Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, & MNDC

Introduction

This hearing dealt with cross applications by the parties. The landlord filed an application on May 19, 2010 seeking monetary relief from the tenants due to loss of rent. The tenants filed a cross application on September 21, 2010 seeking compensation from the landlord due to the landlord's failure to provide a rental unit which meets health and safety requirements. Both parties requested the security deposit.

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.

The tenants submitted that the landlord's evidence for this hearing was not provided in accordance with the rules of procedure. The tenants stated that the landlord's evidence was not received until September 29, 2010.

I note that rule 3.5 of the rules of procedure require that evidence be provided to the respondent at least 5 days before the hearing. I disagree with the tenants' submission and I find that the landlord's evidence was received by the tenants at least 5 days before this hearing. The *Act* does not require the days counted to be business days and therefore the evidence was provided in accordance with the rules of procedure.

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.

Issues(s) to be Decided

Have the tenants breached the tenancy agreement or *Act* entitling the landlord to monetary relief?

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Background and Evidence

The parties entered into a fixed term tenancy which began on April 1, 2010 and was to end March 31, 2011. The monthly rent was $1,200.00 and the tenants paid a $600.00 security deposit on March 6, 2010. Although the tenants moved their possessions into the rental unit around April 5 or 6, they did not actually ever reside in the rental unit. The parties completed a move in condition inspection of the rental unit on April 11, 2010. The landlord and tenants provided copies of e-mail exchanges they had throughout this brief tenancy.

The landlord provided a copy of the move in condition inspection report. The document is filled out in detail, identifying scratches, dents and other deficiencies in the rental unit. Throughout the document the tenants and the landlord have initialled the notations. Under the heading, Start of Tenancy, X. Repairs to be completed at start of Tenancy:, there is a notation that the patio door needs to be fixed as the lock does not work and it states, “under house cleaned to remove odour, urine smell.”

On the evening of April 12, 2010 the tenants e-mailed the landlord indicating that they had found an air quality specialist who could investigate the rental unit and assess any potential health hazards for the cost of $350.00. The landlord responded to this e-mail that night indicating that the landlord had hired an individual who would be cleaning out the crawl space beneath the rental unit on April 14, 2010. The tenants were not satisfied with the landlord’s chosen path to address the problem and question in an e-mail on April 13, 2010 whether the landlord was hiring an expert to investigate the source of the smell coming from the crawl space. The tenants questioned whether the source of the problem is a mould issue.

The landlord responded to the tenants’ concerns in an e-mail dated April 13, 2010 writing that she would have the crawl spaced cleaned and sealed to if necessary to resolve the problem. The landlord expressed her surprise in this e-mail that the tenants had called in a Health Inspector without consulting the landlord and requested that the tenants not make any other decisions impacting the landlord’s property without consulting her first. According to the landlord the Health Inspector did not have any concerns that there were any health and safety issues after viewing the crawl space. In another e-mail dated April 14, 2010 the landlord confirmed that the crawl space had been cleaned out and that there was no sign of a moisture or mould problem underneath the rental unit. The landlord indicated in this e-mail that she would be taking

further steps to seal the ground in the crawl space later in the week now that it had been cleaned. In this e-mail the landlord also addresses the tenants' apparent concern that the landlord was not willing to complete repairs to the rental unit. The landlord expressed that the tenants could notify her of any problems and that she would then proceed to determine the best course to address any repair issues.

The tenants provided no evidence from the health inspector as part of their application. The tenants gave notice to end their tenancy in an e-mail dated April 15, 2010. In their e-mail the tenants expressed the opinion that the landlord should be able to rent the unit to new tenants by May 1, 2010 and offered to assist the landlord by placing an advertisement in the local paper. The tenants sought a mutual agreement to end the fixed term tenancy.

The landlord responded in e-mail on April 16, 2010 expressing that she was sorry that the rental unit did not work for the tenants and thanking them for offering to place an advertisement in the paper. The landlord stated that she would attempt to accommodate the tenants by finding a new tenant; however, pointed out that because it was mid-April it would be difficult to find a new tenant for May 1, 2010. On May 1, 2010 the landlord again stated that she was continuing to try to find new tenants and would agree to end the tenancy as of June 1, 2010. The landlord stated that the tenants were obligated to pay the rent for May 2010.

The tenants stated in an e-mail dated May 4, 2010 that they had a right to vacate the rental unit due to the health hazard caused by the smell in the rental unit. The tenants stated that the poor air quality in the rental unit was a health and safety issue and also stated that the landlord did not provide a secure residence because the patio door lock had not been repaired. The tenants' state in this e-mail that they do not believe it is their responsibility to pay the rent for May 2010 but also want their rent for April 2010 returned and the security deposit returned.

In an e-mail dated May 8, 2010 the landlord expressed her position that the tenants had not given proper notice to end the tenancy because an e-mail was not considered notice in writing. The landlord stated that if the tenants do not provide notice in writing she would consider the property to have been abandoned by the tenants. On the same day the landlord posted a notice on the door of the rental unit indicating that the landlord considered the rental unit to have been abandoned by the tenants.

