



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, OPR, CNR, MNR, MNDC, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end the tenancy, an order to reduce the rent, and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and one of the tenants.

During the hearing the parties acknowledged that the tenants moved out of the dispute address on August 13, 2010. As such the landlord's Application is amended to exclude their request for an order of possession and the tenant's Application is amended to exclude their request to cancel a notice to end tenancy and to reduce rent for repairs.

During the hearing the landlords indicated that they thought they would be having the rental unit re-renting for September 15, 2010 and they would know for sure within the next day or two. At my request I asked the landlords to submit to me, confirmation of the new tenancy no later than the end of business on Friday, September 3, 2010. The landlords provided confirmation the rental unit was re-rented effective September 15, 2010.

Issues(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided whether the tenants are entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 28, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on July 1, 2010 as a 1 year fixed term tenancy for a monthly rent of \$1,450.00 due on the 1st of the month and a security deposit of \$750.00 was paid on June 3, 2010.

On July 8, 2010 the tenant sent a letter to the landlord providing:

- A notation that the rental unit was not ready for move in as it had not been cleaned;
- A notation about having to try to accommodate the installation of a door to the laundry room, restricting the downstairs tenant from having access to the upstairs rental unit;
- A notation regarding use of the garage;
- A notation indicating the tenant's son had been bitten by a spider;
- A notation indicating the screens for the windows did not fit the windows.

The tenant goes on in the letter to request a mutual end to the tenancy with a 2 month notice period. On July 10, 2010 the landlord responded via email addressing the tenants' issues and an additional one regarding a bath tub and a closet in a bedroom. On July 12, 2010 the tenants applied to have the tenancy ended and for compensation for the issues noted above.

The tenants also submitted a letter dated July 14, 2010 citing Section 45(3) that the tenants give notice to end tenancy where the landlord has failed to comply with a material term of the tenancy agreement with an effective date of August 15, 2010.

By both parties submissions the tenants failed to pay rent that was due on August 1, 2010 and the tenants received a 10 Day Notice to End Tenancy for Unpaid Rent on August 6, 2010. The tenants amended their application on August 9, 2020 to cancel the 10 Day Notice to End Tenancy.

The tenant sought compensation for cleaning the house after move in and for the time that they stayed in the house under the noted conditions, in the amount of \$565.00. The landlord sought monetary compensation for rent or utilities due in the amount of \$3,200.00 that included rent for August and September 2010, advertising costs to re-rent the unit and to recover the filing fee for this application.

Analysis

Section 32 of the Act requires a landlord to provide and maintain a rental unit in a state of repair and decoration that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Through the parties' testimony, I accept that the landlord had had the rental unit cleaned prior to the start of the tenancy. While Section 32 requires the unit to be suitable for occupation there is nothing specific about the degree of cleanliness. While the tenants did submit photocopies of photographs that appear to be of the stove, the photocopies were not clear enough to tell much more than that.

As such, I find the tenants have failed to substantiate that the landlord failed to comply with Section 32 of the *Act*. I dismiss this portion of the tenants claim. In relation to the tenants claim for compensation resulting from the loss of quiet enjoyment due to the laundry room access; full use of the garage; and the window screens, the tenant has failed to provide sufficient evidence to confirm they were unaware of these restrictions prior to the start of the tenancy.

As to the tenants' claim for compensation resulting from her son being bitten by a spider, the tenants have failed to provide evidence that in fact he was bitten by anything and that even if he had been bitten that it was at the fault of the landlord. I dismiss the tenants' claim for any financial compensation.

Section 45 of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy not earlier than the date specified in the tenancy agreement. However, it also stipulates that if a landlord fails to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Residential Tenancy Policy Guideline # 8 states that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the party the right to end the agreement. The tenant has submitted no evidence that the parties came to an understanding of any material terms of the tenancy agreement.

In addition the tenants' only offer to rectify the problems that they identified in their July 8, 2010 letter was to end the tenancy, and then within 4 days of the landlord's initial response the tenant gave notice to end tenancy.

Even if I were to find the landlord breached a material term, which I do not, I would also have to find the tenants provided the landlords with a reasonable timeframe to correct the deficiencies, and I do not. I find that the tenants did not find the home suitable for their needs and immediately tried to end the tenancy without regard for their 1 year obligation.

As such, I find the landlord has provided sufficient evidence to show that the tenancy ends on September 14, 2010 the tenants owe rent for the month of August 2010 and for ½ month for September 2010. While the landlords applied for \$250.00 in compensation for advertising their evidence supports only a claim of \$123.90.

Despite the tenants' request to apply the security deposit paid, the landlord has not requested under their application to apply the security deposit to any debt found on behalf of the tenant, and as I am unable to determine the landlord's intent in regards to the security deposit. The parties must comply with the security deposit requirements under Section 38 the *Act* when ending a tenancy.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,348.90** comprised of \$2,175.00 rent owed; \$123.90 for advertising; and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants and 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: September 03, 2010.

Dispute Resolution Officer