



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the Landlords for an order for an order of possession based on unpaid rent, monetary compensation for unpaid rent, for compensation arising from the Tenant breaking a fixed term lease early, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Both parties submitted evidence late and these late documents were not admitted in evidence.

The parties agreed that the Tenant had vacated the rental unit about the middle of December. Therefore, an order of possession is not longer an issue in this matter.

Issues(s) to be Decided

Did the Tenant breach the term lease, entitling the Landlords to the monetary compensation sought?

Background and Evidence

On or about October 8, 2011, the Tenant signed the tenancy agreement. The Landlord testified that the Tenant was at the rental unit when the agreement was signed. Rent was established at \$850.00 per month and the Tenant paid a security deposit of \$430.00.

The tenancy had a term of one year, from November 1, 2011, to October 31, 2012, following which it was to continue on a month to month basis.

The Tenant and the Landlords' Agent conducted an incoming condition inspection report on October 31, 2011, the day the Tenant began moving in.

The Tenant testified that she was not aware there was damage to the rental unit floor and stains from a flood in the apartment above the subject rental unit. She stated she had a quick look at the rental unit on the day she signed the tenancy agreement, however, she testified that the Landlord did not make her aware of the stained walls or floor damage when she was looking at the rental unit. She testified she became aware of this when the Landlords' Agent conducted the incoming inspection with her. The Tenant testified she still moved into the rental unit as she was anxious to get into her own rental unit.

The Tenant also testified that the rental unit had not been properly cleaned by the previous renter. She wrote the Landlords an email on November 4, 2011, and informed them it cost \$195.48 for cleaning supplies and her time to clean the unit. The Landlords agreed she could deduct that sum from one month of rent. She also mentions that the Landlords' Agent informed her that the Landlords were dealing with their insurance company to have the floors repaired and wall stains removed. The Tenant expressed her concern over mold under the floors and how long the repairs would take.

On or about November 9, 2011, a second flood occurred at the rental unit.

The Landlords quickly had a contractor attend the rental unit for repairs on this second flood. The Tenant testified she had to leave work several times in order to deal with the contractor conducting the remediation work. She testified she informed the Landlords that this was not her job and wanted them to arrange for the contractors to access the rental unit by themselves.

On or about November 30, 2011, the Tenant sent the Landlords an email notifying them she was vacating the rental unit on January 1, 2012.

An exchange of emails occurred regarding the December 2011 rent. The Landlords also asked the Tenant how she intended to fulfill her lease obligations. The Landlords informed the Tenant they would allow her to break the lease with two months notice.

The Tenant informed the Landlords they could keep the security deposit and the money owed for the cleaning, and the Tenant would pay the Landlords the balance for December rent. The Landlords sent the Tenant their banking information in order that the Tenant could direct deposit the balance of rent due. The Tenant did not pay any rent for December 2011.

The Landlords issued a 10 day Notice to End Tenancy for unpaid rent on December 3, 2011. The Tenant testified she vacated the rental unit on December 11, 2011.

The Tenant testified that she did not think the lease was binding as the Landlords had not told her about the damage and repairs required from the first flood.

The Landlord testified that the Tenant had plenty of time to look at the rental unit at the time she signed the lease inside the condo apartment. He further testified he had the Tenant deal with the contractors for her own convenience.

The Landlord testified that when the Tenant moved out she left a bit of a mess, but was very concerned about a hypodermic needle the Tenant left in the sink of the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant breached the Act and tenancy agreement by ending the tenancy contrary to the Act and agreement.

I find that the contract was a valid and binding fixed term tenancy agreement.

Under section 45 of the Act, the Tenant is not allowed to end a fixed term tenancy prior to the end of the term. If the Landlords had breached a material term of the tenancy agreement and the Tenant notified the Landlords of this breach and requested in writing that the Landlords correct the situation within a reasonable time, and it was not corrected by the Landlords, then the Tenant could have ended the tenancy early under section 45(3) of the Act. However, there was no evidence from the Tenant that she had complied with this portion of the Act. I find the Tenant breached the Act and tenancy agreement by unlawfully ending the tenancy.

I further find that the Landlords allowed the Tenant to end the fixed term tenancy with two months Notice. The Tenant did not provide the Landlords with this Notice.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenant have caused the Landlords to suffer a loss.

Therefore, I find the Landlords are entitled to the balance of rent due for December and for one month of lost rent due to the Tenant's breach.

Lastly, while the Tenant may feel she has suffered a loss due to the condition of the rental unit when she took possession that was not the Application before me. The Tenant may still apply for any losses she feels she may have suffered.

Conclusion

I find that the Landlords have established a total monetary claim of **\$1,124.52**, comprised of \$1,700.00 for the rent due for December and for one month of lost rent, and the \$50.00 fee paid by the Landlords for this application, less the security deposit of \$430.00 and the cost of cleaning \$195.48 agreed to.

I grant the Landlords an order under section 67 for the balance due of **\$1,124.52**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 04, 2012.

Residential Tenancy Branch