



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDC, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for compensation for loss under the Act, to allow a tenant to reduce rent for services agreed upon but not provided, and to recover the filing fee from the landlord.

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 monetary compensation for loss under the Act?
Are the tenants entitled to reduce rent for services agreed upon but not provided?

Background and Evidence

The parties entered into a one year fixed term tenancy on April 30, 2012 and tenancy began on May 1, 2012. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenants.

The parties agreed the tenants were served with a one month notice to end tenancy for cause issued on May 31, 2012, with the reason stated in the notice as, Rental unit/site must be vacated to comply with a government order. Filed in evidence is a copy of the notice. Filed in evidence is a copy of the letter requiring the immediate decommission of the illegal suite.

The tenant testified they have accepted the notice to end tenancy and are vacating the unit on June 30, 2012. However, they have only found temporary housing and their belongings will have to be stored.

The tenant testified they are seeking one month's rent for compensation for the landlord not complying with the terms of the fixed tenancy agreement and compensation for moving related expenses they would not be incurring if the landlord did not breach the municipal bylaws and the tenancy agreement. The tenants seek to recover \$1,000.00 compensation for loss and \$300.00 for moving expenses.

The tenant testified the landlord was also to provide them with a mail-pickup arrangement and garbage pickup services. However, these services were not provided during the tenancy. The tenants seek compensation in the amount of \$50.00 for loss of services not provided by the landlord but agreed upon.

The landlord's agent testified that she was still trying to work out the terms of the shared mail box and the garbage pickup with the tenants.

Analysis

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

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

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

In this case, the tenants have the burden of proof to prove a violation of the Act and a corresponding loss.

In this case, the landlord entered into a one year fixed term tenancy agreement with the tenants, knowing the rental unit had not been approved by the city bylaws. The rental unit was inspected by bylaw enforcement and the landlord was required to immediately decommission the illegal suite. I find due to the action and neglect of the landlord, the landlord is unable to comply with the terms of the fixed term tenancy agreement.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The tenants are seeking compensation for their loss in the amount equivalent to one month's rent (\$1,000.00) and compensation for moving expenses in the amount of \$300.00. I find the amount claimed by the tenants to be reasonable, and I grant compensation under Section 67 of the Act, in the amount of **\$1,300.00**.

The evidence of the parties was mail pickup and garbage pickup was not provided during the tenancy as the landlord's agent was finalizing arrangements. As the landlord has failed to provide the tenants with services as agreed upon, I find the tenants have suffered a loss.

The tenants' application is to reduce rent, however, as the tenancy is ending on June 30, 2012, a rent reduction is no longer appropriate. I will grant the tenants monetary compensation for the loss of services for May 2012 and June 2012, under Section 67 of the Act, in the amount of **\$50.00**.

I find that the tenants have established a total monetary claim of **\$1,400.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and 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: June 25, 2012.

Residential Tenancy Branch