



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for \$2100.00 and for recovery of the \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$3264.40, and for recovery of the \$50.00 filing fee

Background and Evidence

The tenant testified that:

- On May 1, 2011 he answered an ad for a one-bedroom suite for rent for \$1000.00 per month, and he made arrangements and went and viewed the suite.
- The person who showed the suite to him was actually the tenant, however the tenant told him he would pass on his name and number to the landlord.
- The landlord contacted him on May 4 and at that time the landlord informed him that there was a suite with the same layout available that was even better than the one he had viewed.
- He was informed that they were unable to view the suite however because the present tenants were being difficult.
- With the assurance that the suite was better than the suite I had viewed I agreed to sign a tenancy agreement with the tenancy beginning June 1, 2011, and at that time I paid \$1000.00 to the landlord to cover both my security deposit and pet deposit.
- May 31, 2011 the landlord contacted me and said the previous tenants had vacated the unit and we agreed to meet on June 1, 2011 to do the move in inspection.
- On June 1, 2011 when we entered the suite the suite was in terrible condition. There was a strong smoke odor, there were 18 cigarette burns in the carpet, the carpets were filthy, the rental unit was filthy and stunk, there were cracks in the drywall, and other holes in drywall damage throughout. The fridge handle was broken and tar and grease were abundant throughout the suite.
- The suite was not fit to move into however the landlord was insistent that he would cleaned and fix the damage once I would moved in and therefore I signed the move in inspection report, paid the first month rent and move-in fee; however I was in shock and so after the landlord left I took pictures of the suite.
- I was not sure what to do because I needed to be out of my rental unit and therefore I spoke to my mother who put me in touch with a person who had been a property manager. She informed me that if the suite was not fit to move in I should not do so.

- I therefore informed the landlord on June 2, 2011 that I would not be taking the suite as I felt it was not in any condition to be lived in.

Witness for the tenant testified that:

- The tenant asked him to view the suite with him on June 1, 2011 and upon entering the suite he found the following:
 - There was an extremely bad smell that smelled like a combination of smoke, mildew, and rot
 - This suite was extremely filthy and stinky.
 - There is a strong smell of urine in the bathroom and the bathroom was also very dirty, with even some dried shit in the toilet.
 - There was debris all over the rental unit and dried food around the taps.
 - There was grease all over the stove and oven, and they were both very dirty.
 - The fridge had dried food stuff on the racks and in the freezer and it smelled very ugly.
 - The baseboard heaters had something on them that he assumed was dust however when he touched it, it turned out to be a thick layer of grease.
 - The carpets had dozens of cigarette burns, bleach marks, and what looked like dried dog feces.
 - The drywall was cracked and damaged and had some kind of poorly done patching in numerous areas.
 - All the windows were filthy and the bedroom window sill had some black stuff in it that looked like it was rotting.
 - There were dozens of tack or pinholes in the walls.
 - The toilet seat was loose and only attached on one side and there was no top lid on the toilet.
 - The toilet paper dispenser was loose and falling off the wall.

- There was water damage to the walls that had been poorly patched.
- The rental unit was not in any condition to have someone living in it.

The tenant therefore requests that since this suite was not in any condition to be inhabited, the landlord should return his \$500.00 security deposit, his \$500.00 pet deposit, his \$1000.00 rent payment, and his \$100.00 move-in fee. He also requests recovery of his \$50.00 filing fee.

The landlord testified that:

- He agrees that the rental unit was in need of cleaning and some repairs on June 1, 2011; however at that time the tenant had informed him he did not need to be out of his previous rental unit right away, and probably would not be moving in until June 10-15.
- He assured the tenant that the rental unit would be cleaned and repaired as soon as possible, and at that time the tenant raised no concerns.
- The tenant even signed the move in inspection report which stated that the cleaning and repairs would be done and that a new inspection would be done once that work was completed.
- He even visited the tenant at his previous residence, and the tenant had not yet started packing, and therefore he does not believe there was any urgency to be in the rental unit right away.
- As a result of the tenant breaching the tenancy agreement he suffered significant losses and believes that not only should he be allowed to keep the June 2011 rent payment and the move-in fee, the tenant should also be held liable for losses as follows:

lost rental revenue for July 2011	\$1000.00
Referral fee paid to real estate company	\$1114.40
Lost revenue due to lower rent of \$5.00 per month for 10 months	\$50.00

Filing fee	\$50.00
Total	\$2214.40

He further requests an order allowing him to keep the full security/pet deposit of \$1000.00 towards the claim and that a monetary order be issued for \$1214.40

Analysis

It is my decision that I find in favour of the tenant in this case.

The tenant signed a tenancy agreement with a start of tenancy date of June 1, 2011, and therefore the tenant should expect to be able to move into the rental unit on that date.

It's obvious from the testimony of the tenant, the tenants witness, and even the landlord that this rental unit was not fit for occupancy on June 1, 2011, and in fact after viewing the photo evidence and hearing the testimony of the condition of the rental unit I find it unlikely that the rental unit would have been ready for occupancy for quite some time.

The landlord claims that the tenant had informed him that he did not need to move in right away and would probably be moving in between the 10th and 15th of the month; however he has provided no evidence to support this claim, and the tenant denies ever making such a statement, and in fact testified that he was required to be out of his rental unit by June 1, 2011.

The landlord has unfortunately been put in a difficult position by the previous tenants of this rental unit who vacated the unit only one day prior, as it is obvious that the previous tenants left the rental unit in a very poor condition; however the new tenant cannot be expected to move into the rental unit that is left in such poor condition.

I therefore will not allow the landlords claim for compensation and will allow the full amount claimed by the tenant.

Conclusion

Landlord's application

The landlord's application is dismissed in full without leave to reapply.

Tenant's application

I have issued an order for the landlord to pay \$2150.00 to the tenant.

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: September 29, 2011.

Residential Tenancy Branch