



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for liquidated damages; for cleaning costs; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on January 10, 2010 for a 1 year fixed term tenancy beginning on February 1, 2010 for a monthly rent of \$840.00 per month due on the 1st of each month and a security deposit of \$420.00 was paid on January 10, 2010.

The landlord also submitted into evidence a copy of a Condition Inspection Report signed by the female tenant on move in but not signed by either tenant on the move out section. The report documents a requirement for cleaning specifically of the stove; kitchen cabinets; windows (living room and bedroom); bedroom and bathroom light fixtures.

In addition the report shows a "touch up" is required to the fridge; walls (living room, dining room, hall/stairs, and bedroom); bedroom closet; tub; toilet; and bathroom countertop and cupboards. The landlord also provided 26 photographs of the condition of the rental unit.

The tenants submitted into evidence the following documents:

- A summary of events from the tenants perspective dated January 5, 2011;

- A copy of a letter from the tenants to the landlord dated September 2, 2010 providing their forwarding address and outlining events leading up to the end of the tenancy;
- A copy of a document entitled "Notice to Vacate" signed by the male tenant on July 31, 2010 giving the landlord notice that the tenancy would be ending on the last day of August, 2010;
- A copy of a handwritten note from the landlord's agent regarding noise complaints;
- A copy of a letter from the landlord to the tenants dated July 6, 2010 advising that the landlord has received complaints regarding an odour from the tenant's rental unit and asking the tenants to sop the problem;
- A copy of a receipt for carpet and drapery cleaning dated August 30, 2010; and
- 26 photographs showing the condition of the rental unit.

The landlord provided testimony that the tenants had had some complaints against them and that the landlord had tried to deal with the complaints. The building manager testified that after a couple of events in July, 2010 she had had enough of the tenants and went to discuss a complaint with them on July 31, 2010.

She stated that it was at this time that she told the tenants that the tenancy was going to end and they could do it the "easy way or the hard way". The agent explained that she meant that the easy way was for the tenants to sign a notice to end tenancy now or she would be issuing a landlord's notice to end the tenancy and start the eviction process.

The tenants assert the same basic fact pattern, however, the recall the landlord's agent as being very aggressive and threatening during the interaction. The landlord's agent recalls the tenants as being defiant.

The landlord submits that the move out inspection was completed on August 31, 2010 and that the tenant's choose not to sign the report as they disagreed with the landlord's assessment. The agent testified that she took the submitted photographs within 10 minutes of the tenants leaving the move out inspection.

The tenants assert that the pictures, at least the one of oven, submitted by the landlord were taken in another rental unit. The tenants provide no evidence to support this claim but do suggest the photographs appear to be taken at different times. The landlord denies this assertion.

Analysis

Section 45 of the *Act* allows a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that, among other things, is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The earliest the tenants could end the tenancy under this agreement would have been January 31, 2011.

The tenancy agreement signed by both parties also stipulates that “if the tenant ends this tenancy agreement in less than 12 months from the start of this tenancy, the tenant agrees to pay \$400.00 to the landlord...” as liquidated damages.

However, I accept the tenants position, confirmed by the building manager’s testimony, that the landlord intended on ending the tenancy one way or another either by having the tenants sign their own notice to end tenancy or by the landlord’s issuance of a notice to end tenancy.

I accept that by the agent’s choice of words, “we can do this the easy way or the hard way”, implied the tenants had no choice but to sign the notice giving the impression they were the ones wanting to end the tenancy. As a result, I do not find that the tenants intended to end the tenancy and therefore are not responsible to the landlord for the liquidated damages.

I do accept the landlord’s evidence in regards to the claim for cleaning the rental unit over the tenant’s evidence and in accordance with Section 37 find that while the tenants did clean most of the rental unit they did fail to leave the entire unit reasonably clean.

I find the landlord has established the rental unit required some additional cleaning; that the cleaning took 4 hours and that \$100.00 is a reasonable charge for that cleaning.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$125.00** comprised of \$100.00 cleaning and \$25.00 of the \$50.00 fee paid by the landlord for this application as the landlord was only partially successful in their application. I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$420.00 in satisfaction of this claim.

I grant a monetary order to the tenants for the return of the balance of the security deposit in the amount of **\$295.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: January 17, 2011.

Residential Tenancy Branch