



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with two applications as follows:

By the landlord: For an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and to keep all or part of the security deposit; and to recover the filing fee for this application.

By the tenant: For a Monetary Order for compensation or loss under the Act and the return of the security deposit; and to recover the filing fee for his application.

At the outset, the landlord stated that the tenant moved out of the rental unit on September 30th, 2010. Therefore the landlord's application for an Order of Possession is dismissed.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so and for what amount?

Is the landlord entitled to keep the security deposit?

Is the tenant entitled to compensation for any loss under the Act?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of an apartment in a multi unit complex. Pursuant to a written agreement, the month to month tenancy started on August 6th, 2010 and ended September 30th, 2010. The monthly rent of \$625.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$312.50. Condition inspection reports were completed at the start and the end of the tenancy.

The landlord testified that she received the tenant's written notice to end tenancy on September 21st, 2010, and that the tenant moved out on September 30th. The landlord stated that the unit was not rented until November 1st, 2010. During the tenancy, the landlord stated that she had several interactions with the tenant, and that the he never made any mention of the presence of bugs. She stated that she became aware of that concern when the tenant's mother called her on September 20th, 2010. The landlord said that she informed the tenant that she would spray the unit the next day, at which time she reported seeing two silver fish on the floor.

The landlord said that the tenant had plenty opportunity to address any concern with her directly. The landlord also stated that she received confirmation in October 2010 from Canadian Pest Control that in spite of a reported presence of bugs, it was not considered an infestation.

In her evidence, the landlord submitted in part a collection of other tenants' signatures confirming that their units were not infested.

The landlord made a monetary claim for the loss of October month's rent in the amount of \$625.00.

The tenant's mother testified that her son should not have to pay that month's rent. She said that her son loss enjoyment of the unit; that his health and stress levels were impacted, which ultimately resulted in ending the tenancy prematurely. She stated that she told her son to leave if his unit was infected, and suggested that the other tenants signed the landlord's petition under duress.

In her evidence, the tenant's mother submitted in part that she told her son not to clean the carpets because the landlord would not return the security deposit. The tenant's mother's written statement also indicates that the tenancy ended on August 31st, however based on the evidence at the hearing I take it this was a typographical error, and I accept that the tenant left of September 30th, 2010.

The tenant's mother made an updated monetary claim as follows:

- Return of the security deposit: \$ 312.50
- Compensation for last month's rent: \$ 625.00
- Refund for cable hook-up: \$ 80.00
- Filing fee: \$ 50.00
- Total: \$1067.50

The parties debated over the ultimate motive for the tenant's early departure; however this portion of the dispute brought no new evidence regarding the tenancy, the subject matter or the parties' statutory obligations in this matter.

Analysis

The tenant's mother testified that her son spoke to her about the problem, not the landlord. The tenant's mother lives in Fort St-John, did not attend the rental unit, and did not inform the landlord until late September 2010. Therefore I accept the landlord's evidence that she had no knowledge of any problem with the tenancy until that time.

The tenant's mother's submissions concerning bug infestation in the unit was not supported by any substantive or independent evidence. She stated that her submission concerning the landlord's petition was merely an opinion.

The evidence did support that the landlord took action as soon as she became aware of the presence of bugs in the tenant's unit. She subsequently obtained an assessment from Canadian Pest Control and I accept the landlord's submission that the unit was not bug infested. The onus is on the tenant to prove the loss of enjoyment, and that a monetary compensation is justified. The actual tenant in this matter did not appear and there was no evidence that the landlord was negligent or did not comply with the Act. The *Residential Policy Guideline* states in part that concerning the right to quiet enjoyment, the tenant must show that there had been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy. I find that the tenant's mother's monetary claim for loss of enjoyment does not meet that test. I dismiss the claims for loss of enjoyment of the unit and the return of the cable hook-up fees.

The condition inspection report showed a claim of \$106.40 for carpet cleaning. The tenant's mother acknowledged that the carpet was not cleaned. In the absence of receipts for carpet cleaning I grant the landlord half the amount for \$58.20. The landlord did not provide any other evidence to justify keeping the damage deposit. Accordingly, I find that the tenant is entitled to the return of the balance of the security deposit for \$254.30.

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. The evidence established that the tenant complained to his mother about bugs as soon as he moved in on August 6th, 2010. To end the tenancy on September 30th, written notice should have been given on or before August 31st, 2010. On that basis I find that the landlord did not receive proper notice and is entitled to the loss of October rent for \$625.00.

Conclusion

The landlord established a claim of \$625.00. Since she was successful, I grant the landlord recovery of the \$50.00 filing fee. I authorize the landlord to retain the tenant's \$312.50 security deposit for a balance owing of \$362.50.

Under her application, the tenant's mother established a claim of \$254.30. Since she was partially successful, I grant her partial recovery of the filing fee for the sum of \$25.00.

Pursuant to Section 72 of the Act, I set off the amount awarded to the tenant against the amount awarded to the landlord, and I grant the landlord a Monetary Order for the balance of \$83.20.

Since the parties were partially successful in their respective application, I decline to make an order regarding the filing fees.

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: February 07, 2011.

Residential Tenancy Branch