



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, (MNSD)

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income. The Tenants applied for compensation for damage or loss under the Act or tenancy agreement.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

The Parties signed a tenancy agreement on October 31, 2010 for a month-to-month tenancy commencing November 1, 2010 with rent of \$700.00 payable in advance on the first day of each month. The Tenants paid a security deposit of \$350.00. The Parties agree that when the Tenants arrived at the rental property on November 1, 2010, the Landlord advised them that they could not take possession of the rental unit that day because the former tenant had still not vacated. On November 4, 2010, the Parties signed a Mutual Agreement to End the Tenancy and the Landlord returned the Tenants' security deposit.

The Tenants claim that the Landlord advised them on November 1, 2010 that he needed more time to do painting and bathroom repairs once his former tenant moved out and would reduce their first month's rent to compensate them for not having the use of the rental unit during that time. The Tenants said they needed a place to stay as they had just moved from another community so they offered to help the Landlord do the repairs so they could move in quicker. The Tenants said the Landlord said he did not want their help and could not tell them when it would be ready for them to move into.

The Landlord claims that the Tenants contacted him on the evening of November 1, 2010 and advised him that they would not be moving into the rental unit. The Landlord said he told the Tenants at that time that his former tenant had vacated and that they could move in the following day. The Landlord denied telling the Tenants that they

could not move in until he painted and made repairs but instead said that he told them he could paint and make repairs if they wanted him to. The Landlord argued that the rental unit was available for occupancy by the Tenants on November 2, 2010 but they refused to move in. Consequently, the Landlord said he had to advertise the rental unit again and could not re-rent it until December 1, 2010.

The Tenants said they stayed with relatives until November 5, 2010, moved into a hotel from November 6 – 16, 2010 and moved into a new residence on November 17, 2010. The Tenants sought to recover their additional accommodation or hotel expenses from the Landlord. The Landlord claimed that when he served his hearing package on the Tenants on November 17, 2010 at the Tenants' address for service on the Application for Dispute Resolution, he discovered it was the residence of a family member of one of the Tenants (M.K.) and that person advised him that the Tenants were residing there.

Analysis

According to the terms of the Parties' tenancy agreement, the Tenants were entitled to take possession of the rental unit on November 1, 2010. The Parties agree that the Tenants could not take possession of the rental unit on that day because the former tenant had not moved out. The Tenants also claim that they were advised by the Landlord that he would have to make some repairs and paint the rental unit before they could move in and could not give them a specific date when that work would be completed. The Landlord denied this and claims that the Tenants could have moved in on November 2, 2010.

Where the Parties' evidence differs on this point, I prefer the evidence of the Tenants. In particular, the Tenants claimed that on November 1, 2010 the Landlord offered to reduce their rent for **however long it would take** before they would be able to reside in the rental unit. The Landlord also agreed that this was the case but then changed his evidence later in the hearing and said instead that he told the Tenants he would reduce the rent by **one day**. I find that the Tenants' version of events is also consistent with both Parties' evidence that repairs and painting were necessary because the walls had "mud" all over them that needed to be sanded and re-painted and the bathroom shower and tiles were damaged. I also accept as reasonable, the evidence of the Tenants that they needed a place to reside and offered to assist the Landlord with repairs so that they could move in. Consequently, I find that in not giving the Tenants possession of the rental unit on November 1, 2010, the Landlord breached a fundamental term of the tenancy agreement which entitled the Tenants to rescind the tenancy agreement that day. As a result, I find that there are no grounds for the Landlord's application to recover a loss of rental income for November 2010 and his application is dismissed without leave to reapply.

Section 7(1) of the Act says that a Party may be entitled to compensation if they suffer damage or loss as a result of another Party's breach of the Act or tenancy agreement. The Tenants claim that they incurred additional accommodation expenses (ie. hotel

expenses from November 6 – 16, 2010) of \$1,120.00 because they could not move into the rental unit. However, the Tenants provided no documentary evidence to corroborate their claim (such as a receipt). The Tenants' oral evidence on this point was also inconsistent in that they initially claimed the amount they sought for compensation was for the entire month of November 2010 but then they claimed it was for a 10 day period. The Landlord argued that the Tenants resided with a family member during the time in question. Given the contradictory evidence of the Parties on this point and in the absence of any reliable, corroborating evidence from the Tenants to resolve this contradiction, I find that there is insufficient evidence to conclude that the Tenants incurred additional accommodation expenses and their application is dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed without leave to reapply. The Tenants' application is dismissed 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 09, 2011.

Residential Tenancy Branch