



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, RP, ERP, FF

Introduction

This hearing was scheduled to deal with the tenants' application for compensation for damage or loss under the Act, regulations or tenancy agreement; return of the security deposit; and for Orders to the landlords for compliance with the Act, regulations or tenancy agreement; repairs and emergency repairs. Neither of the two named landlords appeared at the hearing.

Preliminary Issue(s)

The tenants submitted that when the tenancy agreement was signed the landlords used a property manager and the tenancy agreement reflects the property management company as the landlords; however, since then the owner advised the tenants the property manager was no longer acting on behalf of the owners. The tenants were provided an address by the female landlord to send mail to the owners in Alberta. The tenants have no other service address for the landlords. The tenants used that address for purposes of serving the landlords with the hearing documents.

The tenants sent the hearing package to the landlord by registered mail on December 2, 2011. The tenants sent their evidence package to the landlord by registered mail on December 7, 2011. The tenants provided copies of the registered mail receipts, including tracking numbers. The receipts indicate the registered mail was addressed to the female landlord. The tenants testified that they tracked the numbers which showed the female landlord picked up the evidence package on December 12, 2011 but the other package is still waiting to be claimed at the post office.

Section 89 of the Act requires that each respondent must be served with the hearing package at the address of residence or the address where the landlord carries on business as a landlord. Section 90 of the Act deems a party to be served five days after mailing even if the registered mail is unclaimed. Although the tenants named two landlords in their application I found that only the female landlord was sufficiently served with notification of this hearing. Accordingly, this decision was amended to name the

female landlord as the only respondent and I proceeded to consider the tenants' application without the landlord present.

Issue(s) to be Decided

1. Are the tenants entitled to monetary compensation for damage or loss under the Act, regulations or tenancy agreement?
2. Are the tenants entitled to return of their security deposit?
3. Is it necessary to issue orders for compliance with the Act, regulations or tenancy agreement against the landlord?
4. Is it necessary to issue orders to the landlord for repairs or emergency repairs?

Background and Evidence

The tenants testified that their tenancy commenced May 1, 2011 and is for a fixed term set to expire March 31, 2012. The tenants are required to pay rent of \$1,650.00 on the 1st day of every month and paid an \$825.00 security deposit.

On November 30, 2011 City by-law inspectors attended the property and conducted an inspection. The inspectors informed the tenants that there were significant alterations to the building, including structural, plumbing and electrical, done without permits and that there was no Occupancy Permit issued. The inspectors informed the tenants that due to the significance of the alterations the walls would have to be opened up and a Do Not Occupy notice would likely be posted on the building in approximately 30 days. Due to electrical safety concerns, the City inspectors also ensured a working smoke detector was in place in the unit. In the past two weeks there have been 11 people from the city attend the property for purposes of inspecting the property.

The tenants contacted their insurance carrier and learned that without an Occupancy Permit their insurance policy may not be valid.

As the tenants have a large family they started to look for alternative living accommodation and have found one effective January 15, 2012. The tenants are seeking authority to end their fixed term tenancy effective January 15, 2012 without consequence of breaching the fixed term tenancy agreement or the Act. The tenants testified that they gave the landlord written notice of their intent to end the tenancy effective January 15, 2012 in the evidence package sent to the landlord for this proceeding.

The tenants stated that they are very concerned for their safety in the rental unit, especially concerns over electrical issues, and they want necessary steps to be taken to ensure it is safe during the remainder of their tenancy; however, the tenants are satisfied that the City inspectors are handling the issue of repairs and safety. Therefore, the tenants withdrew their request for repairs orders from the Residential Tenancy Branch.

The tenants acknowledged they have not paid rent for December 2011 and in their application they requested that they be authorized to withhold rent for December 2011 as compensation for having to move. The tenants acknowledged they have not yet incurred any moving costs but stated that had these issues not arisen they had intended to occupy the rental unit for 3 – 5 years.

The tenants are also seeking, as stated in their application and during the hearing, authorization to apply their security deposit to rent payable for January 1 – 15, 2012. The tenants explained the landlords are very difficult to get in contact with and that the landlords' actions such as unauthorized alterations to the building indicates to them that they will have a difficult time getting their security deposit back from the landlords.

Included in the tenants' evidence package was a copy of their notice to end tenancy dated December 7, 2011; registered mail receipts; and, building inspection reports issued by the city November 30, 2011.

Analysis

Section 44 of the Act provides for ways a tenancy ends. Section 44(1)(f) provides that a tenancy ends if the Director orders that it is ended. Upon review of the building inspection report, which confirms much of the tenants' testimony, I find the tenants' request to end the tenancy on a date earlier than the fixed term of the tenancy is reasonable in the circumstances. Based upon everything presented to me, I accept that the tenants have sufficient grounds to consider their health and safety in jeopardy as well as their right to insurance coverage. I find the tenants have acted reasonably in proceeding to secure another accommodation for their family and, therefore, I grant their request and **I ORDER that this tenancy shall end January 15, 2012.**

As I have ordered the tenancy shall end January 15, 2012 **I further order that the rent payable for January 2012 shall be one-half of the monthly rent.** The rent for January 2012 is set at \$825.00.

As I am satisfied that the tenants have given the landlords over 30 days of written notice that the tenants intend to end the tenancy January 15, 2012 due to the lack of an occupancy permit and in consideration my orders above, **I further order that the landlord may not pursue the tenants for any unpaid or loss of rent for any period of time after January 15, 2012.** However, if the tenants fail to vacate by January 15, 2012 the tenants may be held responsible for over-holding.

As the tenants have withdrawn their request for repair orders I make no such orders with this decision.

As the tenants have not incurred any damages or loss associated to moving from the rental unit I find their claim is anticipatory and premature. Accordingly, I do not award them any compensation, nor do I authorize them to withhold December 2011 rent. However, the tenants are granted leave to reapply for compensation if they wish to pursue damages or loss against the landlord.

I do not authorize the tenants to apply their security deposit to rent payable for January 2012 rent as the tenants have not yet paid rent for December 2011. However, **I do award the \$50.00 filing fee to the tenants and they are authorized to deduct this award to from their rent otherwise payable.**

In light of the above, the security deposit shall remain in trust for the tenants, to be administered in accordance with section 38 of the Act, unless the landlord provides written consent to the tenants that they may apply the security deposit to rent owed for January 2012. If the landlords fail to administer the security deposit in accordance with the Act after the tenancy ends, the tenants are at liberty to make another Application for Dispute Resolution seeking return of the security deposit, or double, if applicable.

Conclusion

The tenancy shall end January 15, 2012 by order of the Director. The landlords may not pursue the tenants for unpaid rent or loss of rent for the period after January 15, 2012. The tenants remain liable for rent for December 2011 in the full amount and rent payable for January 2012 is \$825.00. However, the tenants are authorized to deduct \$50.00 from rent otherwise payable to the landlord in order to recover the filing fee paid for this application.

The tenants' claim for compensation for damage or loss against the landlord is premature and has been dismissed with liberty to reapply. The tenants are not

authorized to apply the security deposit to January 2012 rent without written consent of the landlord.

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 16, 2011.

Residential Tenancy Branch