



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

A substantial amount of documentary evidence, photo/video 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 tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order in the amount of \$4684.00 and a request to retain the security/pet deposits towards the claim.

The tenant's application is a request for a monetary order for \$4010.00.

Background and Evidence

The landlords testified that:

- The tenants signed a fixed term tenancy agreement with an end of tenancy date of April 30, 2011.
- The tenants gave notice that they would be vacating the rental unit and did so on February 28, 2011.
- As a result of the breach of the tenancy agreement they have suffered a loss of rental revenue, and have gas, electrical, and insurance expenses that they would not have had if the tenants had stayed to the end of the fixed term.
- They attempted to re-rent the unit to mitigate any loss, and were able to re-rent the unit for mid April 2011.

The landlords are therefore requesting a reduced claim as follows:

March 2011 lost rental revenue	\$2100.00
Gas costs	\$130.42
Gas application fee	\$25.00
Electricity costs and connection fee	\$65.85
Empty premises insurance	\$75.00
Filing fee for dispute resolution	\$50.00
Total	\$3496.27

The landlord's further request an order allowing them to keep the full security/pet deposits totalling \$2100.00, and request that a monetary order be issued for the difference.

The tenant testified that:

- They did advise the landlord that they would be ending the lease agreement early and vacating on February 28, 2011; however their main reason for doing so was because the rental unit was uncomfortably cold and expensive to heat.
- When they rented the house the previous tenants inform them of the new heating system and therefore even though the house still had the original Windows they thought that the rental unit would be sufficiently heated.

- As the weather turned colder however they found that the furnace ran nonstop and still the rental unit was not uncomfortably cold in many areas.
- On December 30, 2010 they notified the landlord that they wanted to have the heating system checked because their utility bills for extremely high.
- On January 22, 2011 they notified the landlord they could no longer afford to stay in the house due to the high heating costs and that they had lost the enjoyment of much of the house due to the cold rooms.
- They did not request that the landlord rectify the insulation or heating issues, as they felt it would be extremely expensive for the landlord to do so.
- Due to the uncomfortably cold condition of the rental unit, they do not believe that they should have to pay any more rent and in fact, feel that the landlord should be reimbursing some money to them for loss of use and enjoyment.

The tenants are therefore requesting a monetary order as follows:

Return of March rent paid in the form of security/pet deposit	\$2100.00
Lost income to attend dispute resolution hearing	\$250.00
Loss of use and enjoyment of rental unit from December 2010 to March 2011	\$1500.00
Filing fee	\$50.00
Total	\$4010.00

Analysis

It is my decision that the tenants did not have reasonable grounds to end the tenancy before the end of the fixed term.

The tenants were aware that this was an older home when they rented it, and there is no evidence that the landlord misled the tenants as to the age or condition of the rental

unit when the tenancy agreement was entered into, and therefore it is my finding that there is no breach of this tenancy agreement.

When renting an older home, tenants should not assume that the rental unit will be as efficient and as well insulated as a new unit and I will not hold the landlords liable for any loss of use and enjoyment that the tenants may have experienced in the winter months as there was no misrepresentation on the part of the landlords.

Therefore since the tenants did not have reasonable grounds to end the tenancy before the end of the fixed term, they are still liable for any losses or costs that result from vacating the rental unit prior to the end of the fixed term.

I therefore will be allowing the full reduced amount claimed by the landlords, and will not allow any of the tenants claim.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

I have allowed the landlords full reduced claim of \$3496.27, and I therefore order that the landlords may retain the full security/pet deposit of \$2100.00 and I have issued a monetary order in the amount of \$1396.27

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: June 09, 2011.

Residential Tenancy Branch