The parties exchanged some further e-mails on May 12, 2010 attempting to resolve the dispute about mutually ending the tenancy and having the rent paid for May 2010 and the return of the security deposit. However, the parties could not reach a consensus.

In the hearing the tenants testified that the smell in the rental unit made it uninhabitable. They stated that when they first viewed the rental unit they believed that the smell would dissipate once the landlord's furniture had been removed from the unit; however, this did not resolve the problem. It was the tenants' position that the landlord continually gave them the impression that she would not make repairs to the rental unit and that the rental was being accepted "as is". The tenants felt that the landlord unreasonably rejected their request to have the rental unit inspected by the air quality professional they found and that the landlord failed to repair the lock on the patio door as agreed to during the move in condition inspection. The tenants submit that their health and safety was put at risk entitling them to end the tenancy. The tenants seek the following in compensation:

Cost of storage locker	$40.00
Cost for labourers for moving in and out of rental unit	$430.00
Cost of truck rental, fuel and ferry costs	$350.00
Return of rent paid for April 2010	$1,200.00
Return of security deposit	$600.00
TOTAL	**$2,920.00**

The landlord rejects the tenants' claim. The landlord stated that she responded promptly and reasonably to the tenants concerns. The landlord submitted that the tenants did not tell her of any problems with the rental unit until April 11, 2010 during the move in condition inspection. The landlord stated that she made all attempts to accommodate the tenants and went to significant effort to have the crawl space cleaned three days after the move in condition inspection. The landlord stated that the tenants did not reside in the rental unit after she completed repairs.

The landlord submits that the tenants failed to give proper notice and abandoned the rental unit. The landlord submits that the tenants are responsible for her loss of rental for May 2010 for the sum of $1,200.00. The landlord requests to retain the tenants' security deposit in partial satisfaction of this claim.

Analysis

Section 32 of the *Act* provides that a landlord must maintain and repair a rental unit that meets health and safety housing standards required by law and is suitable for occupation by a tenant. This section also provides that the suitability of a rental unit must reflect the age, character and location of the rental unit. Section 32 also requires that tenants must maintain reasonable health, cleanliness and sanitary standards and must repair damage to a rental unit caused by the tenants or persons permitted in the rental unit by the tenants.

The tenants are seeking compensation on the basis that the landlord failed to comply with section 32 of the Act. It is clear from the tenants' e-mail that they concluded that there was a mould issue with the rental unit stemming from the smell coming from the cellar of the rental unit. However, the tenants have failed to provide any substantive evidence to support their position. Even though the tenants contacted the health authority and it was inspected by the health authority, no evidence has been provided to support the tenants' claim that the rental unit was uninhabitable.

I also reject the tenants' submission that the landlord failed to take reasonable measures to address their health and safety concerns and by doing so placed them at further risk. This position is not supported by the e-mail correspondence provided by both parties. I find from the evidence that the landlord acted both reasonably and expediently to address the tenants concerns. The issue was that the landlord chose a method which the tenants did not agree with or approve of. It is clear that the tenants expected the landlord to conduct air quality testing at a significant cost. I find that this expectation was unreasonable and not necessary.

In addition, I find that the tenants failed give the landlord's attempt to resolve the issue with the smell any time to show results. Rather, when the landlord did not go with the air quality specialist whom the tenants expected, they immediately ended their tenancy. The tenants confirmed that they never stayed in the rental unit. This was unreasonable and of the tenants' personal choice. I also find that the landlord did not have an opportunity to complete the repair of the lock on the patio door because she was attempting to resolve the issue of the smell coming from the cellar of the rental unit. Despite this, I find that the tenants were never at risk because they never actually occupied the rental unit.

I dismiss the tenants' application in full having determined that there is no merit to their claim for compensation. The tenants have failed to demonstrate that there was any health and safety issue and I find that they made a personal choice to end the tenancy.

I grant the landlord's application. I find that the tenants ended the tenancy on April 15, 2010 by e-mail correspondence. I accept that the tenants and the landlord regularly communicated by e-mail and I accept that the landlord received and acted upon the tenants e-mailed notice to end the tenancy. I also accept that the landlord made a reasonable effort to find a new tenant for the rental unit but was not successful unit June 1, 2010.

As the tenants' gave their notice to end tenancy on April 15, 2010 they are responsible for the payment of the rent for May 2010 for the sum of $1,200.00 pursuant to section 45 of the *Act*.

I grant the landlord's request to retain the tenants' security deposit in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **$600.00**.

Conclusion

I dismiss the tenants' application without leave to re-apply.

I have granted the landlord's application and issued a monetary Order of the sum of **$600.00**. This Order must be served upon the tenants and may be filed with the Province of British Columbia Small Claims Court 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: October 19, 2010.

Dispute Resolution Officer