



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee?

Background and Evidence

The parties agree that they had a verbal tenancy agreement which commenced on July 01, 2011, with a monthly rent of \$1,250.00 due on the first of the month for the furnished rental unit. The parties agree that Tenant paid rent for July and August 2011 for a total amount of \$2,500.00. The parties also agree that the Tenant did not move into the rental unit until August 18, 2011 and entered into the tenancy agreement without viewing the rental unit. The parties also agree that no damage deposit was required or received for the rental unit. The parties also agree that the Tenant moved out of the rental unit by September 01, 2011 and the Landlord found another tenant to rent the place in September.

The Tenant testified that although he rented the place sight unseen, he was not satisfied with the cleanliness and the condition of the rental unit upon moving in. The Tenant stated that he thought the rental unit would look newer and be in beautiful condition. The Tenant states that he picked up the keys from the Landlord on August 18, 2011 and moved in. The Tenant states that on the evening of August 18, 2011 he contacted the Landlord to inform them that the unit was dirty. He states that the

Landlord came the next day and did a verbal move in inspection with him and hired and paid for a cleaner to come to the rental unit that same day. The Tenant states that the place was so dirty it took the cleaner several hours to clean it. The Tenant states that he had his girlfriend and his family staying with him and they were disgusted by the condition of the rental unit.

The Tenant stated that upon closer inspection of the rental unit, he discovered that there were several other issues that he wanted the Landlord to rectify. The Tenant stated there were a number of issues, but he was particularly dissatisfied with the caulking around the shower and bathtub which looked mouldy, a stain on the bathroom floor from an old bathmat that the cleaner could not get out, the fridge was not working properly and was not frost free, the stove had a broken element and the oven was too dirty to be used even after cleaning.

The Tenant, with his father assisting him, had a teleconference with the Landlord on August 20, 2011, where he further informed the Landlord of his dissatisfaction with all of the issues after moving in and he requested that the Landlord reduce the rent to \$1,000.00 per month, remedy the caulking and stain in the bathroom, and replace the appliances or else the tenancy would not continue. The Tenant states that the Landlord refused to lower the rent. The Tenant states that he let the Landlord know that he would be moving out. The Tenant states that he found another place nearby for \$1,180 per month. The Tenant states that he wheeled his belongings to his new place in a shopping cart and was out of the rental unit by September 01, 2011.

The Landlord testified that they were completing everything the Tenant requested and that the Tenant did not allow them reasonable time to rectify the issues and demanded a rent reduction to \$1,000.00 per month for the tenancy to continue. The Landlord stated that when they entered into the tenancy agreement with the Tenant at the end of June 2011, he already negotiated with them for a lower rent. The rental unit was advertised for \$1,350.00, however the Tenant convinced the Landlord to rent the unit to him for \$1,250.00 per month and to not pay a damage deposit. The Landlord stated that the Tenant had led them to believe that he would be a long term renter, however they acknowledged that no written lease agreement was signed.

The Landlord states that they had a teleconference with the Tenant and his father on August 20, 2011 and advised the Tenant that they are working on rectifying all of the complaints he had with regards to the rental unit, but that they would not reduce the rent further. The Landlord stated that the Tenant's response was that he would be moving out. The Landlord states that the Tenant did not provide them proper notice and did not pay further rent. The Landlord states that the Tenant held a large party at the rental unit

on the night of August 20, 2011 and that the strata had to call security to deal with it. The Landlord received a formal letter of complaint from the building strata council and a copy was provided to the Tenant as well. The Landlord stated they have not filed an application for dispute. The Landlord states that they resolved all of issues the Tenant had complained about in the rental unit including buying brand new appliances for the rental unit by September 2011, however, the Tenant moved out before he saw all of the work to completion. The Landlord's position is that the Tenant is not owed any compensation under the Act, regulation, or tenancy agreement.

The Tenant agrees that the Landlord was rectifying his complaints, however, he states that he lost faith in the Landlord and that because the Landlord would not reduce the rent he felt he had no choice but to move out. The Tenant stated that he had guests over for a party on August 20th and that some of them stayed the night, but that they lowered the noise when they received a complaint from the building. The Tenant states that his guests also thought the apartment was in poor condition. The Tenant stated that he felt the Landlord had frustrated their contract and he referenced section 32 of the Act stating that the Landlord failed to provide a rental unit that was suitable for occupancy, and section 16 of the Act that states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into. The Tenant is seeking return of his July and August rent in the total amount of \$2,500.00 as compensation for damages and losses in relation to this tenancy.

Analysis

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

The Tenant is incorrect in stating that the contract between the parties was frustrated by the Landlord. The test for frustration of contract is very high and mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

As for whether the Landlord contravened section 32 to the Act, I find that this is not the case. The rental unit was suitable for occupancy, although it was not as clean or as new as the Tenant would have liked. The Tenant's overriding opinion was that the rental unit was too expensive for the condition and age of the unit, even though the Landlord was prepared to do everything the Tenant asked the Landlord to do, within a reasonable time frame.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have the Landlord (Respondent) pay for the loss, the Tenant (Applicant) must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and
- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant did not prove that rental unit was uninhabitable or that he had any losses or incurred any costs while he was waiting for the rental unit to be cleaned and fixed. The Tenant resided in the rental unit until the beginning of September 2011, and did not stay in a hotel or elsewhere. The Tenant held a party and had guests stay with him in the rental unit, despite his alleged dissatisfaction with it. The Tenant found a cheaper place to live and failed to provide sufficient Notice to the Landlord that he would be vacating the rental unit.

I find that the Tenant is not entitled to any compensation for losses or damages under the Act, regulation or tenancy agreement. As a result the Tenant's claim is dismissed.

Conclusion

The Tenant's claim is dismissed.

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: December 02, 2011.

Residential Tenancy Branch