



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDC, MNR, OLC, PSF, RP, RR, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking orders for the Landlord to make emergency repairs, for money owed or compensation under the Act or tenancy agreement, for the cost of emergency repairs, for the Landlord to comply with the Act or tenancy agreement, for the Landlord to provide services or facilities required by law, for the Landlord to make repairs to the rental unit, to allow the Tenants to reduce rent for repairs or services agreed upon but not provided, and to recover the filing fee for the Application.

Both parties appeared at the hearing. One of the Tenants appeared late, but both Tenants participated in the settlement portion of this decision. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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, however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing the last name of the owner/Landlord was corrected as it was misspelled on the Tenants' Application. The correct spelling appears on the cover page of this decision.

During the course of the hearing, the parties came to an agreement to end the tenancy, and I have described that agreement below. Therefore, the issues regarding repairs to the rental unit were not addressed as the tenancy is ending and the Landlord plans on demolishing the rental unit.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation from the Landlord?

Background and Evidence

This tenancy began in 2002. Although the tenancy agreement was put into writing, the parties have submitted into evidence two different versions of tenancy agreements.

The Tenants' tenancy agreement is signed by the spouse of the Landlord/owner, who asserted that the spouse had no authority to act in this matter. The Tenants have not signed this agreement. The terms of the Tenants' agreement are \$220.00 each per month in rent, that the tenancy started on June 1, 2002, and that water is included with the rent paid.

The copy of the tenancy agreement submitted by the Landlord is signed by the Landlord/owner and the two Tenants, has the tenancy starting on September 5, 2002, and requires the Tenants to pay \$330.00 a month each in rent, and water is not included in the rent.

The Tenants made a claim for the return of \$3,000.00, claiming this was the amount of money they have spent paying the water bills over the past 10 years in the rental unit. They allege that under their tenancy agreement they were not required to pay for water. The Tenants have also made other monetary claims for repairs or damages that occurred in 2007 and 2008, however, no receipts or invoices were submitted into evidence by the Tenants to support any of their claims.

During the course of the hearing both parties agreed that the current monthly rent is \$350.00 each, or \$700.00 per month in total.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenants' claims for monetary compensation for water and other repairs and damages should be dismissed.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, applicants must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance, I find that the tenancy agreement submitted by the Landlord is the actual tenancy agreement entered into by the parties. I base this on the fact that the Tenants signed this agreement (and oddly enough not the one they submitted into evidence), and that the rent is closer to the amount being currently paid by the Tenants.

I find the Tenants were required to pay the water bills because water was not included in their rent.

I also find that the Tenants have failed to prove the Landlord breached the *Act* or tenancy agreement, and further, the Tenants have insufficient evidence as to the value of their losses. I also find that by submitting an incorrect tenancy agreement and asserting it to be correct tends to bring into question the credibility of their evidence in its entirety.

For these reasons, I dismiss the monetary claims of the Tenants against the Landlord without leave to reapply.

SETTLEMENT AGREEMENT

During the course of the hearing the parties came to an agreement to end the tenancy. The parties requested the agreement be put in this decision, and I record the settlement pursuant to section 63 of the Act as a binding decision on the parties.

The parties have agreed that the tenancy will end no later than **March 31, 2013 at 1:00 p.m.**, and the Tenants will return peaceful possession of the rental unit to the Landlord at or before **1:00 p.m. March 31, 2013.**

The Landlord agrees that the Tenants are entitled to one month of free rent due to the tenancy ending. The Tenants will not be required to pay the rent for one month during the above period. For example, if both Tenants move out before the end of February 2013, then they are not required to pay rent for February 2013, and any rent paid for February 2013 must be returned to the Tenants. If the Tenants stay in the rental unit past the end of February 2013, then no rent is due for the month of March 2013.

The parties are commended for reaching an agreement on ending the tenancy.

Conclusion

The parties came to a mutual agreement to end the tenancy, as described above.

The Tenants' monetary claims are dismissed for the reasons described above.

Lastly, at the end of the tenancy, the Landlord must deal with any security deposit and interest on it in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 30, 2013

Residential Tenancy Branch