



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This was an application by the landlord for a monetary order. The hearing was conducted by conference call. The landlord and the named tenant participated in the hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary order and if so in what amount?

Background and Evidence

The rental unit is a residential house. The tenants responded to an internet advertisement and viewed the property in March 2010. At the time of the viewing the rental unit was occupied. The tenants agreed to rent the unit commencing March 28, 2010 for a one year term with rent in the amount of \$2,495.00 payable on the first of each month. Utilities were not included in the rent. According to the tenancy agreement the tenants were to pay a security deposit of \$1,250.00. The landlord said that the tenants did not pay the full amount of the deposit; he thought they may have paid \$1,000.00, but he had no records and said that he did not give the tenants a receipt for the payment.

The landlord testified that when the tenants moved in they complained that the rental unit was not clean and there was mold. The landlord testified that as soon as he heard from the tenants he spent a day cleaning the rental unit and removing mold. He

testified that after the tenancy commenced he was away for approximately 20 days and when he returned he discovered that the tenants moved out of the rental unit on April 17, 2010 and their cheque in the amount of \$2,817.00 was returned because the tenants stopped payment on the cheque. The landlord testified that he re-rented the property on May 15, 2010. He claimed payment of the sum of \$2,817.00 plus loss of revenue for May in the amount of \$2,495.00, but said he was limiting his claim to the sum of \$5,000.00. According to the landlord the tenants could have contacted him during his absence and if necessary his brother would have attended to any problems the tenants might have had with the rental unit

The tenant testified that after moving in the landlord told the tenants that the garage beneath the house was rented to another tenant and they would be expected to share utilities and cable service with the other occupant who would pay the tenants for his share of utilities and cablevision.

The tenant testified that his recollection was that the tenants paid the landlord a deposit of \$1,250.00 and agreed to pay pro-rata rent for the days that they occupied the rental unit prior to April, 2010 and this is why the cheque was for an amount greater than one month's rent.. He said that the landlord did respond when they called to complain that the rental unit was not clean and there was mold, but there were other significant problems. There was a non-working dishwasher left in the kitchen. A clothes dryer, supposed to be placed in a closet had been put in the lounge with a hole knocked in the wall. There were other issues but the major problem was a lack of heat. The gas fired furnace was turned off. There were electric oil heaters in the rooms but they had been set by the landlord to restrict the amount of heat that they produced. The tenant testified that the landlord reset the heaters to produce more heat, but thereafter the circuit breakers in the house would trip and turn off the power whenever the heaters were turned up.. He said that the electrical panel was located in the rental unit occupied by the downstairs tenant and they had difficulty gaining access to reset the circuit breakers. The tenant testified that the occupant of the garage has a mental disability and it was difficult communicating with him to get access to reset the circuit breakers to

restore the power. The tenant said that because of the problems heating the rental unit with the supplied heaters, he called a furnace service company to have the furnace turned on. He testified that the technician attempted to restart the furnace by said that the electrical transformer was inoperative and the furnace likely needed to be replaced due to its age. The technician turned on the gas fireplace, but because the fan was not working it did not supply any meaningful amount of heat.

The tenant said that the heating and other problems were intolerable and when they found a more suitable house they stopped payment on the cheque in payment of April Rent and moved. They gave the landlord a letter dated April 17, 2010 setting out the reasons for moving. The tenants submitted that the problems amounted to a breach of the tenancy agreement that justified their moving without notice.

Analysis and conclusion

I accept the tenant's evidence that there were significant problems with the rental unit, particularly with respect to the heating and electrical system. Pursuant to section 32 of the *Residential Tenancy Act* the landlord was obliged to ensure that the rental unit was suitable for occupation. I accept that the landlord's failure to ensure that there was an adequate supply of heat in the rental unit constituted a material breach of the tenancy agreement, but I do not accept that the landlord's breach justified the tenants in withholding rent for April and moving out without giving Notice and without providing the landlord with an opportunity to rectify the breach.

Pursuant to section 45(3) of the *Residential Tenancy Act* if a landlord fails to comply with a material term of the tenancy agreement and has not corrected the problem within a reasonable period after the tenant has given written notice of the failure, the tenant may end the tenancy on a date that is after the date that the landlord receives the notice. In this case the tenants did not give the landlord written notice of a material breach and did not give the landlord a reasonable time to correct the breach before

moving out. They gave the landlord written notice only after they moved out. According to the tenant's evidence they moved out, not because the rental unit was totally uninhabitable, but because they located another, more suitable house for rent and had to act quickly or else lose the opportunity.

I find that the landlord is entitled to payment of rent for the month of April, but not to an award for May because the landlord has not provided evidence to show what steps, if any he took to mitigate his loss by seeking to re-re-rent the unit for the month of May. The tenants may not have given adequate notice, but it is still incumbent on the landlord to prove that he took reasonable steps to mitigate his loss.

The residential tenancy agreement refers to a security deposit in the amount of \$1,250.00. In the absence of any documentary evidence to the contrary I accept the tenant's evidence and the tenancy agreement as evidence that the tenants paid a deposit of \$1,250.00. The tenant testified that the few days of occupation before April 1, 2010 were valueless because of the mold failure to clean the rental unit. I make no award for the period of occupancy before April. I award the landlord the sum of \$2,495.00 as unpaid rent for the month of April, 2010. The landlord is entitled to recover the \$50.00 filing fee paid for this application for a total award of \$2,545.00. I order that the landlord retain the security deposit of 1,250.00 in partial satisfaction of the award and I grant the landlord an order under section 67 in the amount of \$1,295.00. This order may be registered in the Small Claims Court and enforced as an order of that court.