



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

A substantial amount of documentary evidence, photo 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 decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a monetary order for \$1400.00 and a request for recovery of the \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$1950.00.

Tenant's application

Background and Evidence

The tenants testified that:

- This tenancy was to begin on October 15, 2011, however on October 7, 2011 they informed the landlord in writing that they would not be taking the rental unit and requested that their security deposit be returned. Their forwarding address was included on the letter.
- The landlord has refused to return any of their security deposit.

The applicants are therefore requesting an order for return of double the security deposit and recovery of their \$50 filing fee.

The landlord testified that:

- He never received a forwarding address in writing, only verbal notice that they would not be renting the unit.
- He did not return the deposit because they did not comply with the rental agreement and he kept the deposit to cover lost rent.

Analysis

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

It is my finding that the tenants did serve the landlord a forwarding address in writing on October 7, 2011.

The landlord claims he never received a forwarding address in writing; however he only made that claim when it was pointed out to him that the Residential Tenancy Act requires that the deposit be returned within 15 days of receiving the forwarding address in writing.

The tenants had previously stated that they had given the landlord a forwarding address in writing on October 11, 2011, and at that time the landlord did not dispute that claim.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on October 7, 2011 and the landlord had a forwarding address in writing by October 7, 2012 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid any deposit of \$700.00 and therefore the landlord must pay \$1400.00 to the tenants.

I also order recovery of the \$50.00 filing fee paid by the tenants.

Total amount allowed in the tenants claim is \$1450.00.

Landlords application

Background and Evidence

The landlord testified that:

- The tenants signed a tenancy agreement agreeing to rent the unit for a period of one year and were given the keys to the rental unit on October 1, 2011.
- Because the tenants agreed to sign a one-year fixed term tenancy, they were given free rent from October 1 to October 15, 2011.
- On October 7, 2011 the tenants informed him that they were backing out of the tenancy agreement and were no longer going to rent the unit.
- The tenants claim that there was mould in the rental unit, however this is not true and he has since had a mould test done in the rental unit to prove there is no mould.
- He attempted to re-rent the unit but was unable to rent the unit until December 1, 2011 and therefore he is asking for lost rental revenue for both the months of October 2011 and November 2011.
- He is asking for the full rent for October 2011, because the rent discount was only being offered because of the one year fixed term.

The tenants testified that:

- They were not given any free rent, the keys were given to them on October 1, 2011 so that they could get in and clean and paint the unit.
- It was made clear to them that they were not allowed to physically move into the rental unit until October 15, 2011 and they had no intention of doing so.
- While at the rental unit to do cleaning they found an extensive amount of mould in the lower portion of the rental unit and felt it was a health hazard.
- They spoke the landlords handyman about it in the handyman inform them that there had been a grow op in the rental unit and that is what had caused the problems.

- Having been informed of a grow op they decided to go to City Hall to see what their options were, and City Hall inform them that there was a no occupancy order on the property.
- Therefore due to the health hazards caused by mould, and having been informed that there was an occupancy order on the property they inform the landlord that they would not rent the unit and gave him written notice on October 7, 2011 to confirm this.
- They have supplied extensive photo evidence to show the condition of the rental unit.

In response to the tenant's testimony the landlord testified that:

- There has never been a grow op in the rental unit and his handymen did not inform the tenants there was a grow op.
- He has supplied a letter from his handymen stating that he never told the tenants there was a grow op in the rental unit.
- That is not mould in the photos the tenants have supplied, it simply dark staining.

Analysis

It is my decision that the tenants had reasonable grounds to back out of this rental agreement.

I have viewed the photo evidence supplied by the tenants, and it is very clear that this rental unit was in very poor condition, and had a large amount of what appears to be mould growing on the back of the drywall and on the studs.

Even a portion of the evidence supplied by the landlord supports the tenants claim that the unit had a no occupancy order.

The landlord has supplied a document titled "Certification Form" that certifies that the property complied with sections 5.2 of the Controlled Substance Property Bylaw as of

October 21, 2011 and that the no occupancy notice had been removed. However this is well after the October 7, 2011 date when the tenants informed the landlords they were not going to rent the unit.

I therefore accept the tenants testimony that they were informed that there was a no occupancy order in place.

Therefore it is my decision that the tenants are not liable for any of the landlords lost rental revenue and I will not allow any of the landlords claim.

Conclusion

Tenant's application

I have issued an order for the landlord to pay \$1450.00 to the tenants.

Landlord's application

The landlord's application is dismissed in full 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: March 21, 2012.

Residential Tenancy Branch