



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

At the outset of the Hearing, the Landlord objected to the evidence of the Tenants filed on November 8, 2011 and served on only one of the Landlords. The Landlord states that although he and the other Landlord live at the same address and although the Landlord has reviewed the evidence served, that on principle since it was not served on the other Landlord the evidence should be disallowed. Given that the Landlord, who was served, has reviewed the evidence and is in attendance at the hearing, and given that the Landlords live together and were informed of the evidence, I find that there is no prejudice to the Landlord in relation to no service on the other Landlord. I therefore dismiss the Landlord’s request.

The Landlord also objected to a Witness proposed by the Tenants at the Hearing. The Landlord states that he had no prior knowledge that a Witness would be called and therefore, in not being able to prepare for this witness’s evidence, the Landlord would

be prejudiced. The Tenants submit that the Witness is being called to offer evidence of conversations between the Landlord and Tenants prior to the signing of the tenancy agreement. As the Tenant's are both in attendance and are able to provide direct evidence on this matter and given the possible prejudice to the Landlord in not having the opportunity to be prepared for this Witness, I find that the Landlord is entitled to his objection and I disallow the Witness.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on November 1, 2010 on a fixed term to November 1, 2011 with the option following of a month-to-month tenancy. In background information submitted by the Landlord, the Landlord states that in discussion leading up to the signing of the tenancy agreement, the Tenants requested a long-term tenancy with the option of extending the tenancy if the Tenants liked their stay at the unit. The Tenants gave notice and ended the tenancy on July 31, 2011. Rent in the amount of \$1,400.00 was payable on a monthly basis and at the beginning of the tenancy the Landlord collected a security deposit in the amount of \$700.00 and a pet deposit in the amount of \$700.00. The Parties conducted both a move-in and move-out condition inspection and the reports have been submitted as evidence.

The Landlord states that because of the Tenant's ending of the fixed term tenancy, the Landlord lost rental income for three months. The Landlord states that he received the Tenant's notice to end the tenancy while he was out of the country. The Landlord states that he arrived back in the country on July 8, 2011 and commenced advertising for the unit on July 22, 2011 with a second advertisement on August 29, 2011. The Landlord states that he only had authority from the Strata to rent the unit to November 2011 and that since the unit could only be rented for a short time, the Landlord was unable to find new tenants. The Landlord confirms that the unit was listed for sale in January 2011 and sold in October 2011. It is noted in a letter from the Strata to the Landlord, dated

September 27, 2010, that the Strata granted the Landlord the right to rent the unit for a period of 13 months “while the unit is on the market.” The letter further indicates that the Landlord may make application for further extension of the rental period and that documents should include proof that the unit has been listed during the rental period.

The Tenants submit that when they first discussed the tenancy with the Landlord, they informed the Landlord that they wanted a two-year tenancy and a quiet place from which to work as both Tenants worked at home. The Tenant's state that they were not aware that the unit had been for sale prior to their tenancy or that the Landlord was planning to sell the unit during their tenancy. The Tenants submit that the the Landlord was aware of the Tenant's requirements for a tenancy and did not inform the Tenants that the unit was going to be sold with frequent viewings required. The Tenants submit that had they been aware of the planned sale of the unit, they would not have rented the unit and that in withholding this information, the Landlord fraudulently misrepresenting the tenancy. It is noted that an email from the Landlord to the Tenants, dated March 13, 2011, submitted as evidence by the Tenants, the Landlord indicates that had information of the sale of the unit been provided to prospective tenants, his ability to rent the unit would be reduced. The Landlord further indicates that he withheld the sale information from the Tenants at the time of the tenancy agreement based on “buyers beware”.

The Tenant's state that although they agreed to a schedule for showing the unit, that these showings became intrusive and that over the months since January 2011, the Landlord and his Real Estate agent pressured the Tenants to allow a greater amount of time for showing. The Tenants state that the Landlord also had showings on a couple of occasions with only a few hours notice. The Tenant's submit that they attempted to cooperate with the showing schedule but could not tolerate the constant interruptions to their work schedule. The Tenants submit that these showings breached their right to quiet enjoyment of the unit and that this is a breach of a material term of the tenancy that is so oppressive that the Landlord's breach voided the entire tenancy agreement and the Tenants had no other choice but to end the tenancy.

