



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order for unpaid rent and for money owed or compensation for damage or loss, an order to keep all or part of the security deposit, and to recover the filing fee for the Application.

The landlord's agent and the listed tenant and his wife appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I note that although the tenant's wife was not listed on the application, the tenancy agreement names the wife as a tenant. The wife testified for the tenants due to her greater fluency in the English language.

Issue(s) to be Decided

Have the tenants breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an order for monetary relief?

Background and Evidence

This one year, fixed term tenancy began on October 3, 2009, and ended on October 7, 2010, when the tenants vacated the rental unit. Monthly rent was \$1,250.00 and the tenants paid a security deposit of \$625.00 on October 2, 2009.

The landlords' monetary claim is in the amount of \$1,676.80, which includes unpaid rent and late fee for October 2010 for \$1,275.00, fines and moving fees from the strata in the amount of \$170.00, cleaning for \$165.00, light bulb replacements for \$16.80 and the filing fee of \$50.00.

The landlord submitted a copy of the tenancy agreement, a form K Notice of Tenant's Responsibilities, addendum to the lease, statement of a security deposit, a condition inspection report, notice from and invoices to the strata of a \$100.00 move out fee and \$70.00 for a premises violation, and a paid invoice to a cleaner.

In support of their application, the landlord testified that the tenants abandoned the suite without notice, which the landlord did not discover until the rent for October was not

paid. The landlord issued a 24 hour notice and entered the rental unit on October 7, 2010, finding the rental unit abandoned and in need of cleaning.

There was a move out inspection report, but the tenants were not in attendance as they had vacated the rental unit and left no forwarding address, according the landlord.

The landlord stated that the tenants caused strata bylaw fines for not paying the move out fee of \$100.00, as required in the tenancy agreement addendum, and for having an unauthorized party in the clubhouse, which resulted in a fine of \$70.00. The landlord has paid the fines.

The landlord hired a collection agency to address the outstanding debt, with no success, which is why, according to the landlord, the tenants finally made contact with the landlord to submit a demand letter.

In response, the tenants submitted that they were forced to move out of the rental unit due to dangerous chemical smells coming from an unknown source within the residential complex. The tenants stated that even when they were cleared to return to the rental unit by the city, they could not stay there as the chemical smells affected their health and enjoyment of the rental unit.

The tenant submitted that they attempted to contact the landlord multiple times to discuss their move out, but the landlord did not respond.

The tenants submit they informed the landlord of their intent to vacate in a letter dated September 28, 2010. The tenants wanted the matter of the collection company actions addressed, but were informed this was not the proper forum to deal with private collection efforts of the landlord.

In response, the landlord testified that the tenants' notice to vacate, dated September 28, 2010, contained in the tenant's evidence was backdated and false, that the first time he heard from the tenants was in the April 4, 2011, demand letter for a return of their security deposit. The landlord stated this prompted the application on April 5, 2011, as it was the first time he knew of the tenants' forwarding address.

Additionally, the landlord stated that around the time frame of the end of September, the tenants called twice, which he attempted to return their phone call. However, the tenants did not answer.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

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.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Section 45 (2) of the Residential Tenancy Act requires a tenant to give notice to end fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

Based on the testimony and evidence and a balance of probabilities, I find that the tenants failed to comply with the Act by providing insufficient notice to the landlord of their intent to vacate, which caused the landlord to incur a loss of rent and late fee for October 2010. I therefore find that the landlords have established a claim for **\$1,275.00** in lost rent and late fee for October 2010.

I find the landlord submitted sufficient testimony and documentary evidence that they were required to pay a fine and move out fee charged by the strata, which the tenants were obligated to pay by virtue of their signature on the Notice of Tenant's Responsibilities. I therefore find the landlords have suffered a loss and established their claim for a move out fee and fine for unauthorized use of the clubhouse, in the amount of **\$170.00**.

I find on a balance of probabilities that the tenants left the rental unit in a condition that required cleaning and that the landlords were quite reasonable in their assessed costs to clean the rental unit. I therefore find the landlords have established a monetary claim for **\$165.00**.

I find the landlords have provided deficient and inconclusive evidence to support their claim for light bulb replacements, and I **dismiss** their claim for **\$16.80**.

As the landlords were primarily successful in their application, I award them the filing fee of \$50.00.

I therefore find the landlords have established a **monetary claim** of **\$1,660.00**, comprised of unpaid rent and late fee for October 2010, for \$1,275.00, strata fee and fine of \$170.00, cleaning costs of \$165.00 and the filing fee of \$50.00.

I find the landlords made an application to retain the security deposit within fifteen days of receiving the tenants' forwarding address. Therefore, at the landlords' request, I **order** that the landlords retain the security deposit of \$625.00 in partial satisfaction of the claim and I **grant** the landlords an order under section 67 for the balance due of **\$1,035.00**.

I am enclosing a monetary order for **\$1,035.00** with the landlords' Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court (Small Claims) should the tenants fail to comply with this monetary order.

Conclusion

The landlords are granted a monetary order of \$1,035.00.

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 19, 2011.

Residential Tenancy Branch