did not claim against the security deposit for two months after they received the Tenant's Application for Dispute Resolution. Under section 38 I must order the Landlords to pay the Tenant double her security deposit, plus interest accrued, in the amount of **\$915.92** (2 x \$450.00 + \$15.92 in interest).

As to the loss of quiet enjoyment, I find one of the Landlords entered the rental unit many times without giving the Tenant a Notice to enter as required by section 29 of the Act. I allow her the sum of **\$950.00**, for two months of loss of quiet enjoyment, equivalent to 50% of the monthly rent for the two months she endured this loss.

I find that the Tenant had insufficient evidence to prove the value of items she alleges the Landlords threw out, or are still in the rental unit. As the Tenant testified she made nine trips to move her property, I also find it would be unusual to have these many items

still left behind. Nevertheless, if there are still items belonging to the Tenant in the rental unit, I order the Landlords to allow this property to be removed by her.

As to the claims of the Landlords, I dismiss their Application in its entirety. Based on the demeanour of the Landlords at the hearing, their testimony, evidence, claims and failure to abide by the previous order, I find it is more likely their claims are simply retaliation against the Tenant for her previous claim, and for her claims made in the Application in this hearing.

Their claims also lack merit in some instances. For example, the Landlords are not entitled to the last month of rent as they claimed, since the Tenant received this under sections 49 and 51 of Act, as compensation for the two month Notice to End Tenancy.

I also find that the Landlords had insufficient evidence to prove their claim that the Tenant had damaged windows at the rental unit, or left the unit damaged or untidy. It does not appear the Landlords have even replaced the alleged broken windows or doors, as the Landlords simply provided quotes or estimates for many of their claims. For example, the quote for the window replacement was for a complete replacement of windows in the rental unit with energy efficient windows, not to repair broken glass. Likewise, if they have painted the rental unit, there is no evidence it was required due to the Tenant. After a five year tenancy the unit likely required painting, regardless.

The new renter in the unit also wrote she moved into the unit in early November of 2009, and therefore, the Landlords are not entitled to a loss of rent for one month as the rental unit was occupied.

Conclusion

Having found in favour of the Tenant, I order the Landlords to pay the Tenant **\$3,765.92**, comprised of the above described amounts. I grant the Tenant an order under section 67 for the balance due and this order may be filed in the Provincial Court (Small Claims) and enforced 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: April 12, 2010.

Dispute Resolution Officer