



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, FF, O

For the landlord – MNDC, FF, O

Introduction

This hearing was convened by way of conference call in repose to both Parties filing applications for Dispute Resolution. The tenant has applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord has also applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that they entered into a tenancy agreement for this rental unit. The tenancy agreement states that the tenancy starts on August 01, 2011. Rent for this unit was agreed at \$1,500.00 per month and it was agreed that rent is due on the first day of each month in advance. This was also agreed to be a fixed term tenancy with an end date of July 31, 2012.

The tenant testifies that they met with the landlord on July 28, 2011 and the tenant testifies it was agreed that they would pay half the rent on that day and the other half would be paid when they moved in to the unit on August 12, 2011. The tenant states as they were still residing at their previous unit they also agreed with the landlord that they would pay the security deposit for this unit on September 01, 2011 as they would be paying rent on both units throughout August.

The tenant testifies that there was still furniture, appliances and personal belongings in the rental unit which the landlord agreed to remove prior to their move in date. The tenant states she felt that by them agreeing to move into the unit on August 12, 2011 dispute paying rent from August 01, 2011 this would give the landlord ample time to remove these items. On August 10, 2011 the tenant states they met the landlord at the unit to sign the lease and pay the balance of the rent. The tenant testifies that the appliances, furniture and personal items were still in the unit. There were clothes in the closets, items in the kitchen cupboards and food in the fridge. The tenant testifies they could not move into the unit as agreed on August 12, 2011 as they would have had no where to put their belongings. The tenant has provided photographic evidence of these items in the rental unit. The tenant testifies they offered to move these items for the landlord and take them to the dump but the landlord refused their help. At this point there were household items in the basement, the master bedroom, the bathroom, the living room and the kitchen.

The tenant testifies she offered the landlord an alternative where she could change the move in date on the lease to September 01, 2011 to give her more time to remove these household items or cancel the agreement and find new tenants. The tenant states the landlord would not do either of these and wanted the agreement to remain in place despite not providing the rental unit in a condition fit for occupation.

The tenant states the landlord wrote to them on August 16, 2011 to inform them that they were still obligated to pay the rent on the basis of the fixed term agreement. This letter also states the landlord will have the cleaning done and the items removed as soon as possible and states that when the tenants agreed to rent the townhouse the tenants said it was fine with them if the cleaning and removal of these items were completed as the tenants started to move in. The tenant disputes this and states the landlord was supposed to have cleaned the unit and removed everything from it before August 12, 2011 when they agreed they would move in. The tenant states they paid half the rent from August 01, 2011 for a unit they could not move into.

The tenant states they were able to remain living at their previous rental unit up until the end of August, 2011 but had to move out at that time. As they had not found alternative accommodation they had to pay the sum of \$456.40 to store their belongings after their tenancy ended. The tenant seeks to recover this sum from the landlord and has provided a copy of the receipt for storage in evidence.

The tenant also seeks to recover the rent paid on July 28, 2011 of \$700.00 and states she was able to put a stop on the other rent checks. The tenant also seeks to recover her \$50.00 filing fee from the landlord.

The landlord testifies that the tenants told her that as they were paying rent on their old unit up to the end of August, 2011 that they would not be moving into her unit until September. The landlord also testifies that the tenants indicated that it would not be a problem and they could move in around the household items left in the unit. The

landlord testifies that the tenants asked to start the tenancy agreement for August 01, 2011. The landlord states as the tenants had indicated they were not moving in until later she had time to remove the rest of the previous tenants belongings and clean the unit. The landlord agrees the clothes in the closet belonged to her and she kept them there so she could get changed after she had cleaned the unit. The landlord states she was not living in the unit.

The landlord states had the tenants asked for a different move in date she would have cleaned and removed the previous tenants' belongings sooner. The landlord testifies she received a letter from the tenant on August 18, 2011 and states the tenant has indicated in this letter that they would not be moving into the rental unit. The landlord states because of this the tenants would be breaking the terms of their lease agreement. The landlord states the tenants first rent check for \$700.00 was stopped by the tenant but later returned to her after a complaint from her bank.

The landlord testifies that she has had to re-advertise the rental unit but to date it is still unrented. The landlord seeks to recover the costs associated with advertising the unit to the sum of \$207.645. The landlord also seeks to recover unpaid rent from August to December, 2011 of \$6,800.00. The landlord states as the tenants decided to end the tenancy before they paid their security deposit the landlord also seeks to recover the cost of the security deposit of \$750.00 from the tenants as according to the lease agreement they remain the tenants of the rental unit until the end of the fixed term or the unit is re-rented. The landlord also seeks to recover her \$100.00 filing fee from the tenants.

The tenant disputes the landlord's testimony and states they never informed the landlord that they would move in at the end of August. This was only mentioned when they asked the landlord to change the move in date to September 01, 2011 on the tenancy agreement due to the landlord's failure to ensure the rental unit was fit for occupation. The tenant states the landlord was always aware that the tenant and her family wanted to move in on August 12, 2011

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants application for the return of \$700.00 in rent; I have considered the evidence and verbal testimony. S. 32(1)(b) of the Act states that the landlord must provide and maintain residential property in a state of decoration and repair that

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

When a tenancy agreement is entered into which indicates the start date of the tenancy the landlord must ensure the unit is fit for occupation from this date. The landlord argues that the tenants were happy to move in later in the month to give her time to clean and remove belongings left by the previous tenants. The tenants argue that the landlord always knew they would put off moving into the unit until August 12, 2011 to give her time to clean and remove the household items from the unit. The tenants argue the landlord's letter dated August 16, 2011 shows the landlord had still not removed these items or cleaned the unit and did not give the tenants a date in which these items would be removed but simply stated as soon as possible.

When a verbal agreement is entered into I find it is impossible to determine the facts surrounding the agreement when one party disputes the other party's evidence. Consequently, I am led by the terms of the tenancy agreement which states the tenancy starts on August 01, 2011. By August 16, 2011 the unit was still not suitable for occupation by the tenant and her family and therefore it is my decision that the landlord has breached s. 32(1)(b) of the Act and the tenants were entitled to end the tenancy.

In light of this the tenants are entitled to recover rent paid of \$700.00 for August, 2011 and as the tenants incurred additional costs due to the unit not being made fit for occupation I find the tenants are also entitled to recover the sum of \$456.40 for storage costs while they found alternative accommodation. The tenant is therefore entitled to a Monetary Order to the sum of \$1,156.40 pursuant to s. 67 of the Act.

As the tenant has been successful with their claim I find the tenant is also entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the Act.

With regard to the landlords claim for unpaid rent due to the tenants ending the tenancy before the end of the fixed term; As I have determined that the landlord breached s. 32 (1)(b) of the Act I find the landlord is not entitled to recover unpaid rent as the tenants were entitled to end the tenancy. I further find the landlord must bear the cost of advertising the unit as the tenants are no longer responsible for any further costs associated with the tenancy.

It is also my decision that the landlord must bear the costs of filing her own application as she has been unsuccessful with her claim.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,206.40** comprised of rent, storage fees and filing fee. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords application is dismissed in its entirety without 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: December 06, 2011.

Residential Tenancy Branch