



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenant – MNDC, FF, O

Introduction

This hearing was convened by way of conference call in repose to both the tenants and the landlords' applications for Dispute Resolution. The landlords have applied for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; 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 tenant for the cost of this application.

The tenant has applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The landlords and tenant attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and the witness 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.

At the outset of the hearing the landlord advised that the security deposit has already been returned to the tenant and therefore, the landlords withdraw their application to keep the security deposit. The landlord also abandons their claim for money owed or compensation for damage or loss.

The tenant reduced the amount of his monetary claim during the hearing.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or Loss?

Background and Evidence

Both parties agree that this tenancy started on April 01, 2011 although the tenant moved in on March 15, 2011 and paid half a months' rent for March. Rent for this unit was agreed at \$2,000.00 per month and was due on the first day of each month in advance. This was a fixed term tenancy which was due to expire on March 31, 2012.

The landlord testifies that the tenant paid rent for March and April, 2011 but failed to pay any rent for May, June and July, 2011. The landlords testify that a mutual agreement to end tenancy was signed by both parties and was effective on July 31, 2011. The landlord seeks to recover \$6,000.00 in unpaid rent for these three months.

The tenant disputes that he owes rent for these months to the landlords. The tenant testifies that the landlords breached s. 32 of the *Act* by not providing a rental unit that was fit for occupation. The tenant states no final occupancy permit had been issued to the landlord by the City to allow them to rent the unit in the first place. The tenant states when he viewed the property with the property manager there were some deficiencies noted on the inspection report. The tenant states he was under the impression that these would be dealt with immediately. The tenant states he contacted the utility companies and hooked up the utilities in his name. The tenant states when he was at the property a heating contractor came to do some work and told the tenant that the home had not passed its final inspections and been rejected and it was this person that told the tenant that no occupancy permit had been issued.

The tenant states he contacted a friend about this issue who went to City Hall and was told there was two rejected final inspections and no occupancy permit had been issued at that time. The tenant states he notified the property manager that without this permit the house should not have been rented and occupied. The tenant states the property manager did not dispute this logic and agreed to ask the landlords about the tenant withholding rent for May, 2011.

The tenant states by this time all his furniture had been moved into the house. When he tried to get contents insurance for his belongings the insurance company would not cover him without an occupancy permit. The tenant states at first he thought the problems with the house were minor such as bathroom fans not working in two bathrooms, there were no locks or handles on the sliding patio doors, there were no window screens and no central air conditioning as agreed upon, a number of major and minor electrical problems such as loose wiring in the kitchen, loose connectors in the hallway and face plates missing. The tenant testifies later he also identified the reason for the rejected final inspection was because the exterior gas valve for the Bar-B-Que was rendered inoperable, the water shut off valve could not located, and there was debris in the sanitary drain. The tenant has provided copies of the rejected inspection reports which also note that a weather strip must be provided for the attic access, the range hood to be completed and mechanical to be approved by the City plumbing and gas inspector. Other issues are also mentioned of which neither party has any knowledge of the meaning of.

The tenant testifies he sought out the City bi-laws (copy provided) which state the landlord must not occupy the building without an occupancy permit. The tenant states the landlord thought these problems were minor enough to rent out the property however as some of these issues were related to health and safety they should not have rented the house. The tenant states he was unable to live in the house and had to leave his furniture there without insurance while the landlords attempted to resolve these issues. The tenant states eventually they all agreed to end the tenancy on July 31, 2011.

The tenant testifies the locks for the sliding doors were eventually fitted sometime around May 22, 2011 and the occupancy permit was issued on August 02, 2011 after he had moved out.

The tenant testifies that as the landlords breached s. 32 (1)(a) of the Act with regard to providing a rental unit that complies with the health, safety and housing standards required by law, The tenant seeks to recover his utilities paid since the start of this tenancy. The tenant seeks to recover \$800.00 paid to Shaw, \$341.00 paid for gas, \$243.99 paid for electricity and \$151.67 paid for water. The tenant also seeks to recover the rent paid for half of March and for April, 2011 of \$3,000.00.

The tenant testifies that as he had to move from the rental unit because there was no progress at that time for the occupancy permit to be issued, he seeks to recover his moving costs of \$574.61. The tenant also seeks compensation from the landlord for having to move and for all the aggravation involved with this tenancy. The tenant has reduced this portion of his claim from \$5,000.00 to \$1,000.00.

The landlord disputes the tenants claim for his utilities. The landlords state these utilities were for the period the tenant occupied the house and they should not be held responsible for these costs. The landlords also dispute the tenants claim to recover the rent paid for March and April, 2011 and state the tenant had full use and enjoyment of the property during this period of time.

