



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MND, FF

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.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenants application is a request for a monetary Order for \$4,500.00 and a request that the landlord bear the \$50.00 cost of the filing fee that they paid for their application for Dispute Resolution.

The landlord's application is a request for a monetary Order for \$7,863.34.

I have dealt with each file separately below

Tenants application

Background and Evidence

The tenants testified that:

- The landlord failed to supply quiet enjoyment to the rental premises for the full term of the tenancy.
- Originally the landlords had told them that they would be traveling most of the time and would be at the rental unit seldom, this turned out not to be the case.
- They never had any peace and quiet at the rental unit, as they constantly had to try and avoid the landlords who frequently approached them wanting to talk or visit.
- The male landlord sexually harassed the female tenant, and frequently made sexual comments to her.
- They also had to endure loud yelling and swearing from the landlord's suite.
- The male landlord entered their suite when they were not home frightening the female tenant sister who was there babysitting.
- The landlords frequently asked for favours and were always hovering so that they never had any time to themselves.
- The male landlord was a drug addict, and when the landlords were away they found needles in their toolbox and this was the last straw.
- For their safety and the safety of their family they chose to move out of the rental unit on short notice, as they felt the landlords had breached the Residential Tenancy Act by failing to provide a safe environment.

The tenants are therefore requesting an order for the return of all the rent be paid in the three-month period they were there, \$1500.00 per month for three months, for a total of \$4,500.00. They also want an order for the landlord to pay the \$50.00 filing fee.

The landlord testified that:

- There is no evidence that the male landlord is a drug addict or that he ever put any needles in the tenant's toolbox.
- The toolbox was in a shared area to which both the landlords and the tenants had keys, and therefore if the tenants found needles in the tenant's toolbox, it could easily have been them who allowed access to the shared area.
- Neither she nor her husband were loud people, and they did not swear in their suite and therefore there is no way the tenants heard any swearing coming from their unit.
- They did not harass the tenants, and in fact the male tenant frequently would come on his own volition to visit with them in the garage, when he came home from work.
- The male tenant even offered to do some work for the landlord as a mechanic and offered to get the parts at a discount from his workplace.
- This was a friendly relationship, however the female tenant told her that she wanted to live near her to her parents, and that, she believes is why they wanted to move.
- The male landlord did not enter the tenants rental unit, he had noticed that the tenants vehicles were both gone and yet he heard someone walking around upstairs and thought there may be an intruder and so he simply open the door and called out to see if there was anyone there. Once the tenants sister answered and identified who she was he explained his concern and closed the door, that is all there was to it.
- The male landlord never made any sexual comments towards the female tenant and always spoke respectfully to the tenants.
- She does not believe that the tenants had any fear for the safety of their child, as they had often allowed her to come into the garage and even if the landlord's car without any concern.

- The majority of the witness letters are from family members of the tenants, and it is her belief that they are giving false information to support their family members.

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

Analysis

It is my decision that the tenants have not met the burden of proving their claims against the landlords.

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 basically just the tenant's word against that of the landlords, and that is not sufficient to meet the burden of proof in this case.

The tenants have supplied some unsworn, witness letters however I am not convinced that these are unbiased statements, as the majority of them are from family members of the tenants, and in fact it appears that they may have actually been written by the tenants and then signed by the tenants family members, as the same spelling mistake appears in the tenants Notice to End Tenancy and in a witness letter, and the same incorrect date appears in more than one of the witness letters. The word "tendency" has been used instead of the word "tenancy" and more than one letter has the date July 31, 2010 mistakenly identified as the end of tenancy date, as this tenancy ended on June 30, 2010.

Since the tenants have not met the burden of proving their claim I will not allow the tenants request for return of rent.

Landlords application

Background and Evidence

The landlord testified that:

- The tenants did not give the required one month Notice to End Tenancy and as a result she lost the full rental revenue for the month of July 2010. Notice was given on June 9, 2010, and the tenants vacated on June 30, 2010.
- The tenants also left the rental unit in extremely dirty and damaged condition and as a result there was a requirement for extensive cleaning and repairs.
- The carpets were in such bad condition that they would not come clean and as a result the flooring has to be replaced.
- The toilet was so covered in fecal matter that it could not be cleaned and had to be replaced.
- The tenants also borrowed a compressor that was returned broken.

