



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, FF, MNDC, MNSD, O

Introduction

Some 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 an order cancelling a Notice to End Tenancy, disputing additional rent increase, and a request for monetary order for \$700.00, and recovery of the \$50.00 filing fee.

Background and Evidence

The applicants testified that:

- They agreed to rent the unit from March 1, 2012, however the rental unit was in poor condition, needed extensive cleaning, and had mould in various parts of the rental unit.
- They also believe there was likely mould behind the walls in the bathroom because the shower leaked down inside the bathroom wall. Therefore they were unable to use the shower.
- When trying to deal with the landlord over these issues they found him to be very unprofessional and therefore they inform the landlord that they would move out of the rental unit.
- They therefore believe that, due to the health hazards and lack of service regarding the mould and the shower, they should be allowed out of the lease,

and the landlord should be returning all the rent they paid plus their security deposit.

- They subsequently moved out of the rental unit on March 18, 2012.
- Further the ad for the rental unit offered two weeks rent free, however now the landlords are insisting that they are liable for the full rent for the month of March. They believe this is an illegal rent increase.

They are therefore requesting an order as follows:

Return all rent paid	\$225.00
Filing fee	\$50.00
Total	\$750.00

The landlord testified that:

- On March 1, 2011 the tenants pointed out some problems at the rental unit that they wanted dealt with, and they inform the tenants they would be back on March 4, 2011 to take care of the problems.
- When they return to deal with the mould issue on March 4, 2011 the tenants became confrontational stating that the rental unit was uninhabitable and that they wanted to leave and wanted their money back.
- They has landlords were never given the opportunity to rectify any possible problems with the rental unit and therefore they do not believe it's reasonable that the tenants can just break a fixed term tenancy and moved without the required notice.
- They were fully willing to rectify any issues and there was no reason for this tenancy to end.
- They therefore do not believe that the tenants claim is reasonable and believe that the tenant should be held liable for all lost rental revenue resulting from their breaching the tenancy agreement.
- The offer of two weeks free rent was only if the tenants stayed for a full year and they obviously have not and therefore they do not qualify for the two weeks free rent.
- The tenants did not move out of the rental unit on March 18 and in fact were still in the rental unit on March 27, 2012.

Analysis

Is my finding that the tenants have not met the burden of proving that the rental unit was uninhabitable or that they had reasonable grounds for ending the tenancy without the required notice and therefore I will not order to return of any rent.

The tenants claim that mould in the rental unit was a health hazard; however they have provided no proof that there was mould in the rental unit nor did they give the landlords a reasonable time to rectify the problem if mould was present.

The tenants also claim that the shower was unusable however again it is my finding that the tenants did not give the landlords reasonable time to rectify that problem before cancelling their tenancy agreement.

Therefore the tenants are liable for the lost rental revenue suffered by the landlord as a result of breaching the tenancy agreement.

As far as the amount of rent payable for the month of March 2012 is concerned, it is my finding that the tenants are only liable for two weeks rent in the month of March 2012 and not the full rent, because the ad clearly says two weeks free rent and does not stipulate in the ad that this is contingent upon signing a one-year lease.

As far as the security deposit is concerned is my finding that the tenants were premature on their application for the return of the security deposit, because the landlord has 15 days from the end of the tenancy to either return the deposit or file a claim against it. Therefore at the time that the tenants filed their application, on March 15, 2012, the landlord was under no obligation to return the security deposit.

Conclusion

The tenant's application for the return of rent is dismissed without leave to reapply.

The tenant's application for return of a security deposit is dismissed with 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: April 04, 2012.

Residential Tenancy Branch