



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for a monetary order for unpaid rent, unpaid utilities, to recover the filing fee and an order to retain the security deposit.

The Landlord, Landlord's son and Advocate and Tenant SS appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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.

I note that the Landlord requested her son act as her advocate in the hearing and provide the Landlord's testimony; despite this, the Landlord continually disrupted the hearing, although warned not to do so, and had to be muted from the conference at certain times.

Preliminary Matter:

The Landlord submitted an evidence package to the RTB and the Tenants containing copies of utility bills less than five days prior to the hearing. Section 3.5 of the Rules of Procedure require that documents applicants intend to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the Respondent as soon as possible, and at least five days before the dispute resolution proceeding. Therefore I have not considering the Landlord's evidence in this Decision.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Background and Evidence

The Landlord did not submit a copy of the tenancy agreement, the One Month Notice to End Tenancy, allegedly served June 18, 2010 or the 10 Day Notice to End Tenancy for Unpaid Rent, allegedly served 7, 2010, as mentioned in her Application.

The Tenants submitted the following documents in a timely manner into:

- A statement dated August 9, 2010, to the Landlord in rebuttal to the Landlord's claim. The main portion of the rebuttal was the statement that the Advocate got into a shouting match with Tenant SS in the front yard in June, which resulted in the Advocate telling them they would not have to pay rent if the Tenants moved out by July 15. Further the statement said the Tenants could not move out by July 15 as Tenant SM was due to give birth on June 30.
- A Condition Inspection Report, purportedly showing the condition of the rental unit at the beginning of the tenancy. I note the Report was not signed, dated or completed in any manner in conformance with the Act.
- An unsigned, undated, incomplete and invalid Tenancy Agreement.
- Photos of the condition of the rental unit at the end of the tenancy.

The Advocate for the Landlord and the Landlord each gave testimony that rent was \$1,200.00 per month, that the Tenants were to pay one half of the utility bills and that a security deposit of \$400.00 was paid on March 18, 2010. As the Landlord did not have a written tenancy agreement, the remaining details of the agreement are not clear and in dispute.

The Advocate for the Landlord testified that the Tenants owed rent of \$1,200.00 for the month of August, \$282.86 for unpaid utilities and that they have not returned the security deposit of \$400.00 due to the alleged unpaid rent. I note that the Landlord has properly made application to retain the security deposit within 15 days of the end of the tenancy.

When queried, the Landlord testified that her son was not the Landlord, but that he did handle all matters pertaining to the rental unit.

The Tenant gave confirmation that there was no written tenancy agreement, that rent was \$1,200.00 per month and that the Tenants paid one half of the utilities after submission of the monthly bills. I note the Tenants moved into the rental unit in the middle of February 2010.

The Tenant testified that they were told by the Advocate for the Landlord they would not have to pay August rent if they moved out by August 15th, which they did, and that they have paid all the utilities that were owed and submitted to them to that time.

The Tenant stated he and Tenant SM believed the Advocate was the actual Landlord, as he originally showed the rental unit and all their contact and communication was with the Advocate.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Dealing with the terms of the rental agreement, the onus is on the Landlord to prove the amount of rent payable and agreed upon at the commencement of the tenancy, as well as all other terms. The Landlord did not prepare a tenancy agreement as required under the Act, and therefore is unable to prove the day of the month the tenancy began or other terms of the tenancy agreement. The parties agree that rent was \$1,200.00 per month, but not on other agreement terms. Without that proof, the Tenant's evidence will be the acceptable evidence as I further find the Landlord and Advocate's testimony lacked credibility.

Therefore I find the Landlord misled the Tenants into believing her son was the Landlord through actions and deeds. I find the Tenants were correct in relying on their belief the Advocate was the actual Landlord so as to believe his statement that the Tenants would not have to pay rent if they vacated the rental unit by August 15, 2010. It is completely plausible that the tenancy would end in the middle of a month when the Tenants moved in the middle of the month.

I find the Tenants vacated the rental unit by August 15, 2010, and that they do not owe the amount claimed in the Landlord's Application.

The Landlord's application for a monetary order for unpaid rent is **dismissed** without leave to re-apply for failure to comply with the Act, rules and regulations.

Under authority of Section 67 of the Act, I **direct** the Landlord return the Tenant's security deposit in the amount of \$400.00 within ten (10) days of this Decision and therefore I grant the Tenants a monetary **Order** in the amount of **\$400.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's Application is dismissed.

The Tenants are granted a monetary Order in the amount of **\$400.00.**

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 27, 2010.

Dispute Resolution Officer