



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNDC, MNSD
 Landlord MNR, MNSD, 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 compensation for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of their security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on April 15, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on March 1, 2011, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Have the Tenants had a loss and if so how much?
2. Are the Tenants entitled to compensation for damage of loss and if so how much?
3. Are the Tenants entitled to recover their security deposit?

Background and Evidence

This tenancy started on September 1, 2010 as a month to month tenancy. Rent was \$1,850.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$925.00 by September 1, 2010. The Tenants moved out of the rental unit on November 1, 2010.

The Tenants said when they viewed the rental unit on August 24, 2010 the unit was under construction and the Landlord said he would have the construction finished by the time they moved in. The Tenants continued to say when they moved in on September 1, 2010 the construction was not completed and it was not completed by the time they moved out on November 1, 2010. The Tenants said that the unit was not safe to live in because of the construction and the construction made the unit uninhabitable. They said they gave the Landlord written notice to end the tenancy on October 1, 2010. The Tenants said the Landlord accepted the notice to end tenancy and signed it. As well the Tenants said the Landlord agreed to reduce the rent for October, 2010 to \$1,100.00 to compensate the Tenants for the construction in the unit.

The Tenant said they are applying for the return of \$1,200.00 of rent due to the condition of the rental unit and \$600.00 of their security deposit. The tenant continued to say the balance of the security deposit the Landlord can keep for unpaid utilities.

The Landlord said he agreed that the unit was under construction during the tenancy and that he agreed to end the tenancy on November 1, 2010. As well the Landlord said he agreed to the rent reduction to \$1,100.00 for the month of October, 2010 because of the construction in the unit. The Landlord continued to say that an occupant who was not one of the Tenants and who was not signed on the tenancy agreement stayed in the unit until November 3 or 4, 2010 and that the Tenants left some of their belonging in the unit in November, 2010. As a result the Landlord is applying for lost rent of \$1,850.00 for the month of November, 2010 as he said he could not rent the unit because the Occupant and the Tenants belongings were in the unit. In addition the Landlord is claiming unpaid utilities, but he said he did not know the amount and he did not have any receipts. The Landlord said his claim is \$2,400.00 plus the filing fee of \$50.00.

The Tenant said he gave the Landlord his forwarding address verbally on the phone, in an email and in his application dated February 24, 2011, but the Landlord has not returned his security deposit to date.

Analysis

It is apparent from both the Landlord and the Tenants' testimony that the rental unit was not in a rentable condition during the tenancy. This is reflected by the Landlord agreeing to end the tenancy due to the construction in the unit and he gave the Tenants a rent reduction for October, 2010 of \$750.00 as a result of the condition of the rental unit. As well by the Landlord agreeing to the notice to end tenancy that the Tenant said was dated October 1, 2010 which ended the tenancy November 1, 2010. The Tenants said they were moved out of the unit by November 1, 2010. I find the Landlord has not established grounds to prove he lost rental income because of the Tenants ending the tenancy. The Tenants gave proper notice and I accept the Tenants testimony that they were moved out of the unit in accordance to the notice. Therefore the Landlord's application for lost rent for November, 2010 of \$1,850.00 is dismissed without leave to reapply. In addition the Landlord's claim for unpaid utilities is not substantiated by receipts and he was unable to provide evidence that proved he made a formal demand to the Tenants for payment of the utilities. Consequently I dismiss the Landlord's claim for unpaid utilities in the amount of \$550.00 without leave to reapply.

With regard to the Tenants claim for damage or loss in the amount of \$1,200.00 for the Landlord not providing facilities and services that were promised in the tenancy agreement (agreement was verbal). I find that service and facilities were not provided due to the construction and repairs of the unit. In addition the Landlord agreed to a rent reduction of \$750.00 for October, 2010 as compensation for the condition of the rental unit or not providing the facilities or services promised in the tenancy agreement. Give a rent reduction of \$750.00 was established between the parties for the October rent and the condition of the rental unit was similar in September as it was in October; I find that the Tenant has established grounds for loss of facilities and services that the Landlord promised at the start of the tenancy, consequently I find for the Tenant and award the Tenants compensation for loss of facilities and services in the tenancy of \$750.00 or the equivalent of the agreed rent reduction of October, 2010 for September, 2010 rent.

Section 38 of the Act says a tenant may apply for double the security deposit if a landlord does not return the deposits or apply for dispute resolution within 15 days of the end of the tenancy and receiving the Tenant's forwarding address in writing. The tenancy ended on November 1, 2010 and the Landlord received the Tenants' forwarding address in writing in the Tenants' application dated February 24, 2011. This application was deemed to be received by the Landlord pursuant to Section 90 of the Act on March 1, 2011 or 5 days after mailing. The Landlord did not return the security deposit or make an application for dispute resolution within the 15 days after the end of the tenancy or receiving the Tenants' forwarding address in writing on March 1, 2011. Therefore I find for the Tenants and award double the security deposit of \$925.00 in the amount of $2 \times \$925.00 = \$1,850.00$. A monetary order will be issued to the Tenant for the return of double the security deposit of \$1,850.00 and for compensation for services and facilities not provided by the Landlord of \$750.00. The total Monetary Order is for \$2,600.00.

As well as the Landlord has been unsuccessful in this matter I order the Landlord to bear the filing fee cost of \$50.00 which he has already paid.

Conclusion

The Landlord's application is dismissed without leave to reapply.

A Monetary Order in the amount of \$2,600.00 has been issued to the Tenants. A copy of the Orders must be served on the Landlord and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch