



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent.

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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

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

Is the landlord entitled to recover the cost of filing the application from the tenant?

Background and Evidence

The parties entered into a six month fix term tenancy agreement, which was to begin on August 14, 2012. Rent in the amount of \$1,600.00 was payable on the first of each month.

The landlord testified that the tenants picked up the keys to the rental unit on September 13, 2012. However, later that evening the tenants left him a phone message that they would not be moving into the rental unit. The landlord stated he tried numerous times to reach the tenants, however, they did not answer the phone until later the following day and they were not willing to work out a resolution. The landlord stated the tenants breached the fixed term agreement and they placed a stop payment on the rent cheque and security deposit cheque.

The landlord testified that attached to the tenancy agreement was an addendum which he agreed to have nine items fix by August 15, 2012 and all items were completed in accordance with that agreement.

Filed in evidence is a copy of the tenancy agreement and the addendum. The addendum states,

“the items listed below will be replaced/fixed/re-done by move in date August 15/12. 1. Blinds, 2. Front door/ensuite door 3. Hardwood Floors stained 4. Drywall 5. Re-paint deck 6. Carpets in 2 rooms 7. Trim on studio room 8. Lanscapping 9. Roof/floor in shed”

[Reproduced as written]

The landlord testified that he seeks to recover unpaid rent for August 2012 and in order to mitigate any further loss to both parties he moved back into the rental unit, however, he paid \$2,400.00 as a penalty to break a lease agreement, in which he was the tenant.

The tenant testified that the landlord breached the material terms of the addendum by only completed two items on the addendum and as a result the rental unit was unfit to live in.

Front door/ensuite door

The tenants testified the landlord did not replace the front door as required and only sprayed the lock black with paint. The tenants stated the ensuite door did not close properly and was falling off the hinges.

The landlord testified the front door and the ensuite doors were replaced. The landlord stated there was a loss screw in the ensuite door hinge, however, that was easily fixable. Filed in evidence are photographs of the doors.

Hardwood floors stained

The tenants testified the hardwood floor in the master bedroom was not stained.

The landlord testified all the hardwood floors were stained as required. However, the flooring in the master bedroom is laminate and impossible to stain.

Drywall

The tenants testified the landlord failed to complete the drywall in the back of the closet and it was dangerous. The tenants stated that there was also a hole in the studio wall that was not patched.

The landlord testified the drywall was fastened to the wall and the only thing that is missing was the drywall tape. However, this is inside a closet and is not a safety issue and does not have any impact on the tenancy. The landlord stated the hole in the studio wall could easily have been fixed with a cover plate, however, that was never discussed.

Filed in evidence is a photograph of the drywall in the bedroom closet. The photograph clearly shows the drywall is fastened to the wall properly and is not a safety issue.

Re-paint deck

The tenant testified the landlord failed to paint the deck and there were rust spots on the deck. Filed in evidence is a photograph showing rust spots.

The landlord testified the deck was painted. Filed in evidence are photographs of the deck, the deck appears to be freshly painted.

Carpet in 2 rooms

The tenant testified that the carpets were not replaced as you can tell by the floor trim.

The landlord testified that both carpets were replaced, however, each room had a different pattern installed. Filed in evidence a photographs of the carpets, the carpets appear to be clean and in good condition.

Trim in studio room

The tenants testified the trim on the outside of the studio door was not completed properly and was a safety issue as the trim stuck out from the door by an inch. The tenants stated the landlord also failed to put trim on the inside of the door. Filed in evidence are photographs of the trim.

The landlord testified that the only trim that he agreed to fix was the outside trim on the studio and that he had that trim installed. The landlord stated if there was a problem with the trim it could have easily been fixed, however, he was not given the opportunity.

Landscaping

The tenants testified that landlord did not properly complete the landscaping as required by the addendum. The tenant stated the grass was not cut for at least four days, the

garden beds were over grown and the pond was not cleaned and there were items left behind in the yard, such a car parts, child's tricycle and a dog chain.

The landlord testified that the landscaping was completed and that he was not required to upgrade the landscaping or complete the landscaping to the tenants unreasonable standards. The landlord stated any items left behind could have easily been removed if given the opportunity.

Roof/floor in shed

The tenants agreed the landlord did fix the shed, however, the landlord left belongings behind in the shed.

The landlord testified the only items left behind were items to maintain the property, such a lawn mower, the landlord stated if the tenant did not want to use these items he could have easily removed them if given an opportunity.

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.

The landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss.

As the tenants have claimed the landlord has breach a material term of the tenancy agreement, the onus is on the tenants to prove the landlord has violated that agreement to such an extent that the rental unit does not meet “health, safety and housing standards” established by law, and are not reasonably suitable for occupation given the nature and location of the property.

The evidence of the tenants was the landlord failed to complete the list in the addendum, and the rental unit was left in is such a condition that it was not suitable to live. The evidence of the landlord was all items in the addendum were addressed.

In this case, the addendum is not detailed enough to determine if the landlord has breached the addendum. As an example the addendum states front door/ensuite door, it does not detail what is required to be done to the doors, such as paint. However, the photographic evidence supports that both doors appear to be in a reasonable condition.

The photographic evidence submitted by both parties does not indicate that the rental unit was in such a condition that is was unsuitable to live in. The landlord is not required to make the unit new and is not required to bring the unit to a standard set by the tenants.

The landlord is only required to meet “health, safety and housing standards” established by law, and is reasonably suitable for occupation. The photographs filed in evidence support that the landlord has met the required standards and it appears by the photographs exceeded that standard.

I find the tenants have failed to prove the landlord breach the material terms of the tenancy agreement.

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 February 14, 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 August 2012.

While the landlord did move back into the rental unit during the month of August 2012, I find that landlord was merely mitigating the loss to both the tenants and himself. I find the landlord is entitled to compensation for unpaid rent in the amount of **\$1,600.00**.

I find that the landlord has established a total monetary claim of **\$1,650.00** comprised of the above amount 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

Conclusion

The landlord is granted a monetary.

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: October 31, 2012.

Residential Tenancy Branch