



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC; OLC; FF

Introduction

This Hearing was convened in response to the Tenant's application for compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for an Order that the Landlords comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

Both parties attended the Hearing and provided affirmed testimony.

Preliminary Matters

The Tenant seeks an Order that the Landlords comply with the Act, regulation or tenancy agreement, but did not provide details with respect to this on his Application for Dispute Resolution. He did not indicate what section of the Act or regulation or what clause in the tenancy agreement he wished to Landlords to comply with. Therefore, this portion of his application is dismissed.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order in compensation for damage or loss under the Act?

Background and Evidence

There was a large amount of documentary evidence and oral testimony provided by both parties which was irrelevant to the Tenant's application. I have referred to relevant testimony only in the Decision.

The rental unit is a suite in a house. The Landlords live in the main suite of the house. The Tenants signed a tenancy agreement with the previous owners of the rental property on June 15, 2010. Monthly rent was \$725.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$362.25 on June 9, 2010.

The Landlords purchased the rental property in April, 2011, and inherited this tenancy from the previous owners.

The Tenant testified that when he went to pay rent to the Landlords in July of 2011, the Landlords showed him a new tenancy agreement and said that the Tenant had to sign it or move out. The new tenancy agreement increased the rent to \$575.00 per month.

The Landlords testified that the tenancy agreement was a fixed term lease that expired on June 15, 2011. They testified that they told the Tenant on May 1, 2011, that they would not be renewing the lease and that the tenancy would end on June 15, 2011. The Landlords stated that they had family coming from overseas that they had expected to move into the rental unit. As it turned out, the family ended up living somewhere else.

The Landlords testified that the Tenant offered to pay them \$50.00 more a month if he could stay longer. They stated that they agreed to rent the rental unit to the Tenant for \$775.00 per month on a month-to-month basis commencing July 1, 2011.

The Tenant denied offering the Landlords \$50.00 more to stay in the rental unit. The Tenant stated that he felt he had no option but to sign the new tenancy agreement. The Tenant seeks to recover \$500.00 in rent that he believes he overpaid for 10 months.

In March, 2012, there was a flood at the rental unit which required remediation to be done. The Tenant stated that the Landlords gave him \$300.00 for accommodation and food while his family had to be out of the rental unit. The Tenant seeks an additional \$500.00 in compensation for having to move their furniture back into place and clean the rental unit after the remediation was done. The Tenant testified that it took him about 5 to 7 hours to move the furniture back and clean the rental unit.

The Landlords testified that they had suggested that the Tenant stay in a motel close by to the rental unit for \$40.00 per night, so he could monitor the renovations, but the Tenant and his family chose to go to another accommodation for \$100.00 a night. The Landlords testified that since they had originally agreed to pay for the accommodation and food up to \$300.00, they credited that amount towards April rent. The Landlords apologized for some drywall dust that was left behind in the rental unit.

Analysis

The Landlords provided copies of both tenancy agreements: the one between the former landlord and the Tenant (the "First Tenancy Agreement"); and the one dated July 1, 2011. The Landlords and the Tenant both believed that the First Tenancy Agreement

was a fixed term lease that expired on June 15, 2011 and that the Tenant must move out at that time. This is not so. The First Tenancy Agreement was a one year lease, but there was no agreement that the tenancy must end at the end of the term. There is a box that must be ticked and initials that must be placed if the agreement was that the tenancy ends and the Tenant must move out on June 15, 2011. The box is not ticked and the initials are not placed. Therefore, I find that the First Tenancy Agreement continued on a month-to-month basis at the end of the one year term.

This was a mutual mistake made by both parties. It would be unjust to allow the Landlord to benefit from this mutual mistake. Tenancies can only end in accordance with the provisions of Section 44 of the Act. I find that the first tenancy did not end according to the provisions of the Act and that therefore the tenancy agreement of July 1, 2011, is a nullity and the First Tenancy Agreement still applies.

I find that monthly rent is \$725.00 per month and that the Tenant is entitled to recover the overpaid rent in the amount of **\$550.00** (\$50.00 per month from July 1, 2011 to and including May 1, 2012, 11 months). **The Landlords are at liberty to increase the rent in accordance with the provisions of the Act.**

The Tenant seeks additional compensation arising from the flood that occurred though no fault of either party. I find that the Landlords sufficiently compensated the Tenant when they provided \$300.00 for accommodations and food while the rental unit was being remediated. Therefore, that portion of the Tenant's application is dismissed.

The Tenant has been only partially successful in his application and I find that he is entitled to recover half of the cost of the filing fee from the Landlord in the amount of **\$25.00**.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct his monetary award in the total amount of **\$575.00** from future rent due to the Landlords.

Conclusion

I find that the Tenant is entitled to a monetary award in the amount of **\$575.00** from the Landlords, which includes recovery of half of the filing fee. The Tenant may deduct this amount from future rent due to the Landlords.

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 14, 2012.

Residential Tenancy Branch