



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD MNR MND FF
 MNDC MNSD O FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for unpaid rent or utilities, damage to the unit site or property, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of security deposit, for other reasons and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the Act, sent via registered mail on November 17, 2010. The Tenant confirmed receipt of the Landlord's hearing documents.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the Act, served personally on November 9, 2010. The Landlord confirmed receipt of the Tenant's hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?

2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective September 1, 2010 which was set to switch to a month to month tenancy agreement after August 31, 2011. The Tenant was granted permission to occupy the unit on August 15, 2010 and paid additional rent to gain access to the unit on this earlier date. Rent was payable on the first of each month in the amount of \$1,200.00. The Tenant paid \$600.00 on August 15, 2010 as the security deposit. A move in inspection report was completed on August 13, 2010 and a move-out inspection report was completed on October 30, 2010. The Tenants provided their forwarding address in writing and again in an e-mail October 1, 2010 and October 30, 2010 on the move-out document.

The Tenant is seeking monetary compensation comprised of \$600.00 for the return of their security deposit, plus \$404.00 for the moving expenses, plus \$63.27 for the cost of cleaning the carpets at the onset of the tenancy.

The Tenant testified that when they first viewed the rental unit the Landlord took them around very quickly and kept saying “do you smell the fresh paint, the landlord keeps this place in good condition.” Then after the contract was signed and the deposit was given to her she told them about the carpets being stained and that if the air conditioning breaks the owner will not fix it. This is a 3 level town house with a small yard which they thought would be perfect for him, his pregnant wife and their 3 year old daughter.

When they first moved in they called the Landlord and complained about a horrible smell coming from the carpets. The Landlord had left them with a form to complete which they dropped off at her office in August 2010. They advised the Landlord of the problem with the smell at that time. The Landlord wrote on this document that there was an odour issue and did not provide the Tenants with a copy of this document. Every time they complained they were told the owner refused to do anything about the carpets.

Because his wife was 3 months pregnant and they have a 3 year old daughter they decided to rent a steam cleaner and purchase chemicals to see if they could get rid of the smell and some of the stains, as supported by their documentary evidence of a copy of an invoice dated September 6, 2010. When that did not work they began to e-mail the Landlord and she kept replying that the owner was not going to replace the carpets. As supported by the e-mails they provided in their evidence, the Landlord switched to saying they agree the carpets are stained and that the Tenants agreed to live with them. The Tenant continued to point out that they did not agree to live with an odour or smell.

The Tenants advised that they were willing to accommodate the owner to change out one carpet one month and another the next month and so on, but the owner continued to refuse to eliminate the odour. So they provided the Landlord with 1 months notice to vacate the property by November 1, 2010.

The move-out inspection was conducted by a different agent for the Landlord and she noted the foul smell coming from the carpet on the move-out inspection report. She also told them that the Landlord was charging more money for the unit and so the new tenants decided to wait to move in until December 1, 2010.

The Landlord testified and confirmed the Tenants gave her a deficiency form dated August 15, 2010 and she did write on it that the living room carpet smells. She confirms she discussed the stains on the carpets with the Tenants and that they agreed that they could live with them. She stated that she did not think there was a difference between stains in a carpet and odour coming from a carpet. Then the Landlord claimed she smelled the carpet and it was not bad; however she could not provide testimony of when she allegedly smelled the carpet.

The Landlord has filed seeking \$1,200.00 for loss of rent for November 2010; plus \$300.00 for the Tenant breaking the lease as provided for in their tenancy agreement on page 3, section (a); and \$100.00 for carpet cleaning which is a portion of the bill for \$162.40 that was provided in their evidence. She claims they told the Tenants they would be changing the living room carpet.

The Landlord testified that the new tenants signed their tenancy agreement on October 27, 2010 for the higher rent amount of \$1,300.00 effective December 1, 2010. She could not provide testimony as to how the unit was advertised for rent.

In closing the Tenants questioned why the Landlord would smell the carpets if there was no problem with them. They also questioned why the Landlord would spend \$162.40 to clean the carpets if the living room carpet was going to be replaced. They had told the

Landlord they would be willing to wait to have the bedroom carpets changed as long as they were completed before the new baby was born. They were not being unreasonable however when the Landlord kept putting them off they had to consider the health of their 3 year old and their unborn child, so they had to move.

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 and section 6(a) of the tenancy agreement provide the landlord must provide and maintain the residential premises and residential property in a reasonable state of decoration and repair, making the residential premises and the residential property suitable for occupation by a reasonable tenant. It further states the Landlord must comply with health, safety and housing standards required by law.

I accept the evidence before me that the carpet in the living room and bedrooms were excessively stained and emanated a very foul odour which may be hazardous to one's respiratory health. The owner refused to remedy the situation simply because they did not want to spend the money to do so; which is a breach of Section 32 of the Act and of section 6(a) of the tenancy agreement.

Section 45 (3) of the Act provides that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As per the aforementioned, I find the tenancy ended October 31, 2010, in accordance with Section 45(3) of the Act.

The Tenants provided evidence that they attempted to mediate the problem by having the carpets cleaned September 5, 2010. The move-out inspection form completed October 30, 2010 supports the odour was still present. After careful review of the evidence before me, on a balance of probabilities I find the carpets to have been so badly soiled that the Landlord could not have had the carpets professionally cleaned prior to the onset of this tenancy.

Landlord's application

Based on the aforementioned I find this tenancy ended, in accordance with section 45(3) of the Act, as a result of the Landlord's breach of Section 32 of the Act, and section 6(a) of the tenancy agreement. Therefore the Tenant is not to be held responsible for breaking the fixed term lease and the Landlord is not entitled to compensation. Therefore their claim for \$300.00 is dismissed without leave to reapply.

The evidence supports the Landlord signed a new tenancy agreement October, 27, 2010 for a tenancy effective December 1, 2010, for a higher rent. There is no evidence to support the Landlord made any effort to mitigate their loss to rent the unit for November 2010 for the same rent. Therefore the Landlord has provided insufficient evidence to meet the test for damage or loss as listed above and I dismiss their claim for loss of rent, without leave to reapply.

The Tenants paid to have the carpets cleaned on September 5, 2010, just weeks prior to the end of the tenancy. Therefore I find the Landlord provided insufficient evidence to support their claim for carpet cleaning and their claim of \$100.00 is hereby dismissed without leave to reapply.

The Landlord has not been successful with their claim; therefore they bear the burden of the cost of filing their own application.

Tenant's application

The evidence supports the Landlord breached Section 32 of the Act and section 6(a) of the tenancy agreement which caused the Tenants to move and suffer a loss of \$404.00 for moving costs on October 27, 2010. Therefore I find the Tenants have met the burden of proof, as listed above and I approve their claim of **\$404.00**.

Page 3, section C. of the addendum to the tenancy agreement provides the Tenants are responsible to have the carpets cleaned at the end of the tenancy. The evidence supports the Tenants had the carpets cleaned September 5, 2010. As this is a requirement of the tenancy agreement I decline to award the Tenants compensation for their claim of \$63.27, without leave to reapply.

Having dismissed the Landlord's claim above, the Landlord has no entitlement to retain the \$600.00 security deposit. Therefore I approve the Tenants' application for the return of the security deposit in the amount of **\$600.00**.

The Tenants have been successful with their application, therefore I award recovery of their \$50.00 filing fee.

Moving costs	\$404.00
Return of the security deposit of \$600.00 plus interest of \$0.00	600.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANTS	\$1,054.00

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$1,054.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: March 15, 2011.

Residential Tenancy Branch