Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was reconvened as a result of the landlord's Application to Review Arbitrator's Decision or Order of the Decision and Order granted on April 1, 2011 regarding the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenants' agent and the landlord's agent.

A substantial length of time was dedicated to determine what evidence and documents had been served on the parties. I am satisfied that the tenants have served the landlord with all of the documentation on file, with the exception of a copy of the Application for Dispute Resolution.

The tenants served the landlord with their evidence by providing it in person to the landlord's lawyer's office which is the office of record for the limited company that is the landlord. I accept the tenants' agent's testimony that the material was served two weeks prior to the hearing. The landlord noted that he received the evidence a week ago.

In lieu of having a copy of the Application itself, the tenants had provided a document entitled "Details of Dispute" outlining their claim against the landlord in its entirety. I therefore find that landlord has been served sufficiently with all documentation and evidence that will be relied upon by the tenants for the purposes of this hearing.

During the hearing the landlord requested an adjournment until such time as the tenant served him with a copy of the Application for Dispute Resolution. Rule 6.4 of the Residential Tenancy Branch Rules of Procedure state I must consider the following points in relation to a request for an adjournment:

1. The oral or written submissions of the parties;
2. If the purpose of the adjournment will contribute to the resolution of the matters under dispute;
3. If the adjournment is required to provide a fair opportunity for a party to be heard;
4. The degree to which the need for adjournment arises out of intentional actions or neglect on the part of the party seeking the adjournment; and
5. The possible prejudice to each party.

On the matter of the landlord's request for an adjournment, I have considered the oral testimony provided by both parties and find the following:

1. The landlord was provided with all the information pertaining to the tenants' claim, even in the absence of a copy of the Application for Dispute Resolution and as such he was fully aware of the case against him in sufficient time to establish his response to the tenants' claim. I further find the landlord has failed to establish how an adjournment would contribute to resolution of this dispute.
2. As the landlord received the evidence, at his lawyers office that he argues is his address for service, at least two weeks in advance of the hearing, I find the landlord has had sufficient time, in accordance with the *Residential Tenancy Act (Act)* and the Rules of Procedure, to prepare for this hearing and establish an adequate response.
3. I find no degree of intent or neglect on the part of the landlord in the need for an adjournment.
4. I find, for the reasons noted above (1 and 2), that the landlord suffers no prejudice as a result of proceeding with the hearing without an adjournment.

I also note the landlord provided no documentary evidence to this hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Act.*

Background and Evidence

The landlord provided testimony specifically in regard to the following finding in the original decision dated April 1, 2011:

> Based on the above, I accept the landlord failed to provide a rental unit that was suitable for occupation by tenants and find the tenants should not be responsible for the payment of rent for the month of September 2010 or for the first part of October 2010.

The landlord contends that the evidence provided by the tenants does not show that the rental unit was not suitable for occupation by tenants. He asserts that the photographs show only microbial growth on the tenants' belongings not on the structure of the residential property.

In his testimony the landlord states that the basement/crawlspace had been recently insulated. Photographs submitted by the local health authourity include pictures taken in the crawlspace and show no evidence of insulation or vapour barriers.

The tenants' agent contends the landlord was fully aware of the problems with these growths and that is why he agreed to allowing the tenants to end the tenancy early and why he provided the tenants with their full security deposit and an additional $100.00 to pay for disposal services.

The landlord states he was unaware of any problems and that he never likes to hold tenants to fixed terms in a tenancy agreement if they are unhappy with the arrangement and that although he acknowledges he paid the tenants an extra $100.00 at the end of the tenancy he cannot recall why.

The landlord testified that he had previous tenants in this rental unit who did not complain about any moisture or mould problems and that the tenant next door (the property is a duplex) has not complained about any problems.

Analysis

As the landlord provided testimony on only one aspect of the original decision, I have focused my findings for this hearing on the landlord's testimony as it relates to the finding of suitability for occupancy.

First, in relation to the testimony provided by the landlord, I find it unlikely that a landlord who requires tenants to enter into a 1 year fixed term tenancy would so easily agree to end a fixed term one month after it was started simply because the "tenants were unhappy".

I find it unlikely that a landlord would return an additional amount of money to tenants for any reason and then not be able to provide testimony as to what the money was intended. I do find it probable that a landlord might provide money to a tenant for disposal of items if he felt some responsibility to the cause for the need for disposal.

While the landlord asserts that he has never had any other complaints about this rental unit or the neighbouring (duplex) tenant he has failed to provide any corroborating evidence of his claim, in the form of affidavits or witness testimony.

I find, also, the letter from the local health authourity Environmental Health Officer submitted by the tenants provides sufficient concern that the occupancy of the residential property was questionable.

Ultimately, and despite the recommendations of the health authority, the landlord has failed to provide any evidence, supporting his assertion that the rental unit was suitable for occupation.

In essence, I find the landlord has provided testimony that questions only my finding in the original hearing that the unit was unsuitable for occupancy but has provided no evidence or testimony to dispute the evidence provided by the tenants in the original hearing or in the evidence package provided for this hearing.

Conclusion

Based on the above, I find the landlord's testimony to be unreliable and has provided no basis on which the decision or order should be set aside or varied. I therefore confirm the decision and order issued on April 1, 2011.

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 28, 2011.

Residential Tenancy Branch