



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. An agent for the landlord and both tenants participated in the conference call hearing.

Preliminary Issue

The tenants requested an adjournment of the hearing on the basis that they did not receive notice of the hearing until two weeks before the hearing, and they had evidence that they wished to submit.

The landlord stated that they sent the hearing package by registered mail to the forwarding address that the female tenant provided, and five days later the tenant left a voice message for the landlord indicating that she was aware of the package.

The female tenant stated that the landlord contacted her and asked for an address where they could send the security deposit, and the tenant gave the landlord her mother's address as a forwarding address. The female tenant stated that because she is not on good terms with her mother, she did not pick up the hearing package until mid-June. Upon receiving notice of the landlord's claim, the tenants did not contact the Residential Tenancy Branch or submit any evidence.

I determined that the landlord had complied with service requirements under the Act, and I denied the tenants' request for an adjournment. I informed the tenants that I would hear their testimony and consider it in reaching my decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on February 1, 2011. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$700. Rent in the amount of \$1400 was payable in advance on the first day of each month. In an addendum to the tenancy agreement, the landlord and tenants agreed that the tenants would pay no rent for the month of February 2011, in lieu of the tenants carrying out cleaning and repairs,

and purchasing a fridge and stove for the rental unit. The tenants vacated the rental unit in April 2011.

The landlord has claimed the following monetary compensation:

- 1) \$1250 for February 2011 rent – the tenants did not complete all of the cleaning and repairs that they were to carry out in lieu of rent for the month of February 2011. The landlord gave the tenants a credit of \$150 for purchase of a washer and dryer for the rental unit.
- 2) \$700 for damages – tenants left many items in disrepair and dirty when they vacated. The landlord did not provide a breakdown of the cost for each item claimed; nor did they provide receipts or photographs of the damaged or dirty items.
- 3) \$800 for lost revenue for the lower rental unit – the tenants caused the tenant in the lower rental unit to move out because of the tenants' excessive noise and other inappropriate behaviour on several occasions. The landlord was unable to re-rent the lower rental unit after that tenant moved out, and therefore the landlord suffered a loss of revenue for the lower rental unit.

The response of the tenants was as follows.

The tenants carried out all of the work that was set out in the addendum entitling them to free rent for February 2011. The addendum required that the tenants purchase a fridge and stove, which they did, not a washer and dryer as the landlord has claimed. The rental unit was in extremely poor repair at the outset of the tenancy because the previous tenant had left the unit in that condition.

The tenants improved the condition of the rental unit during their tenancy, and the landlord was not going to do any repairs. She was renting the unit to the tenants "as is." The landlord did not provide any photographs to support their claim.

The tenant in the lower unit was the one at fault, and the landlord told the tenants that she was kicking out the guys downstairs because of all the problems they caused. The tenant denied playing loud music or making noise late at night, as she has young children and she does not "do parties."

The tenants denied the landlord's claim in its entirety.

Analysis

In considering all of the evidence, I find as follows.

The landlord did not provide sufficient evidence to establish the condition of the rental unit at the outset of the tenancy or the end of the tenancy. The landlord did not provide sufficient detail regarding the alleged damages or receipts for repairs or cleaning. I therefore find the landlord is not entitled to recovery of rent for February 2011 or any amount for cleaning or repairs after the tenancy ended.

In regard to the claim for lost revenue for the downstairs unit, I find that it was open to the landlord to serve the tenants with a notice to end tenancy for cause, but the landlord chose not to do so. The landlord did not provide evidence that the tenants were responsible for the landlord's loss of revenue for the downstairs unit.

The landlord is not entitled to any of the amounts claimed.

As the landlord's claim was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The landlord's application is dismissed.

The landlord must return the security deposit to the tenants. I grant the tenants an order under section 67 for the balance due of \$700. This order may be filed in the Small Claims Court and enforced 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: July 15, 2011.

Residential Tenancy Branch