



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes Landlord: MNSD, MNDC, MNR, FF
Tenant: MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, for unpaid rent or utilities, to keep all or part of the security deposit and to recover the cost of the filing fee from the Tenant.

The Tenants applied for a monetary order for money owed or compensation under the Act or tenancy agreement, for the return of all or part of the security deposit, an order requiring the Landlord comply with the Act and to recover the filing fee for the Application.

The parties 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.

Issue(s) to be Decided

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

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

Background and Evidence

I heard testimony and saw evidence that the parties entered into a fixed term one year tenancy agreement on July 29, 2010, for an occupancy date of August 4, 2010, ending on August 31, 2010. The rent was to be \$2,250.00 per month and a security deposit of \$1,125.00 was required to be paid. I heard testimony that prior to occupancy, the

Tenants paid one half month's rent and a security deposit and the Tenants signed the Agreement accepting liquidated damages if the tenancy ended early.

I heard undisputed testimony that the Tenants never occupied the rental unit, with the Tenants alleging that the reason was due to the rats and rat droppings all over the premises.

The Landlord's Agent testified that once the Tenants failed to move in, he immediately advertised the rental unit in the local newspapers and the internet. The Agent further testified that new tenants moved in on August 21, 2010, for a reduced rent of \$50.00 per month and the Tenants were paid \$650.00, supposedly as reimbursement for the portion of the August rent when the rental unit became occupied. The Landlord's Agent testified the advertised price was \$50.00 below the agreed to rent and did not state that it could not be re-rented at the former price.

The Landlord is seeking liquidated damages agreed to in the tenancy agreement in the amount of \$1,000.00, utilities allegedly incurred for that rental unit and \$50.00 per month, for 12 months, reflecting the difference in current rent and the agreed to rent. The Landlord is requesting to retain \$1,700.00 from amounts paid.

Tenant FS testified that the date of occupancy was to be August 15, 2010, not August 4 stated in the tenancy agreement, that he made a mistake in not looking more closely at the rental unit prior to signing the lease agreement, and that the Landlord agreed that they could get the keys early in return for repairs to be supplied by the Tenants.

Tenant FS stated that upon entry into the rental unit the first time, Tenant EE noticed rats and rat droppings, causing the Tenants not to move in due to concerns about their and their daughter's health and safety.

Tenant FS claimed that the Landlord was not actively marketing the rental unit and that the liquidated damages were too expensive.

The Tenants are seeking \$1,625.00, representing the balance of the amounts paid for rent and security deposit, less the refund from the Landlord.

Analysis

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

The Tenants ended the Tenancy Agreement early in contravention of section 45 of the Act.

RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to

constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The Landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the Tenants. I find the liquidated damages clause in this instance **is enforceable**.

I find that the amounts requested by the parties to be contradictory in relation to the amounts said to be paid. The Landlord seeks to retain \$1,700.00 and the Tenants seek \$1,625.00, which should be \$1,600.00, to reflect the amounts paid less \$650.00 reimbursed rent received.

I find that the Landlord has established a total monetary claim of **\$1,000.00**, comprised of the liquidated damages. I find the Landlord submitted insufficient evidence proving that the rental unit could not be re-rented for \$2,250.00 per month and there was no evidence of unpaid utility bills.

I find that the Tenants have established a total monetary claim of **\$600.00**, reflecting the one half month's rent payment and security deposit, **less** \$650.00 refunded by the Landlord and \$1,000.00 for liquidated damages.

I order that the Landlord retain from the funds held any amount over and above \$600.00 and refund the amount of \$600.00 to the Tenants within five (5) days of this Decision. I grant the Tenants an order under section 67 for \$600.00.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As each party was partially successful, I decline to award a filing fee to either party.

Conclusion

The Landlord is entitled to retain any deposit held in excess of \$600.00.

The Tenants are granted a monetary order in the amount of \$600.00.

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: November 30, 2010.

Dispute Resolution Officer