



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MNSD

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order in the amount of \$3035.50 and a request for recovery of the \$50.00 filing fee. The applicant is also requesting an order to keep the full security deposit of \$1012.50 towards the claim.

Background and Evidence

The applicant testified that:

- In early October 2011 the tenants had asked if they could end the lease early, and move by the end of December 2011 instead of at the end of the lease, February 29, 2012.
- He had informed the tenants at that time that if they could find a suitable tenant to take over the lease they would be allowed to vacate.

- In October there was a major flood in the building and as a result there was some water damage to this rental unit.
- As a result of the flood there was a need for a restoration company to come in dry out the unit, and the hardwood floors in the rental unit needed to be replaced and some of the drywall had to be repaired as it was bubbling.
- The restoration company informed him that the rental unit would still be habitable while the work was taking place.
- The tenants however decided to take this as their chance to break the lease and ended up vacating by the end of October 2011 without giving proper notice.
- He therefore believes that the tenants should be held liable for lost rental revenue for both the months of November 2011 and December 2011 as he was unable to re-rent the unit for those two months.

The respondent testified that:

- They did not use the flood as an excuse to break the lease; they were told by the restoration company that they should vacate the rental unit as major repairs were needed.
- Due to the flood they had to put up with extreme inconvenience, with people coming and going from there suite, and loud and noisy fans blowing for long periods of time.
- They were also facing ongoing repairs such as removing the floor and repairing the damaged walls and they decided that this was more than they were willing to endure.
- They therefore looked for a new place and vacated the rental unit by the end of October 2011.
- They believe that it would have been an extreme inconvenience to continue living in the rental unit during ongoing repairs and therefore they believe it was reasonable to end the tenancy prior to the end of the lease and request the return of their full security deposit.

Analysis

It is my decision that I will not allow the landlords claim for lost rental revenue.

Neither the landlord nor the tenant have provided any written evidence from the restoration company as to whether or not the rental unit was inhabitable, however it is my decision that it was reasonable for the tenants to vacate the rental unit considering the extent of the repairs needed.

The landlord claims that the rental unit was still inhabitable and he was willing to give a rent reduction for the inconvenience, however when such extensive repairs are needed to the rental unit it is not reasonable to expect the tenants to stay living in the rental unit while those repairs are ongoing.

The landlord testified that the hardwood floors had to be replaced and the drywall had to be repaired due to bubbling, and is my finding that the extent of the work needed would most likely cause significant disruption to the tenants ability to use the rental unit.

Conclusion

The landlord's application is dismissed in full without leave to reapply and have issued an order for the landlord to return the full security deposit of \$1012.50 to the tenants.

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: January 24, 2012.

Residential Tenancy Branch