



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, MNDC, FF
 Tenants: MNDC, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution both parties sought a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to the rental unit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 35, 36, 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for compensation due under the *Act* for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 51, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on October 15, 2008 as a month to month tenancy for a monthly rent of \$2,150.00 due on the 1st of each month with a security deposit of \$1,050.00 paid. They also agree the tenancy ended on October 31, 2010 after the landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenants submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on August 31, 2010 with an effective vacancy date of October 31, 2010.

In their written submission and testimony the landlord assert that when they served the tenants with the 2 Month Notice they asked if they could stay until March 2011 as the tenants had rented out a part of the house to other occupants and it would be difficult to move everyone within the 2 month time frame.

The landlord goes on, in their written submission and testimony, to say that when the landlords advised the tenants that they were in breach of the tenancy agreement and the landlords could end the tenancy within 30 days the parties agreed the tenancy to end on October 31, 2010 and the tenants would forgo the compensation allowed for the 2 Month Notice and pay the full rent for the month of October.

The tenants testified that the landlord had always been aware that they had additional tenants in the rental unit and that they had no such conversation with the landlord regarding breach of the tenancy agreement or ending the tenancy in 30 days. The tenants testified that they were unaware of the compensation requirements under the *Act* until just recently when they were advised by a friend.

The landlords also submit that when they moved into the house they found “all the floors and staircase to be loose and squeaky for over use. We had to remove all the carpets and screw in all the floors back at the cost of \$1,500.00. The landlord did not provide a copy of a move in or move out Condition Inspection Report or receipts for any work completed.

The landlord testified that the over use of the floors resulted in the additional people living in the rental unit. He stated that he had rented the unit to a family of five and because there were at least 3 additional adults living there it caused excessive damage to the flooring.

Analysis

Section 51 of the *Act* states that a tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use of Property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes. The burden of proof lies with the party claiming there was such an agreement.

In the case before me the parties dispute whether an agreement was reached for the landlord to retain the compensation required under Section 51 and as such I find the landlord has failed to provide sufficient evidence to establish the parties had reached an agreement of any kind regarding this required compensation.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 requires tenants who are vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. As the landlords have provided no evidence of the condition of the rental unit at either the start or the end of the tenancy, I find the landlords have failed to provide sufficient evidence that there was any damage to the rental unit; further the landlords have failed to provide any evidence that even if there were damage to the rental unit that it was caused by the tenants or resulted from a violation of the *Act*, regulation or tenancy agreement.

For these reasons, I dismiss the landlord's Application in its entirety.

Conclusion

For the reasons noted above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,200.00** comprised of \$2,150.00 Section 51 compensation and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 03, 2012.

Residential Tenancy Branch