



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for a monetary order for compensation under the Act and the tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. 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.

Issue(s) to be Decided

Are the Landlords entitled to monetary compensation from the Tenants?

Background and Evidence

On July 19, 2012, the parties signed a written tenancy agreement. The tenancy began on August 1, 2012, and had an initial term of one year to July 31, 2013, following which the tenancy would continue on a month-to-month basis. The rent was \$1,150.00 per month, and the Tenants paid a security deposit of \$575.00 in July of 2012.

On September 4, 2012, the Tenants wrote a letter to the Landlords stating they were ending the tenancy immediately, because they found bed bugs and cockroaches in the rental unit.

The Tenants vacated the property, and the Landlord is claiming for loss of rent for one month, October 2012, in the amount of \$1,150.00. The Landlords' position is that the

Tenants breached the Act and tenancy agreement by ending a fixed term tenancy improperly.

In reply to the Landlords' claims, the Tenants testified and submitted a letter in evidence, setting out that they asked the Agent for the Landlord before they signed the Tenancy Agreement if there were bugs in the rental unit. The appearing Tenant testified that they asked the Agent for the Landlord if there was any history of bugs in the rental unit and were told there was no history of that, or words to that effect.

The Tenant testified that he was away in August and the cockroaches came in during that time.

The Tenant testified that his spouse refused to stay in the rental unit as she is afraid of bugs and is a very clean and tidy housekeeper.

Analysis

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

I find the Tenants have breached section 45 of the Act by breaching a fixed term tenancy without proper authority to do so.

Under section 45(2) of the Act, the Tenants were not allowed to end a fixed term tenancy without an order from an Arbitrator to end the tenancy, or without other authority under the Act to end it.

The Tenants might have used section 45(3) of the Act, which required them to give the Landlords a written notice of the alleged breach of a material term of the tenancy, and a reasonable amount of time to address the alleged breach of the material term of the tenancy. If the Landlords had not corrected the alleged material breach within the reasonable amount of time, then the Tenants may have given the Landlord notice they were ending the tenancy.

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.

I find that the Landlords have established that the Tenants breached the Act and tenancy agreement, and are entitled to monetary compensation for the breach.

I find the Landlords have established a total monetary claim of **\$1,200.00** comprised of \$1,150.00 in loss of rent for one month and the \$50.00 fee paid for this application.

I order that the Landlords may retain the deposit of **\$575.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$625.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants ended a fixed term agreement without authority to do so under the Act or tenancy agreement. The Landlord is entitled to one month of loss of rent and may keep the security deposit in partial satisfaction of the claim.

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 *Residential Tenancy Act*.

Dated: February 04, 2013

Residential Tenancy Branch

