



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary order for compensation for a loss or damage suffered under the Act, the regulations or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to a monetary order?

Background and Evidence

The landlord gave the following testimony; the landlord and tenant entered into an agreement on September 12, 2011 that the tenant would take possession of the unit on September 16, 2011, the parties signed an agreement that the landlord was to install a new refrigerator, new stove, new bathroom sink and new bathroom toilet, the landlord testified that he had met all of the terms sought by the tenant, the tenant attended the rental unit on September 16, 2011 and accused the landlord of installing a used stove that was scratched and greasy, the landlord adamantly denies this and insists that all items that were installed in the unit were brand new, the tenants did not accept the unit and did not move in, the landlord stated he had lost two other potential parties that were interested in the unit and as a result was not able to rent the unit until December 1, 2011.

The tenant gave the following testimony; the landlord did not meet the terms of the agreement as the stove was used, old, scratched and greasy, agrees the landlord

replaced the fridge, the sink and the toilet, alleges the landlord was verbally abusive to himself and the two witnesses that participated in this hearing, feels that since the landlord has breached the contract he wasn't obliged to move in nor pay any compensation for loss of revenue.

Analysis

The tenants had two witnesses participate in the hearing. Both witnesses gave testimony that they had attended with the tenant on September 16, 2011 and that the landlord was verbally abusive towards them. Both witnesses testimony was consistent in that regard, however a major discrepancy between the two witnesses came to light during the hearing. One witness stated the refrigerator was old, scratched and greasy. The second witness stated the stove was old scratched and greasy. The tenant was relying on his witnesses to corroborate his version of the events. The inconsistency of the witnesses on the major issue of this hearing creates doubt and I disregard both of their testimonies.

Both parties agree that the landlord replaced the refrigerator, the bathroom sink and the toilet. The landlord produced a receipt for a new stove that he purchased for the unit. Taking into account that the landlord replaced all the other items as discussed, has a receipt to corroborate that he did purchase a new stove, the inconsistent testimony of the witnesses, based on the balance of probabilities; I find the landlord has proven that all terms of the tenancy agreement were met.

The landlord is the sole applicant in this matter and I will address his claim as follows;

The landlord is seeking the equivalent of 2 ½ months of rent (\$2250.00) as compensation as he was unable to rent the unit until December 1, 2011. Although I find the landlord has met the terms of the tenancy agreement I do not agree with his claim of seeking \$2250.00. The landlord submitted a signed tenancy agreement of his new tenant that took possession on December 1, 2011. That tenancy agreement was signed

on September 25, 2011. The landlord has a responsibility to mitigate his losses as is prescribed in the Act. I accept the landlord made attempts to rent the unit for October 1, 2011 and found it difficult to do with the short turnaround time however he chose to give up his opportunity for trying to rent the unit for October 15, November 1 or November 15. I find that the landlord is entitled to the equivalent of $\frac{1}{2}$ a month's rent as compensation = \$450.00.

As for the monetary order, I find that the landlord has established a claim for \$450.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$500.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$500.00.

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: May 08, 2012.

Residential Tenancy Branch