



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the tenants and the landlord.

The tenants' application is seeking orders as follows:

1. A monetary order for money owed or compensation under the act; and
2. Return all or part of the pet deposit and damage deposit.

The landlord's application is seeking orders as follows:

1. A monetary order for unpaid rent; and
2. To keep all or part of the pet deposit and security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation?

Are the tenants entitled to the return of all or part of the pet deposit and damage deposit?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the pet deposit and security deposit?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement commencing February 1, 2012. Rent in the amount of \$1,325.00 was payable on the first of each month. A security deposit of \$662.50 and a pet deposit of \$300.00 were paid by the tenants. The tenancy ended on February 19, 2012.

Tenants' application

The tenant testified that the landlord gave them false information about an occupant that resides in the building. The tenant stated this occupant appears to be on illegal drugs and a person of bad character. The tenant stated he observed this occupant fumble for his keys and something white dropped from his pocket. The tenant alleges it might have been illegal drugs.

The tenant testified that his partner was terrified of this occupant. The tenant stated that this occupant was knocking on the door of their residence and his partner did not answer the door because she was fearful for her safety.

The tenant testified that on one occasion the sheriff's department came to their door looking for this occupant. The tenant stated that they had the right to break the fix term agreement because they felt they were in an unsafe, dangerous environment and their safety was at risk.

The tenant testified that due to having to move from this dangerous environment the landlord should return their rent for February 2012, compensated them for the cost of moving supplies, for the cost of moving, the cost of storing their belongings and the cost for their dog's daycare. The tenants are seeking compensation in the amount of \$3,438.14.

The landlord argued that she never provided the tenants with false information regarding this occupant. The landlord stated she also resides in this building and the occupant's rental unit is adjacent to hers and there have never been any issues of unreasonable noise or any criminal activity. The landlord stated she is not sure if it was the police or the sheriffs who attended at her residences to find this occupant, however, it was regarding a family matter, and not a criminal matter.

Landlord's application

The landlord testified the tenants breached the fixed term agreement and is seeking compensation for March 2012, rent. The landlord stated she received written notice from the tenants in a letter dated February 13, 2012, that the tenancy was ending on February 19, 2012. The landlord stated that she immediately advertised the rental unit on a classified website and was able to re-rent the unit for April 1, 2012, under a new fixed term agreement. The landlord is seeking compensation for March 2012, rent.

The tenant testified that the landlord provided false information when they entered into the tenancy agreement. Therefore, they should not be responsible for March 2012, rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As the parties have filed cross applications each party has the burden of proof to prove a violation of the Act and a corresponding loss.

Tenants' application

The evidence of the tenant was that they did not honour the fixed term agreement as they believed the landlord provided them with false information regarding an occupant who resides in the building.

The evidence of the tenant was that this person appeared to be on illegal drugs and the appearance of this occupant lead them to believe he was a person of bad character. The evidence of the tenant was they believed their safety was at risk. The evidence of the landlord was that she did not provide false information as there has never been any problems with this occupant.

In this case there was no evidence that this occupant had caused the tenants' to loss quiet enjoyment, such as unreasonable and ongoing noise. There was no evidence that this occupant significantly interfered with the tenants' use of the premises. There was no evidence of illegal activity being conducted at the premises by this occupant.

Further, the tenants did not provide any written complaints to the landlord regarding this occupant. I find the tenants have not proven that any damages or loss exist. Therefore, I find the tenants' claim for compensation has no merit and I dismiss the tenants' application for compensation under the Act.

Landlord's application

The evidence of the parties was a one year fixed term tenancy agreement was entered into and tenancy commenced on February 1, 2012. The tenancy ended on February 19, 2012.

The Residential Tenancy Act states - Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
(b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy. [Emphasis added]

I find that the tenants have breached section 45 of the Act as the earliest date they could have legally ended the tenancy was January 31, 2013, as stated in the tenancy agreement. As a result of the tenants not complying with the terms of the tenancy agreement the landlord suffered a loss of rent for March 2012.

The Residential Tenancy Act states - Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The evidence of the landlord was when the tenants provided her with written notice to end tenancy, she immediately advertised the rental unit in a classified add on a website, and was able to re-rent the unit for April 1, 2012, under a new fixed term tenancy agreement. I find that the landlord took reasonable steps to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for March 2012, in the amount of **\$1,320.00**.

I find that the landlord has established a total monetary claim of **\$1,370.00** comprised of rent owed and the \$50.00 fee paid for this application.

As a result, I dismiss the tenants' application for the return of the pet deposit and security deposit.

I order that the landlord retain the security deposit of \$662.50 and a pet deposit of \$300.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$407.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants' entire application is dismissed.

The landlord is granted a monetary order and may keep the security deposit as partial satisfaction of the claim, and is granted an order for the balance due.

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