



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking monetary orders for unpaid rent, for compensation under the Act or tenancy agreement for cleaning, to keep all or part of the security deposit and to recover the filing fee for the Application.

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.

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

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began on October 25, 2009, with the parties entering into a standard written tenancy agreement, with an initial fixed term to end on October 31, 2010. The monthly rent was set at \$1,795.00, payable on the first day of the month, and the Tenants paid the Landlord a security deposit of \$897.50 on September 8, 2009.

The tenancy agreement contained a liquidated damages clause, requiring the Tenants to pay the Landlord \$300.00 if they ended the fixed term lease before the end of the initial term. The tenancy agreement sets out that this sum is to cover the costs of re-renting the unit, and it is not a penalty. In addition, the tenancy agreement allows the Landlord to charge the Tenants for unpaid rent or for damage to the rental unit.

As to cleaning the rental unit, the terms of the tenancy agreement require that the Tenants pay for professional cleaning of the window coverings at the end of the tenancy, if the window coverings were professionally cleaned at the outset of the tenancy. There was also a sentence written into the tenancy agreement stating, "Drapes to be cleaned when suite vacated."

In June of 2010, the Landlord began renovations to all units in the building, replacing windows and trim.

On August 6, 2010, the Tenants wrote to the Landlord and provided a notice they were moving out of the rental unit. The Tenants wrote that the renovations of removing the old windows and installing new ones, were not disclosed to the Tenants in October of 2009. The Tenants state the noise of removing and re-installing the windows and trim is unacceptable to them.

The Tenants vacated the rental unit on September 20, 2010, and wrote a letter to the Landlord on September 21, 2010, indicating they felt justified in terminating the agreement early due to the excessive noise and constant inconvenience created by the renovations on the windows. The Tenants write that they do not expect to have to pay any additional rent or fees, or to pay for any deductions from the deposit.

At the end of the tenancy the Landlord prepared an outgoing condition inspection report and provided an accounting statement to the Tenants requesting they pay \$300.00 in liquidated damages, rent of \$1,795.00 for October of 2010, and \$150.00 for cleaning the window coverings. The Tenants refused to sign this accounting statement.

The Landlord filed the Application on September 24, 2010, claiming for \$300.00 in liquidated damages, loss of rent of \$1,795.00, \$150.00 for cleaning the window coverings and \$50.00 for the filing fee for the Application.

The Tenant testified that the repairs took a period of about six weeks and explained he felt justified in ending the tenancy due to a loss of quiet enjoyment.

The Tenant testified that they cleaned the window coverings themselves prior to vacating the rental unit.

Lastly, I note the Tenants have filed their own Application claiming against the Landlord for loss of quiet enjoyment at the rental unit. This matter was dealt with in a different hearing, apparently held earlier this month.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenants breached the Act and tenancy agreement by ending the tenancy prior to the expiry of the fixed term.

Under section 45(2) of the Act the Tenants were not able to end the tenancy earlier than the end of the initial fixed term, unless they followed section 45(3) of the Act. Under section 45(3), the Tenants were required to put the Landlord on written notice that they believed the Landlord had failed to comply with a material term of the tenancy agreement, and that if the Landlord did not correct the situation in a reasonable period of time after the notice, the Tenants would end the tenancy. The Tenants failed to do this. Therefore, I find the Tenants are in breach of the Act and tenancy agreement.

I also note that under section 32 of the Act, the Landlord is required to maintain the rental unit and the property. In this instance, the Landlord was not required to disclose to the Tenants in October of 2009 that maintenance was going to be performed at the building in June of 2010, or at any other time, unless it was required to enter a rental unit as set out in the Act. Furthermore, the Agent for the Landlord also testified that these repairs were not certain in October of 2009, when the parties entered into the tenancy agreement.

I also find that the liquidated damages clause in the tenancy agreement is not a penalty, but a genuine pre-estimate of the cost to the Landlord of re-renting the rental unit if the Tenants breached the tenancy agreement. While the Tenants did not claim that the Landlord failed to mitigate, I note that the Landlord provided evidence of advertising for the unit soon after the notice from the Tenants. Therefore, I find the Landlord mitigated as required under the Act.

As to the issue of the window coverings, I find that the Landlord has failed to prove that the window coverings were professionally cleaned at the outset of the tenancy. The Landlord provided an invoice from the property manager at the property for cleaning and washing the drapes at the end of the tenancy. I find that "professional cleaning", in this particular circumstance, would have required dry cleaning of the drapes. Here the Landlord simply did what the Tenants had already done, that is, they machine washed and re-hung the drapes. Therefore, I dismiss this portion of the Landlord's claim.

Having found the Tenants breached the Act and tenancy agreement section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the breaches of the Tenants caused the Landlord to suffer a loss. I find the Landlord has established a total monetary claim of **\$2,145.00** comprised of \$1,795.00 for one month of lost rent, \$300.00 for liquidated damages and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$897.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,247.50**.

This order must be served on the Tenants 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 28, 2011.

Residential Tenancy Branch