



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNR and FF
Tenants: MNDC, MNSD and FF

This hearing convened on applications by both the landlord and the tenants.

By application of November 14, 2011, the landlord sought a Monetary Order for damage to the rental unit, unpaid utilities, loss of rent, and recovery of the filing fee for this proceeding.

By application of November 15, 2011, the tenants sought a Monetary Order for loss or damage resulting from the landlord's non-compliance with the legislation or rental agreement, return of their security deposit in double and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether and in what amount both parties are entitled to monetary compensation and in what amount.

Background and Evidence

This tenancy began on September 15, 2011 and ended on October 24, 2012 pursuant to a Notice to End Tenancy for unpaid rent. Rent was \$900 per month, due on the 15th of the month. Whether a security deposit was paid is in dispute but the parties agree that a \$100 pet damage deposit was paid and returned on the departure of the pet.

Both parties came to this dispute under the disadvantage of failing to comply with the *Act* under which they now seek remedy.

On the landlord's part, she advised during the hearing that she had received a number of cash payments but she was not aware of the requirement of section 26(2) of the *Act* that landlords must issue a receipt for payments made in cash. Lacking the reliable evidence of copies of receipts for amounts that the parties agree were paid, I am hard pressed to make a determination on payments on which they do not agree.

The attending tenant concurs that the rent due on October 15, 2011 was not paid because of grievances with the landlord, but is unaware that section 26 of the *Act* requires that rent be paid "whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement...."

The tenants claim that they paid a security deposit of \$450 on August 29, 2012 as shown on their copy of the rental agreement, but the date is absent on the copy submitted by the landlord and the landlord noted that the inserted date is not in her handwriting, nor is it initialled as were all other insertions in the rental agreement.

The tenant's claim they left the tenancy due the landlord's breach of the rental agreement and legislation, but the Notice to End Tenancy for unpaid rent had already been issued when they provided the landlord with written notice of claimed grievances which might have provided for early notice under section 45(3) of the *Act* if it had been served before the notice. Also, the evidence of the note was on a barely readable photograph of the document which was submitted late. The same note refers to the rent being \$950 per month and the security deposit being \$475, both of which the attending tenant agreed were in error as to amounts.

Both parties claim breaches by the other involving police attendance. Among other matters, the landlord claims the tenants used marijuana in the rental unit and ongoing disturbances by the tenants. The attending tenant stated that the landlord's husband had threatened him with a hammer and in the process destroyed an heirloom chair. The tenant also stated that the landlord's husband had made an obscene reference with his own genitalia directed toward the tenant's wife.

The landlord makes claim for loss of rent, but she has submitted no evidence of advertising the rental unit as proof of efforts to minimize the loss as required under section 7 of the *Act*.

The landlord also sought a \$150 per diem as the tenants had moved in five days early, but the tenant stated that when they had asked to move in early, they were given to believe that there would be no charge of the period.

The tenants claim repeated unlawful entry to the rental unit by the landlord; the landlord claims only one such entry made on 24-hour notice.

Analysis

I find that both parties have breached the legislation and the rental agreement, and that the evidence submitted by both is insufficient and unreliable and I cannot provide a fully informed decision on their claims. Therefore, I dismiss both applications without leave to reapply.

Conclusion

Both applications are dismissed 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: February 02, 2012.

Residential Tenancy Branch