



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order for compensation under the Act or tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing, the Agent for the Landlord requested an adjournment as two participants for the Landlord were unable to attend due to a death in the family. The Tenants would not agree to an adjournment. The parties had been involved in an earlier hearing under a different file number, which concluded on January 19, 2011 (the "First Hearing"). The Agent for the Landlord had represented the Landlord at the First Hearing, and therefore, I find the Landlord was represented at the hearing and an adjournment was not granted.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation under the Act or tenancy agreement?

Background and Evidence

The Tenants are claiming that in the First Hearing the security deposit should have been doubled as a penalty against the Landlord.

In the First Hearing the Dispute Resolution Officer ordered the Landlord to pay the Tenants the security deposit and interest. In this case, the Tenants are claiming that the security deposit should have been doubled and request the difference.

The Tenants further claim that they should have not paid the last month of rent for the tenancy, which ended on August 31, 2010, according to the First Hearing decision.

The male Tenant initially testified that the reason the tenancy ended was because their employment with the Landlord was terminated and they voluntarily moved out. The female Tenant testified that that the Landlord renovated the rental unit after they left and before the new caretaker moved in. The Tenants claim the guidebook for the Act states they were entitled to a full month of rent, and should not have paid the August rent.

The Tenants submitted in evidence a copy of the 10 day Notice to End Tenancy for unpaid rent. The Tenants testified they did not pay rent on the first day of August 2010, because they wanted to get clarification from the branch as to whether or not they had to pay rent for August of 2010. The Tenants argue that since the Landlord renovated the rental unit at the end of their tenancy they should have received a free month of rent for August 2010, according to the guidebook. The male Tenant testified they had also received a two month Notice to End Tenancy, however, he did not think it was necessary to submit it in evidence.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Tenants' Application must be dismissed without leave to reapply.

The security deposit issue was dealt with in the First Hearing. Under the law, I have no authority to change that decision from the First Hearing, unless it is under an application for Review, or upon return from Judicial Review in the Supreme Court of British Columbia. If the Tenants were unhappy with the outcome of the First Hearing, they should have filed for a Review, or applied for a Judicial Review in Supreme Court. They failed to do this and the time limit to apply for a Review under the Act expired several months ago.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Tenants, have the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or

Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The Tenants had insufficient evidence they were given a two month Notice to End Tenancy by the Landlord, entitling them to one month of free rent. Therefore, they were unable to prove that damage or loss occurred, or that the Landlord had breached the tenancy agreement or the *Act* by failing to provide them with a free month of rent.

A dispute resolution hearing is a formal, legal proceeding. Parties are expected to prepare the evidence they will rely on during the hearing and submit all of their evidence prior to the hearing, in order to avoid multiple applications and hearings.

For the above reasons, I dismiss the Application of the Tenants without leave to reapply.

This decision is final and binding on the parties, except as otherwise provided for under the *Act*, and 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 26, 2011.

Residential Tenancy Branch