



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damages, money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

The landlord and tenant TCF participated in the conference call hearing. Tenant ACR did not attend. Tenant ACR was provided with documents for this hearing by the Residential Tenancy Branch and I found that tenant ACR had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began October 2006 with monthly rent of \$2300.00 and the tenant TCF paid a security deposit of \$1150.00. In December 2010 the tenant TCF advised the landlord that their contract with the Ministry of Child and Family Development was ending and the contract being awarded to ACR. An agreement was reached between the landlord and tenant TCF whereby the tenant TCF would assign the lease for the property to ACR effective January 1, 2011. ACR took possession of the property December 14, 2010. To date ACR has not signed the 'Assignment of Lease' or signed a new lease agreement with the landlord.

The landlord testified that tenant ARC was refusing to sign the new lease agreement until the landlord had come to a resolution with tenant TCF regarding the landlord's claim for the repairs required to bring the property back to its original condition.

The landlord and tenant TCF both expressed concern that tenant ACR did not participate in this hearing and agree to take responsibility for all or any of the landlord's claim.

On December 15, 2011 an agent for the landlord, an agent for the tenant TCF, an agent for ACR and a contractor for the landlord completed a move-out inspection. During this inspection the landlord's agent noted significant alterations and damage throughout the property. The parties stated that the responsibility for returning the property back to its original condition was discussed but no agreement finalized.

Tenant TCF testified that they were responsible for the modifications to the property but that as part of the new lease assignment tenant ACR was taking over use of and assuming all responsibility for the modifications. Tenant TCF stated that the modifications to the property were necessary to protect the at needs children who resided and are cared for on site. Tenant TCF stated that in an effort to make the transition seamless for the children who reside on the property, no changes were made to the rental unit including the TCF on-site staff that were transferred to tenant ACR. Tenant TCF maintained that tenant ACR clearly understood that the responsibility for repairs would fall to them at the end of their tenancy.

The landlord in this claim is seeking \$15,000.00 for the cost of repairs to the rental unit for the following;

- Drywall repair in most rooms in the house as occupants had damaged walls and attached pads to the walls.
- Ceilings in every room require repair due to the security camera equipment that was installed and hardwired
- Ceiling tiles will require replacement due to sink overflow
- Doors damaged, door frames damaged
- All kitchen and bathroom cabinets and closets have had locks installed, all cabinets will all have to be replaced
- Plumbing repairs required and plumbing fixtures changed
- Repaint entire residence after repairs are complete
- Replace missing items such as door bell chime and fixture, chandelier lighting, toilets, screen doors, window screens, windows

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for damages. The landlord at this time has not suffered a financial loss in regards to the repairs required for the property and until such time as the landlord has possession of the rental unit to complete the required repairs, the landlord will not be able to move forward with their claim.

While both parties were hoping that tenant ACR would assume some responsibility for the repairs to the rental unit that will ultimately be required, the repairs referred to in this

application will be required as a result of modifications done to the rental unit by tenant TCF. However when the tenancy with tenant ACR ends and move-out inspections completed, the landlord may at that time find that they have grounds to proceed with a claim against both tenants.

The landlord understands that they have two (2) years after the date which the tenancy with tenant TCF ended to proceed with this claim for damages.

Residential Tenancy Act Section 60 Latest time application for dispute resolution can be made

(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

The landlord's application is dismissed in its entirety with leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's application is dismissed in its entirety with leave to reapply.

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 27, 2011.

Residential Tenancy Branch