



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNSD, FF

For the tenant – MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both the tenants and landlords applications for Dispute Resolution. The landlord seeks an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants seek an Order for the return of their 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 landlord for the cost of this application.

The tenants and the agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord's agent and tenants 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 landlord entitled to keep the tenants security deposit?
- If not are the tenants entitled to recover their security deposit?
- Are the tenants 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 July 01, 2011. This was a fixed term tenancy which was due to end on June 30, 2012. Rent for this unit was agreed at \$1,150.00 per month due on the first day of each month in advance. The tenants paid a security deposit of \$1,150.00 on June 15, 2011. This tenancy ended by mutual agreement on July 31, 2011 and the tenants gave the landlord their forwarding address in writing on this day.

The Landlords Application

The landlord's agent testifies that they were unable to re-rent the unit dispute advertising it in many different forums for August 01, 2011. As this was a fixed term tenancy the landlord seeks to keep the tenants security deposit of \$1,150.00 to cover the loss of rental income suffered by the landlord for August, 2011. The landlord's agent testifies that they only agreed to end the tenancy in order for the landlord to mitigate their losses and get the unit re-rented as quickly as possible. The landlord's agent states the tenants made it clear that they could no longer live in the unit due to an attack upon them by a mentally ill neighbour.

The tenants' dispute the landlords claim to keep their security deposit the tenants testify that they spoke to the landlord's agent who informed them that the landlord had a new tenant lined up to rent the unit for the rent of \$1,200.00. The tenant states the landlord's agent told him the landlord was disgruntled about them ending their tenancy so decided not to re-rent the unit but to sell it instead. The tenants' testify that the landlord agreed they could end their tenancy and a mutual agreement was signed by both parties. The tenants state their responsibility for any future rent ended with their tenancy on July 31, 2011.

The landlord's agent testifies that the new renter they had lined up did not qualify to rent the unit and it could take many months to re-rent the unit.

The Tenants Application

The tenants testify that the moving truck with their belongings arrived at the unit on July 12, 2011. They did not stay in the unit that night but returned the next day to start unpacking their belongings. The tenants state a man with a history of mental illness forced his way into their unit and violently assaulted the male tenant. The female tenant ran for help and called 911. The male tenant states he managed to get free from his assailant and ran for his life. The police came and three officers subdued this man and took him away. The tenant states the police informed them that he was being taken to a mental health ward but could be released later that night and they would have no control over whether he would return to the complex as he lived in a nearby unit. The tenant states the police also explained that this man had a psychotic breakdown and had violent tendencies and could not be trusted. The tenants testify that due to a concern for their safety in case this assailant returned to the complex they could not remain in their home and they had to find alternative accommodation. The tenants testify that they could not return to live in their unit with the threat of violence from this man if he returned to the complex and they seek to recover the rent paid for the last 17 days of their tenancy from the landlord to the sum of \$629.00.

The tenants testify that they lived in Ontario when they agreed to rent this unit and had not visited the unit themselves. They state they did have some concerns about the dark colour of the unit but were told by the landlord's agent that it was his camera that gave this impression. The tenants state when they arrived at the unit they found the paint colour was too dark and gloomy and the lights had to be left on even in the day time. The tenants' state there were also some nail holes in the walls from previous tenants and the paint work was looking quite tired and needed to be redone after four years of renters.

The tenants testify that they spoke to the landlord's agent about the paint during the move in condition inspection and were told they could repaint the unit a neutral colour. They submit they finally found a colour to compliment the hardwood and cabinetry and took it to the landlord's agent's office for approval. The tenants' testify they then hired professional painters to do this work and they started the same day to get the job done before the tenants moving truck arrived from Ontario. The tenants' testify that the paint job has improved the rent ability and sell ability of the home. The tenants submit that because they did not get to enjoy living in the home for even one night the landlord should reimburse them for the cost of this painting to the sum of \$2,464.00. The tenants have provided a quote and invoice for this work.

The landlord's agent disputes the tenants claim for the return of rent for 17 days. The landlord does not dispute that the tenants were attacked in their home by a neighbour living in another unit in the complex but states this is not the fault of the landlord as he had no control over this attack.

The landlord's agent disputes that the landlord is responsible to reimburse the tenants for the painting to the unit. The landlord's agent testifies that the tenants did have a concern about the colour of the walls in the unit but the unit is the same colour as all the other units and it is simply a case of the tenants' preference.

The landlord's agent testifies that the move in condition inspection went well and the walls have been identified as being in a good condition. This report was signed by the parties. A few days later the tenants said they did not like the colour of the walls and asked to change it. The landlords agent testifies he tentatively discussed the tenants repainting the walls with a neutral colour and tentatively discussed the landlord could pay half the cost of this work allowing the tenants to reduce their rent by \$50.00 a month for this work if they agreed to sign a two year lease with the landlord. The landlords agent testifies that the tenants went ahead and painted the unit before any formal agreement was put in place as the tenants did not want to sign a two year lease.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim to keep the tenants security deposit for a loss of rental income for August, 2011; as the parties both signed a Mutual Agreement to End Tenancy document this document allows the tenants to end the tenancy before the end of the fixed term. The tenants therefore would not be responsible for any terms or conditions relating to the tenancy after the end of the tenancy. Consequently, the landlord is not entitled to pursue the tenants for a loss of rental income for August and the landlord's application to keep the security deposit for this purpose is dismissed without leave to reapply.

With regards to the tenants claim to recover the security deposit; as the landlord is not entitled to keep the deposit the tenants are entitled to have this deposit returned to them and a Monetary Order has been issued to the tenants to the sum of **\$1,150.00**.

With regards to the tenants claim for money owed or compensation from the landlord for 17 days of rent to the sum of \$629.00; in order for the tenants to be entitled to a Monetary Order for damage or loss they would have to show that the loss suffered was as a direct result of the landlord's actions or neglect. As this violent attack on the tenants was not something the landlord could have foreseen or controlled or prevented it is my decision that the landlord is not at fault in this matter. While I sympathize with the tenants for having to experience a violent attack of this nature and to still suffer from the consequences of this attack it was still their choice to move from the rental unit to avoid living in a potentially dangerous situation and again this is not something the landlord had any control over. Consequently, this section of the tenants claim is dismissed without leave to reapply.

With regards to the tenants claim for money owed or compensation for the work done in painting the unit; the tenants did not have a written agreement with the landlord to reimburse them for the painting and as it was the tenants personal preference that the unit was painted in colours that were too dark and not to their taste; the landlord cannot

be held responsible for their loss. As the tenants elected to end this tenancy and they have not shown that the walls in the unit were in a condition of poor repair or required painting for any other reason other their personal preference; they are not now entitled to pursue the landlord for these costs and this section of their claim is also dismissed without leave to reapply.

As the tenants have been partial successful with their claim I find they are entitled to recover half their \$50.00 filing fee from the landlord to the sum of **\$25.00** pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the tenants to the sum of **\$1,175.00**.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,175.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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 15, 2011.

Residential Tenancy Branch