The landlords dispute the tenants claim for moving costs and state it was the tenant's choice to move out at the end of July and they agreed to the tenant ending his tenancy before the end of the fixed term. If the tenant had waited a few more days his tenancy could have continued as the occupancy permit was granted on August 02, 2011.

The landlords call their witness who testifies that she was the property manager. The witness testifies she and knew there were some problems with two fans on back order waiting to be fitted. The witness states the landlords were trying their best to get trades people in but it did not happen in a timely manner. The tenant asks the witness if she spoke

to the landlord about the tenant withholding his rent for May, 2011 until the problems could be resolved. The witness states she did speak to the landlord but did withhold the tenants rent because the tenant had asked her to. The tenant asks the witness why if they had waited four months for these repairs to be completed were they suddenly all done in one morning. The witness replies she was not involved in this. The tenant asks the witness if she thought it was logical for him to withhold his rent. The witness replies she would not disagree with this statement. The tenant asks the witness would she rent a property without an occupancy permit. The witness replies that she would not rent a property without a permit in place and would want to be assured one was in place. In this case she assumed an occupancy permit was in place as the landlords were renting the property.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the landlords claim for unpaid rent; s. 32(1)(a) of the Act states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law.

It is therefore my decision that the landlord did knowingly rent this property to the tenant without an occupancy permit in place and therefore they have failed to comply with this section of the *Act* as an occupancy permit is required in accordance with the City bylaws. It is irrelevant if the required repairs to the property were major or minor the fact remains that the property had not passed a final inspection and had not been granted an occupancy permit at the time the tenant moved into the property. Consequently, I find the landlords breached this section of the Act which in effect null-in-voids the tenancy. Therefore the landlords application for unpaid rent for May, June and July, 2011 is dismissed without leave to reapply.

As the landlord has been unsuccessful with their application they must bear the cost of filing their own application and this section is also dismissed without leave to reapply.

With regards to the tenants claim to recover his utilities paid during this tenancy. I have considered both arguments in this matter and find the tenant's utilities were a cost incurred for utilities he used at the property during the time he spent in the property. Therefore, the landlords cannot be held responsible for these costs and this section of the tenants claim is dismissed without leave to reapply.

With regard to the tenants claim to recover rent paid for March and April, 2011. I find the tenant did move into the rental unit in good faith and continued to reside there or have his belongings in situ there until the mutual agreement to end tenancy was upheld on July 31, 2011. Consequently as the tenant did use the rental unit for this period of time regardless of whether or not there was an occupancy permit in place and regardless to whether or not the tenancy agreement should be upheld because of the landlords breach of the *Act*, it is my decision that the tenant is not entitled to recover the rent paid for these two months and this section of the tenants claim is dismissed without leave to reapply.

With regard to the tenants claim to recover moving costs from the landlords; I have considered these costs and find if the landlords had an occupancy permit in place the tenant would not have had to move from the rental unit and would not have incurred these additional costs for moving. Consequently, it is my decision that the tenant is entitled to recover the sum of **\$574.61** for his moving costs from the landlords and will receive a Monetary Order for this sum pursuant to s. 67 of the *Act*.

With regards to the tenants reduced claim for compensation of \$1,000.00 due to the aggravation caused to him during this tenancy. I refer the parties to the Residential Tenancy Policy Guidelines # 16 which states, in part, that the Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the *Act*.

In this matter the landlord failed to obtain an occupancy permit before renting the property to the tenant. This resulted in the tenant not being able to obtain contents insurance cover; resulted in the tenants time and aggravation in attempting to determine what were the issues in preventing this permit being issued; resulted in the tenant having to stay elsewhere for periods of time; resulted in the tenant having to investigate the city by-laws; and resulted in the tenant having to find alternative accommodation and having to move from the rental unit before the end of the fixed term.

In this matter I find that the landlords were negligent in not obtaining this occupancy permit and although I recognise that this did not necessarily make the rental property totally unfit for occupation it certainly rendered it unsuitable for occupation until the City had determined that the issues preventing the final inspection to be signed off had been rectified.

Consequently, I am satisfied with the tenant's evidence that he suffered as a result of the landlords' negligence and as such I find his claim for damages to the sum of **\$1,000.00** to be reasonable. The tenant will receive a Monetary Order for this amount pursuant to s. 67 of the *Act*.

As the tenant has been partially successful with his claim I find he is entitled to recover half his \$100.00 filing fee to the sum of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Moving expenses	\$574.61
Damages	\$1,000.00
Filing fee	\$50.00
Total amount due to the tenant	\$1,624.61

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,624.61**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The landlords' application is dismissed without leave to reapply.

The property management company name has been excluded from the Order as they are not obligated for this debt to the tenant.

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: November 10, 2011.

Residential Tenancy Branch