



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC FF

Preliminary Issues

After reviewing the Tenants' application for dispute resolution, at the onset of the hearing, the Tenants confirmed their application was for compensation for not being able to use the entire basement during their tenancy as noted in the details of their dispute and as listed on the monetary order worksheet provided in their evidence.

As this was indicated in the details of the dispute and on the monetary order worksheet, I find the Landlords were made aware of what the Tenants were seeking in their application and they would not be prejudiced by an amendment to the application.

Based on the aforementioned I hereby amend the Tenants' application to include a request for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to remove a request for reduced rent as this tenancy has ended and there is no future rent payable to the Landlords. This amendment is made pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenants to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on February 11, 2011. Mail receipt numbers were provided in the Tenants' evidence. The Landlords are deemed to be served the hearing documents on February 16, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenants appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared at the teleconference hearing on behalf of the Landlords, despite them being served Notice of this hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The Tenants testified they entered into a fixed term tenancy agreement effective July 15, 2010 that was set to switch to a month to month tenancy after January 15, 2011. Rent was payable on the first of each month in the amount of \$1,400.00 and they paid \$700.00 on July 13, 2010 as the security deposit.

They put an offer in on a house and removed the subjects by November 20, 2010. They had possession of their new home by December 1, 2010 and had vacated the rental property by December 4, 2010. They had a discussion with the Landlords on November 28, 2010 to request a rebate of half of the rent and also to request getting out of the lease early but the Landlord refused. The Tenants provided the Landlord verbal notice to end their tenancy on November 28, 2010. They were told they were responsible for the unit until the end of their fixed term so they paid the rent for the full month of December 2010 and \$700.00 up to January 15, 2011.

The Tenants completed the move-out inspection form on their own accord as the Landlords made no attempts to conduct a move-out inspection. The form was completed with their forwarding address and sent to the Landlord via registered mail on January 19, 2011. The Tenants received \$484.85 on February 16, 2011, as the return of their security deposit (\$700.00 - \$215.15) after the Landlord deducted the last utility bill of \$215.15. This utility was originally in the Tenants' name however they confirm that it was switched back to the Landlords' name before the final billing.

They advised that when they first met with the Landlords they told them that they wanted a short term tenancy because they were looking to purchase a house; however the Landlords insisted on having a six month lease. When it became too cold to keep the basement windows open they noticed that there was a horrible smell emanating from the carpets. On October 28, 2010 they requested the Landlord conduct repairs to the basement as they could not use the main room due to allergies to the odour. They kept calling the Landlord "over and over" to have the repairs completed. Then the male Tenant removed all of his music studio equipment from the room and removed the

carpets waiting for the Landlord to finish the repair. At one point the Landlord spoke about installing a cushioned type flooring however all he did was paint the floor. The Landlord did not replace the carpet which made this room unusable as a studio. The Tenants confirmed there was nothing written in the lease about use of the property as a music studio and this was primarily a hobby for the male Tenant that he was developing into a business.

Around the first week of November 2010 when they realized the Landlord was not going to install carpet in the basement, the Tenants called their realtor to speed up the process to purchase a home. They stated that it was their intention all along to purchase a house and decided to proceed quicker once the basement became unusable as a studio. They argued that they were not able to use any portion of the basement because the studio equipment was piled up in the other rooms awaiting the repair of the bigger room.

They are seeking the return of half of their rent for the months of November \$700.00, December \$700.00, and \$350.00 for January 2011 as compensation for not having full use of the basement during this time. They are of the opinion that they should be entitled to this refund of rent regardless of whether they were occupying the rental house or not because in their mind the basement was not useable for their intended purpose. When asked why they did not make an application for dispute resolution sooner they stated they were too busy moving and setting up their new home.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and

4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. That being said, there is no provision in the Act that states a basement floor must be carpeted.

After careful consideration of the evidence and testimony before me there is insufficient evidence to support the tenancy agreement or regulations stipulated the basement must be carpeted.

Based on the aforementioned, I find the Tenants provided insufficient evidence to support the Landlords breached the Act, regulation or Tenancy agreement, and have therefore failed to meet the test for damage or loss, as listed above. Therefore, I hereby dismiss the Tenants' application, without leave to reapply.

As the Tenants have not been successful with their application; they must bear the cost of filing their application for dispute resolution.

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

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: March 14, 2011.

Residential Tenancy Branch