



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC

Introduction

Some 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 tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for \$25,000.00.

The landlord's application is a request for an order to keep the full security deposit of \$350.00 and a request for recovery of the filing fee.

Tenants application

Background and Evidence

This tenancy began on April 1, 2009 and ended on November 30, 2011 pursuant to a mutual agreement to end tenancy.

The tenants claim that a security deposit of \$375.00 was paid at the beginning of a tenancy, however the landlords claim that a security deposit of \$350.00 was paid.

The tenants claim that:

- They had no Internet for 14 months of the tenancy because the landlord frequently changed the password and did not give it to them.
- They had no cable for three months.
- They were without water for seven days when the landlords were away.
- At the beginning of the tenancy they were unable to get into the suite for the first two days because their son had not yet moved out.
- They had ambulance fees because the tenant slipped in the driveway when the landlords did not properly clear the snow, and because there was mildew in the bedroom closet that made the tenant ill.
- The kitchen flooded six times in three days and some of their packing boxes were damaged.
- When they vacated the landlord gave them bad references and as a result they lost 10 suites and ended up homeless.
- The landlord has refused to return their security deposit.
- They should have been given one free month rent at the end of the tenancy because the landlord son wanted to move in and therefore it should have been a two month Notice to End Tenancy.
- They ended up on the street after vacating and as a result suffered a substantial amount of stress and hospital visits.

As a result of all the above they are requesting an order as follows:

no Internet for 14 months	\$546.00
No cable for three months	\$204.00
Seven days without water	\$25.00
Two days when they were unable to get into the suite	\$50.00
Winter 2010 ambulance fees	\$85.00
Four trips in the ambulance due to mildew	\$340.00
Replace large packing boxes	\$16.73
Replace a medium packing boxes	\$11.09
Replace small packing boxes	\$10.01
Replace Rubbermaid boxes	\$13.31
10 lost rental suites	\$350.00
Wrong Notice to End Tenancy	\$700.00
Return security deposit	\$375.00
Hospital visits	\$340.00
Stress of living on the street	\$20,000.00
Unable to cook food items bought and thrown away	\$100.00
Moving truck	\$850.00
Storage locker for belongings	\$405.44
Photocopying and photos	\$40.00
Total	\$24,461.58

The landlords testified that:

- The tenants had the Internet for the full term of their tenancy and were given the password whenever it was changed.

- The cable was out for a short period when they made some changes with the cable company however as soon as they became aware of the outage it was restored.
- The tenants were never without water, there are other tenants in the rental property as well as themselves and if the water had gone off all tenants would have been without water.
- They never told us about any mould or mildew during the tenancy.
- They are not aware of any flooding in the kitchen.
- They never gave any bad references to potential landlords and in fact only heard from one potential landlord.
- They did not force the tenants to move out and in fact the tenancy ended by a mutual agreement to end tenancy that was reached a previous dispute resolution hearing.

Analysis

It is my finding that the tenants have not established any of their claims.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is just the tenant's word against that of the landlords and therefore the tenants have not met the burden of proving that they were without Internet or cable or water or that they were unable to get into the rental unit at the beginning of the tenancy.

The applicants have also failed to provide any evidence of having paid any ambulance fees nor have they proven their claims that they were injured in a slip and fall or that they were affected by mildew in the closet.

The tenants have not met the burden of proving that there were floods in the kitchen.

The tenants have not met the burden of proving that the landlords ever gave a bad reference or that they suffered any loss from a possible bad reference.

Further since this tenancy ended as a result of a mutual agreement to end tenancy, the tenants have no claim for any moving costs, compensation for moving, or any the stresses that resulted from moving out of the rental unit including the stress of having lived on the street.

As far as the security deposit is concerned the tenants have admitted that prior to applying for dispute resolution they have not serve the landlord with a forwarding address in writing, and therefore the landlords were under no obligation to return the security deposit.

Landlord's application

Background and Evidence

No move in inspection report, or move out inspection report was done for this tenancy.

The landlords claim that:

- The tenants were supposed to move out of the rental unit by 1:00 PM on November 30, 2011, however they did not move out of the rental unit until approximately 8:00 PM on November 30, 2011 and as a result their son, who was moving into the rental unit, had to renew his storage unit for minimum two-week period at a cost of \$112.24.
- The carpets in the rental unit were also left dirty and smelly and had to be cleaned.
- The toilet seat in the rental unit was broken.

- The whole rental unit needed to be painted as the walls were left in poor condition.

The tenants testified that:

- They agreed that they did not get out of the rental unit until 8 p.m. on November 30, 2011, however it was due to extenuating circumstances because one of the trucks that was going to be moving them had caught fire.
- They explained the problem to the landlord and the landlord agreed to allow them more time to move out.
- They also left the rental unit clean and undamaged, and the unit was not in good condition when they moved into the rental unit.

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

- They did agree to allow the tenants more time to move out however they felt like they had no option because it was obvious the tenants were not going to be out by 1 p.m..

Analysis

It is my decision that the landlords do not have a claim for storage costs for their son's belongings, because the landlords have admitted that they did allow the tenants more time to vacate the rental unit. Therefore the claim for storage unit is dismissed.

I also dismissed the claims for cleaning, toilet seat, and paint supplies, because the landlord did no move-in or move out inspection reports and therefore they have not met the burden of proving that the condition of the rental unit was any different on move out that it was on move-in.

I therefore deny the landlords request to retain the security deposit and the deposit must therefore be returned to the tenants.

The amount of the deposit is in dispute, however I find “on the balance of probabilities” that the deposit was most likely \$350.00, as the rent was \$700.00 per month.

Conclusion

Landlord's application

The landlords claim is dismissed in full without leave to reapply, and since the landlord now has a forwarding address in writing for the tenants I have issued an order for the landlord to return the full security deposit of \$350.00 to the tenants.

Tenant's application

I have ordered the return of the tenant's security deposit; however the remainder of the tenants claim 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: April 26, 2012.

Residential Tenancy Branch