The landlord is therefore requesting an order as follows

Rent for July 2010	\$1500.00
Toilet service call/installation	\$100.00
Carpet cleaning	\$222.85
Missing garbage can	\$39.20
8 light bulbs	\$3.50
Large patio plant pots borrowed and not returned	\$40.32
Hinge lock on stair door (keys not returned)	\$14.55
Ant spray	\$9.49
Cleaning supplies	\$15.00
Furniture damage	\$100.00

Caulking toilet	\$20.00
Yard clean up and ground repair	\$108.00
Dump fees	\$52.40
House cleaning	\$432.00
Damage ceramic kitchen tiles	\$320.00
Knife cuts on kitchen counter	\$40.00
Wall repairs	\$60.00
Damaged compressor	\$250.00
Replace flooring	\$4189.04
Photo printing, 4 sets	\$40.27
Filing fee	\$50.00
Total	\$7863.34

The tenants testified that:

- They believe the landlord breached the Residential Tenancy Act and therefore they had the right to vacate without giving the full required one months notice.
- They did not cause any damage to the rental unit and left the unit in a very clean condition.
- A move-out inspection was completed with the landlord and the landlord did not list anything as being in poor condition and in fact everything was listed as being good. Therefore they signed it and their full security deposit was returned
- The landlord has never given them a copy of the move-out inspection report.
- They do not believe she would have returned their full security deposit if the rental unit had been left in such poor condition.
- They moved out of the rental unit on June 30, 2010 and yet the landlord did not have the work done on the toilet until July 23, 2010 well after they had vacated,

and therefore the condition of the toilet could have been as a result of the landlords misuse.

- They believe all landlords evidence has been fabricated to try and establish a claim against them as a result of them filing a claim against her.

The tenants therefore believe the landlord's full claim should be dismissed.

In response to the tenant's testimony the landlord testified that:

- She does agreed there was a move-out inspection report however she has lost that report and therefore is unable to produce it at this time.
- She denies that the move-out inspection report stated that everything was fine, and in fact quite the contrary, all the damages had been pointed out to the tenants and the only reason that their security deposit was returned was because they informed her that they would not be able to afford the rent at their new place if she did not return it.
- She returned the security deposit to the tenants, however at the same time she inform them that she would be claiming for the damages and cleaning.
- She did not dirty and damaged her own house, simply to file a claim against the tenants.

Analysis

As I stated in my decision on the tenants application the tenants have not met the burden of proving that the landlord has breached the tenancy agreement or the Residential Tenancy Act and therefore they did not have the right to vacate the rental unit without giving the proper one months notice.

I therefore allow the landlords claim for the lost rental revenue for July 2010, in the amount of \$1500.00. I will allow the \$50.00 filing fee.

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I deny the remainder of the landlords claim however; because the landlord has not met the burden of proving her claims against the tenants. In this case it is basically just her word against that of the tenants and as stated before, that is insufficient to meet the burden of proving a claim.

The landlord admits that a move-out inspection report was done. It's was the landlords responsibility to insure that a copy of that report was given to the tenants however in this case the landlord admits that she has lost that report. In the absence of the move-out report, I am not willing to accept the landlords claim that the tenants left the rental unit damaged and dirty especially since she returned their full security deposit.

I find it very unlikely that the landlord would have returned the full security deposit if she really believed that there was a need for such significant cleaning and repairs.

It is also my decision that I do not find the plumber's statement to be of much relevance, since so much time had passed between when the tenancy ended and when the plumber attended the rental unit.

I therefore deny all the landlords claims for cleaning, repairs, and dump fees etc.

I declined jurisdiction over the borrowed compressor as this claim does not result from the residential tenancy and is a separate matter between the parties, and the residential tenancy act only has jurisdiction over matters resulting from a residential tenancy.

Conclusion

Tenant's application

The tenant's application is dismissed in full without leave to reapply.



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Landlord's application

I have allowed \$1550.00 of the landlord's application and have issued an order for the tenants to pay that amount to the landlord. The remainder of the landlords claim is dismissed without leave to reapply.

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 15, 2010.

Dispute Resolution Officer