



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, OLC, O, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together.

Landlord's application

At the time of the original application the landlord's had requested a monetary order of \$4062.50 and recovery of the \$50.00 filing fee; however the landlord's subsequently amended that application reducing the total claim to \$937.50 and recovery of the \$50.00 filing fee.

Tenant's application

The tenant's application is a request for a monetary order for \$2839.79.

Background and Evidence

The landlords testified that:

- When they originally showed the tenants the rental unit the tenants did not mention allergies or ask if there had been pets in the rental unit.
- The tenants signed a tenancy agreement with the tenancy to start on October 1, 2010, and paid the October rent in the amount of \$625.00, and the filing fee of \$312.50.
- On September 29, 2010 they did the move in inspection with the tenants and although it was mentioned that it could have been cleaner, there was again no mention of any allergies.
- October 2, 2010 the tenant asked me to come down to the rental unit and at that time she pointed out cat hair on the bottom of the curtains, and that was the first time that allergies were mentioned, and in fact I thought she was talking about a child not about her husband.
- October 4 2010, the tenants delivered a letter outlining deficiencies with the rental unit and stating the severity of the male tenant's cat allergy.
- They responded immediately on October 4, 2010 and presented the tenants with a letter outlining how they would rectify the problems with the rental unit.
- The tenants were dissatisfied with their proposals to rectify the problem and on October 5, 2010 the tenants inform them it was unlikely that the landlords would be able to clean the rental unit well enough to alleviate the allergy problem and therefore they would be vacating the rental unit.
- The tenants vacated the rental unit and a move out inspection was done on October 8, 2010, and they served the tenants with the notice of dispute papers for today's hearing.
- Originally they had been claiming six months' rent because the tenants had broken a fixed term tenancy; however they subsequently re-rented the unit for November 1, 2010 and therefore the claim was reduced.

The landlords are therefore requesting an order allowing them to keep the full \$625.00 that was paid for the month of October 2010 and they are also requesting an order allowing

them to keep the full security deposit to cover their time and costs associated with re-renting the unit.

The tenants testified that:

- When they met the landlords to sign the tenancy agreement they did mention allergies, because the landlords had pets and they could only stay for a short while in the landlord suite.
- The tenancy agreement they signed with the landlord's states "no pets of any kind are allowed on the premises.", and therefore they felt safe moving into the rental unit knowing they should not be bothered by allergies.
- They did move some of their furniture into the rental unit starting on September 29, 2010; however they did not personally move into the rental unit until October 1, 2010.
- Once they started living in the rental unit, the male tenant started having allergy problems and it was then that they discovered the cat hair on the bottom of the curtains and behind the stove.
- On October 2, 2010 they showed the cat hair to the landlord, and subsequently on October 4, 2010 gave the landlord letter requesting that the problem be rectified.
- The landlord subsequently did give them a letter on the same date stating how they propose to rectify the problem; however the landlord did not give specifics on what would happen to their furniture, where they would stay, etc. while the cleaning was being done and therefore they were dissatisfied with the landlord's proposals.
- Since they did not feel the landlord was going to rectify the problem they informed the landlord that they would be vacating, as this was now a health issue.
- They did not give written notice to end the tenancy however the landlord was fully aware that they were going to move out.

The tenants therefore believe that the landlords breached a material term of the tenancy agreement ("no pets of any kind are allowed on the premises") and should be held liable for costs they incurred as a result of that breach as follows:

Six months of an increase in their rent of \$225.00 per month	\$1350.00
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Storage costs	\$78.40
Postage	\$13.04
Photocopying	\$10.98
Filing fee	\$50.00
Total	\$1902.29

The tenants are also requesting the return of the following:

October 2010 rent	\$625.00
Total	\$937.50

The total amount requested by the tenants is therefore \$2839.78.

Analysis

It is my decision that the tenants have not shown that the landlords breached the material term of the tenancy agreement.

I am also not convinced that the tenants ever informed the landlords of the severity of the tenant's cat allergy prior to signing the tenancy agreement.

The pet clause that's in place ("no pets of any kind are allowed on the premises") is a standard clause in tenancy agreement's that informs the tenant that they are not allowed to have pets in the premises, however it cannot be considered to be a guarantee by the landlords that there have been no pets in the rental unit prior to this tenancy. Therefore the landlords have not breached this clause of the tenancy agreement.

For the tenants to have ended this tenancy for breach of a material term, after finding cat hair in the rental unit, there would have to have been a term in the tenancy agreement such as "the landlord warrants and guarantees that there have been no pets in this rental unit prior to this tenancy".

Further even if there had been a breach of the material term of the tenancy agreement the tenants would of had to a given the landlords reasonable time to rectify the breach, and in this case they certainly did not.

I find no negligence on the part of the landlords, because I am not convinced that they were aware of the allergy, and I am certain that even if they did know of the allergy, they were never informed of the severity.

Conclusion

I deny the tenants full claim for costs resulting from the move. I also deny the request for return of October 2010 rent, and for the filing fee.

I allow the landlords claim to retain the full October 2010 rent and allow their request for their \$50.00 filing fee.

I deny the landlords request to retain the security deposit to cover the costs of re-renting the unit, because the landlords have provided no evidence of time spent or costs incurred in re-renting the unit.

I have therefore issued an order for the landlord to return the full security deposit of \$312.50 less the \$50.00 filing fee for a total order of \$262.50.

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 08, 2011.

Residential Tenancy Branch