



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and an order for the return of their security deposit. The tenants served the landlord with their application for dispute resolution and notice of hearing personally. The party named as a respondent did not appear, but 2 agents appeared on her behalf.

The tenants testified that they served evidence on the occupant of the upper floor of the residential property, who is the landlord's brother and acted as an agent during the tenancy. The landlord denied having received the evidence and stated that the occupant in question is a family member but not a brother and at no time acted as an agent for the landlord. I am unable to find that the tenants' evidence was properly served on the landlord and therefore have not considered it in this decision.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The tenancy began on July 1, 2010 and ended on or about October 1, 2010. Rent was set at \$975.00 per month and the tenants were expected to pay ½ of the hydro bills. the tenants moved some of their belongings into the unit at the beginning of July but testified that they did not actually begin to occupy the unit until approximately July 28.

The tenants testified that when they began to occupy the unit, they noticed that there were a number of repairs which had not been completed and that the suite had not been thoroughly cleaned. Specifically, the tenants testified that a cupboard door was missing, the unit had just one smoke detector, a hole had been drilled from the rental unit to the unit above, there was mould in the bathroom and the exhaust for the home was all routed through the bathroom fan. The tenants stated that despite their request that the landlord change the locks, she failed to do so, the landlord did not replace a missing cupboard door and a pile of garbage had been left in the unit as well as a number of other belongings from the previous tenants. The tenants claimed that they repeatedly complained to the landlord but that the landlord did not respond and eventually stopped returning their telephone calls.

The landlord testified that they thoroughly cleaned the rental unit on June 30, the day before the tenancy began and that repairs had been completed by that time. The landlord acknowledged having received a complaint about mould, but testified that she was confident there was no mould in the unit.

The tenants seek the return of their rent for two months as well as the return of their security deposit.

Analysis

The tenants' claim for the return of their security deposit is dismissed with leave to reapply. The tenants acknowledged that they did not give the landlord their forwarding address in writing. The landlord's obligation to return the security deposit does not arise until the tenants have both vacated the rental unit and given their forwarding address to the landlord in writing.

The tenants bear the burden of proving their claim on the balance of probabilities. I find that the tenants have failed to prove that the problems they allege were present in the rental unit. While the tenants may have been entitled under the Act to have the locks changed, I find insufficient evidence to prove that they suffered any tangible loss as a result of the landlord's alleged failure to change the locks. The tenants have not proven

that a second smoke detector was required or that the landlord was legally obligated to install a smoke detector. The tenants claimed that the rental unit was not properly cleaned and that garbage was left therein, but provided no estimate of the time they spent cleaning the unit and therefore have not proven the loss they suffered as a result. The fact that the only exhaust point for the home was the bathroom fan may show poor construction, but the tenants have failed to show that they suffered any loss as a result. The tenants have further failed to prove that the allegedly missing cupboard door and the hole drilled in the ceiling in any way devalued their tenancy.

Conclusion

I find that the tenants have not proven their claim and accordingly the claim is dismissed.

Dated: October 15, 2010

Dispute Resolution Officer