



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MND, MNDC and FF
Tenant: MNDC

Introduction

This hearing was convened on applications by both the landlords and the tenants.

By application of August 24, 2012, the tenants seek a monetary award for on the claim that the landlords did grant the one-month's free rent provided under section 51 of the Act when the tenancy ends on a section 49 notice to end for landlord use.

By application of October 24, 2012, the landlords sought a monetary award for damage to the rental unit, damage for loss under the legislation or rental agreement and recovery of the filing fee for his proceeding.

Issue(s) to be Decided

Are either or both parties entitled to a monetary award for the claims submitted?

Background and Evidence

This tenancy began on August 28, 2011 at a rent of \$1,100 per month, reduced to \$1,050 after a hearing on May 10, 2012. The tenancy ended on July 30, 2012.

The parties' first disagreement arose on the question of the security deposit. According to the landlord, the required \$550 security deposit was never paid. According to the attending tenant, the security deposit was returned to her at the end of the tenancy, which she offers as demonstrative that the landlord's claims for damage to the rental unit were contrived two months after he received her application and Notice of Hearing.

As to the tenants' claim, both they and the landlords have submitted a copy of a typed paragraph stating that, as of May 30, 2012, the landlords were serving notice to end the tenancy for landlord use, to house the male landlord's brother to enable him to care for his aged mother who lives in the basement suite of the rental building. The notice was not on the prescribed form as required by section 49(7) of the *Act*.

The attending tenant submits that she was not informed of and did not receive the one month's free rent which is due to tenants who received a notice to end tenancy for landlord use.

The tenant further stated that she had seen the rental unit advertised on August 9, 2012. A copy submitted had unfortunately cut off the advertisement, but the landlord concurred that he had run the advertisement to entice an application from the tenants because they had left without providing a forwarding address.

As to the tenants' claim, the landlord advised that, in fact, the tenant's had paid no rent for the last month of the tenancy. The tenant stated that the rent had always been paid directly by Income Assistance and she could only assume that they had done so for July 2012.

As to the landlords' claims, they had submitted a number of photographs late. While the tenant stated she had received coloured prints two days before, because of the late submission, the copies before me were poorer quality black and white faxes.

The tenant challenged the photographs on the claim that they were not of the subject rental unit, but of another building.

The landlord also submitted an itemized estimate for \$4,714.88 for the claimed repairs. However, he said most of the work has not yet been done, and his witness gave evidence that he had helped the landlord himself do the painting for which the estimate claims \$1,895. The witness said he used to work for the landscaping company which prepared the estimate, none of which appears to be for landscaping and which the tenant stated appears to have been written in the landlord's hand.

Analysis

As to the tenants' claim, I cannot, on the evidence before me, grant the one month's free rent as provided for under section 51 of the Act without third party, reliable confirmation that the contested July 2012 rent was paid. As such evidence would be obtainable by the tenant from the Income Assistance Branch, I dismiss the application with leave to reapply.

As to the landlord's claim, I find that, as much of it has not been done, and due to questions concerning the documentary evidence submitted and a lack of arm's length third party verification, I do not have sufficient evidence to calculate a monetary award. Having granted the tenant leave to reapply, I grant the same privilege to the landlord.

Conclusion

Both applications are dismissed with leave to reapply.

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: November 06, 2012.

Residential Tenancy Branch