



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

At the beginning of the hearing, the Landlord admitted that he had only sent his evidence package to the Tenant on the date of the hearing by registered mail. The Tenant confirmed that he had not received the Landlord's hearing package. The Landlord was advised that his evidence package would be excluded unless this matter was adjourned to allow the Tenant an opportunity to review the evidence package and respond to it. Both Parties said they wished to proceed with the hearing in the absence of the Landlord's documents (with the exception of a copy of the tenancy agreement and the Tenant's written Notice ending the tenancy agreement).

Issues(s) to be Decided

1. Is the Landlord entitled to recover a loss of rental income and utilities and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy was to start on March 15, 2010 and end on March 31, 2011. Rent was \$2,000.00 per month payable in advance on the 1st day of each month plus 50% of the utilities for the rental property. The Tenant paid a security deposit of \$500.00.

The Parties agree that when the Tenants viewed the rental property for the first time on or February 23, 2010, they liked it and were anxious to rent it but had concerns about its condition. The Landlord claimed that the previous Tenants had left the rental unit "a bit messy" however the Tenant claimed that the rental unit had been "trashed" in that all the walls had scratches, holes or other marks, faucets were broken, all of the carpets were stained and some had burns, lights were missing fixtures, a closet door was off, a kitchen cupboard door was broken and it was generally in a very dirty condition.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Parties also agree that the Landlord advised the Tenants that the rental unit would be cleaned and repaired so that they could move in on March 15, 2010. Consequently, on February 28, 2010, the Tenant signed a tenancy agreement and paid a \$500.00 security deposit. The addendum to the tenancy agreement contains a term which states that the Tenant may not “run a day care, share accommodation, vacation rental or rent out any rooms.

The Landlord said the house was thoroughly cleaned and repaired and 3 bedrooms were repainted. The Parties met at the rental unit on March 12, 2010 to do a walk through but did not complete a condition inspection report. The Landlord said the Tenant’s spouse appeared upset prior to entering the rental unit and was unfriendly to her and her family. The Landlord claimed that the Tenant’s spouse started scrutinizing everything and at one point started crying saying that the house was unclean. The Landlord said she believed the Tenant’s spouse was being unreasonable because she was a “clean freak” based on comments made to her by the Tenant on a previous occasion. The Landlord also suggested that the Tenant’s spouse was upset because the Tenant was advised that his spouse would not be permitted to operate a home business from the rental unit.

The Tenant claimed that the rental unit was not reasonably clean or in a reasonable state of repair when he viewed it with his spouse on March 12, 2010. The Tenant admitted that it was apparent some cleaning had been done but said a closet door was off the hinge, a light fixture was on the floor, a faucet was still broken, a kitchen drawer had been poorly repaired and the three bedrooms that had been painted had paint splashed on the light switches, baseboards and ceiling. The Tenant also claimed that damages were still present on many of the walls.

In any event, on March 13, 2010, the Landlord and Tenant had a telephone conversation in which they tried to work out a solution. The Tenant said the Landlord suggested that he should move in as scheduled on the 15th and that she would later make some repairs and paint. The Tenant said he had reservations about moving into the rental unit in its present condition and did not want to expose his infant children to paint fumes. However, the Tenant said he had to move out of his previous residence that day and had all of his family’s belongings in a moving truck. Consequently, the Tenant said he asked the Landlord if he could move his belongings into the garage of the rental unit until the repairs and painting were done but was not willing to pay rent until it was repaired and painted. The Tenant said the Landlord advised him that she was not prepared to make any further repairs if the Tenant was not moving in and that he would have to take it in “as is” condition.

The Landlord claimed she had already lost a half a month’s rent by accommodating the Tenants in allowing them to move in on March 15, 2010 when the rental unit was

Residential Tenancy Branch
Ministry of Housing and Social Development

available for March 1, 2010. The Landlord also claimed that the rental unit was new, everything was in working order and the unit had been repaired and thoroughly cleaned. The Landlord further claimed that even though she believed there was nothing wrong with the rental unit, she offered to have the unit painted once the Tenants moved and she was not prepared to make any further repairs if the Tenant was not going to be moving in. The Tenant argued that he was prepared to move into the rental unit because he had given his notice at his former residence and had nowhere else to go.

On March 14, 2010, the Tenant attended the rental unit with a friend to take photographs of the rental unit but he said the Landlord and her family were there and would not let him take pictures. At that time, the Tenant gave the Landlord a written Notice that he would not be moving in and was terminating the tenancy agreement. The following day, the Landlord returned the Tenant's post dated rent cheques. The Tenant said the Landlord also agreed to return his security deposit within 2 weeks but instead filed a claim against it. The Landlord claimed he never agreed to return the Tenant's security deposit because he had lost another ½ of a month's rent when the Tenant ended the tenancy agreement.

Analysis

Section 32 of the Act says that a landlord must **provide** and maintain residential premises in a state of decoration and repair that complies with the health, safety and housing standards required by law and that make it suitable for occupation by a tenant. This means that at the beginning of a tenancy, a Landlord must ensure that a rental unit is in a reasonable state of cleanliness and repair.

Section 23 of the Act says that the landlord and tenant must together inspect the condition of the rental unit at the beginning of the tenancy, the Landlord must complete a condition inspection report, both parties must sign the report and the Landlord must give a copy of it to the Tenant. The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. Consequently, the Act places on the Landlord the burden of proving that the rental unit was in a reasonable state of cleanliness and repair at the beginning of the tenancy.

In the absence of a condition inspection report or some other corroborating evidence such as photographs of the rental unit on March 14, 2010, I cannot conclude that the rental unit was in a reasonable state of cleanliness and repair. Given also that the Landlord refused to allow the Tenant to take photographs of the condition of the rental unit on March 14, 2010, I make an adverse inference that those photographs would

Residential Tenancy Branch
Ministry of Housing and Social Development

likely have supported the Tenant's position in this matter. Furthermore, the Tenant provided a witness statement from a friend who accompanied him at the rental unit on March 14, 2010 and that statement corroborates the Tenant's oral evidence at the hearing as to the overall poor condition of the rental unit on that day.

As I have found that the Landlord did not comply with s. 32 of the Act, I find that the Tenants were entitled to refuse to move into the rental unit until it was put in a reasonable state of cleanliness and repair. As the Landlords refused to make further repairs to the rental unit, I find that the Tenants were entitled to end the tenancy agreement. Consequently, I find that the Landlord is not entitled to a loss of rental income and utilities and accordingly, I order him to return the Tenant's security deposit immediately.

Conclusion

The Landlord's application is dismissed without leave to reapply. A Monetary Order in the amount of \$500.00 has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: July 14, 2010.

Dispute Resolution Officer