The Landlord states that at move-out the Tenants failed to clean the bathroom sink and tub, window tracks, oven, under the fridge, the fireplace and balcony floor. The Landlord claims the amount of \$160.00 for this cleaning. The Tenants dispute the amount claimed as excessive and state the following: the windows were dirty at move-in and were not noted as dirty on the move-out report; the balcony was not noted on the move-out report as dirty. The self-cleaning oven was not fully cleaned at move-in and was cleaned at move-out. The Tenants state that the fireplace was gas and no cleaning was required. The Landlord provided photos of the unit and it is noted that the gas fireplace is dusty and the oven is clean.

The Landlord states that the Tenants left a chip in the hardwood floor and claim the amount of \$100.00 for depreciation of the floor's value that the Landlord states was new four years ago and cost approximately \$6,000.00. The Tenant does not dispute that the chip was caused by the Tenants but disputes the amount, as the Landlord has not provided written evidence of cost.

The Landlord states that the Tenants left a note of "issues" on their fridge that was seen during an inspection by purchasers who had made an offer on the unit. The Landlord submits in documentary evidence that the purchasers were scared away and that the sale was not completed as a result. At the Hearing, the Landlord stated that this note did not necessarily cause the sale to end as the Purchasers did not tell the Landlord why the sale was rejected but that this was the implication of the note. The Tenants state that the note had nothing to do with the unit as it referred to issues with other houses being considered by the Tenants for their own purchase. Further, the Tenants state that during the inspection with the Purchasers nobody asked the Tenants about the note. The Landlord claims the amount of \$90.00 in compensation for the loss in relation to the sale of the unit.

The Landlord states that because of the Tenants ending the fixed term tenancy early, the Landlord incurred administrative costs associated with finding new tenants and claims the amount of \$100.00.

Analysis

Black's law dictionary defines misrepresentation as "Any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. A "misrepresentation" which justifies the rescission of a contract, is a false statement of a substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead."

Given the undisputed evidence that the Tenants were looking for a long-term tenancy, I find that by entering into a one-year tenancy, with the option, at the Tenant's choice, of extending the tenancy beyond that year, the Landlord led the Tenants to believe that the tenancy would be long term. Given the letter from the Strata, I find that the Landlord knew that the unit was required to be on sale for the length of the tenancy or that the Landlord intended to have the unit on sale during the tenancy. Given the Landlord's email, dated March 1, 2011, I find that the Landlord knew or should have known that the Tenants would reject the tenancy under the condition of sale.

As the Landlord knowingly failed to disclose the sale of the unit to the Tenants, I find on a balance of probabilities, that the Landlord misrepresented a material understanding of the tenancy with the intention of misleading the Tenants into accepting the tenancy and that rescission of the tenancy agreement is therefore justified. As the tenancy agreement is rescinded, I dismiss the Landlord's claim for lost rental income.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Considering the photo of the Landlord, I find that the Landlord has established on a balance of probabilities that some light

cleaning of the unit was required. I find however, given the self-cleaning option with the oven, that the level of cleaning was so minimal that an award is not merited.

Given the undisputed evidence of the Parties that the Tenants caused the floor to be damaged and finding the amount claimed by the Landlord to be a very reasonable estimate of depreciation to the floor, I find that the Landlord is entitled to the amount of **\$100.00**.

Section 7 of the Act provides as follows: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However where there is a breach, the person claiming the breach must show that the responding party breached a duty of care owed to the person and that the loss claimed was a foreseeable result of the wrong.

I do not find that the evidence supports a loss in relation to the Tenant's note on the fridge. The connection between the note and the loss of the sale is too remote and tenuous to make a finding on a balance of probabilities that the Landlord suffered a loss due to the note. I therefore dismiss this part of the Landlord's claim.

Given the above rescission of the tenancy agreement, I dismiss the Landlord's claim for administrative costs arising from the ending of the tenancy.

The Landlord is entitled to the amount of \$100.00. Given that Landlord's claim beyond this amount was otherwise without merit, I decline to make an award in relation to recovery of the filing fee. I find that the Landlord is entitled to retain the amount of \$100.00 from the security deposit plus interest in the amount of \$1,400.00. This leaves the amount of \$1,300.00 due to the Tenants and I order the Landlord to return this amount forthwith.

Conclusion

I order that the Landlord retain the amount of \$100.00 from the **deposit** and interest of \$1,400.00 in satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for the balance due of **\$1,300.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 5, 2011.

Residential Tenancy Branch