



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF, MNDC, MNSD, MND

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have also filed an application seeking a monetary order and the return of double the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

Both parties agreed to the following set of facts; The tenancy began on May 1, 2010 and ended on December 31, 2010, it was a fixed term tenancy that was to end on January 31, 2011. The tenants were obligated to pay \$2900.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1450.00 security deposit. Both parties agree that a move in or move out condition inspection report was not conducted.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As both parties have filed for a monetary order, I will first address the tenants' claims and my findings as follows;

Tenants First Claim – The tenants are seeking \$34.45 for photo development, \$6.44 for the photo album, 20 hours of hearing preparation time X \$20.00 per hour = \$440.89.

It was explained that the Act does not prescribe for the costs of litigating ones case and accordingly I dismiss this portion of the tenant's application.

Tenants Second Claim – The tenants are seeking \$1280.00 for cleaning the unit at move in. The tenant's came to the amount as follows; 4 people X 16 hours = 64 hours X \$20.00 per hour. The landlord adamantly disputed this claim. The landlord stated that an agreement was in place to allow the tenants a \$400.00 rent reduction on the second month's rent to compensate the tenants for doing some cleaning and to cover the expenses of cleaning supplies. The tenant's do acknowledge that they did receive the \$400.00 dollar "rebate" but feel that they are entitled to what was verbally agreed to "on a handshake". The landlord replied that he wished they "would be honest with everything agreed on that handshake". With no supporting documentation or other evidence to consider the tenants have not satisfied me that they are entitled to the amount claimed and I therefore dismiss this portion of their application.

Tenants Third Claim – The tenants are seeking \$1280.00 for repairs they conducted but were to be done by the landlord prior to the tenants moving in but were not done. The tenants provided the same calculation as in their second claim to arrive at the number sought. The landlord disputes that any repairs were to be done by the tenants or that any agreement was in place to conduct any work as he has his own staff that would and did conduct repairs as needed. The landlord acknowledged the unit was not pristine but was functional and working. The tenant's did not submit any supporting documentation for this portion of their claim and have not satisfied me that they are entitled to the amount sought. I dismiss this portion of the tenant's application.

Tenants Fourth Claim – This portion of the tenant's application is to recover the loss of amenities in the home. The tenant's position is that there are 12 amenities in the home divided by the rent of \$2900.00 = \$241.67 per amenity per month. The tenants are seeking \$1933.36 ($\241.67×8 months) for loss of use of the downstairs bathroom, seeking \$483.34 ($\241.67×2 months) for having to deal with a roof leak, and seeking \$362.50 ($\241.67×1.5 months) for having to deal with a flood in the basement bathroom. The tenant's total claim for loss of use of these amenities is \$2779.20. The landlord disputes the entire amount sought by the tenant's. The landlord was emphatic that he would have a member of his staff address each and every issue brought to his attention. The landlord also advised that one of his employees lived on the same block so it was not an issue to have a serviceman attend. The landlord stated that all of the above issues were dealt with in "24 hours". He did not agree with any of the timelines as provided by the tenants. The landlord also challenged the tenant's entire application and stated it was a "cash grab". He further questioned the late filing of the matter as it had almost come up to its time limitation as noted in the Act.

The tenant's stated that they had placed numerous phone calls to the landlord about these issues and provided him with a letter detailing a list of deficiencies in the unit in November 2010. The landlord stated that he was not aware of any of the issues outlined in a letter dated November 9, 2010 as submitted by the tenant's for this hearing as he did not receive it until the tenant's filed for this dispute resolution hearing 22 months after the tenancy ended.

The tenant's stated that they "dropped off" this letter at the landlord's office and left it with his secretary. The tenants also provided pictures of the home that depict an older and worn home. The landlord stated that he did not receive any of these photos until this past Friday. The landlord does not dispute that the house was 70 years old and "last updated in the 70's". The landlord was consistent in stating the home was scheduled to be "knocked down" for new development and that the home was "not pretty but fully functional". The landlord reiterated that whenever the tenants informed him of an issue he dealt with it in a timely fashion.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy 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 tenants must inform a landlord if there are issues that need to be repaired, replaced or remediated. They bear some responsibility in minimizing the damage and then ultimately the landlords bear the responsibility of correcting or remedying the matter. The tenants stated that the first written notification was on November 9, 2010. The tenants were not clear or certain as to whether the landlord was personally served this letter and now seek to be compensated for 1.5 months up to 8 months for loss of use of some amenities. I do not accept this as making reasonable attempts to notify the landlord or mitigate the amount of loss or damage as is required under section 7(2) of the Act. Based on all of the above I am not satisfied that the tenants' have proven this portion of their claim and I accordingly dismiss this portion of their application.

Tenants Fifth Claim – The tenants are seeking the return of double the security deposit. The tenants have provided a letter dated December 8, 2011 seeking the return of the security deposit. The landlord stated that he had never received the tenants

forwarding address until he received notice that the tenants had filed for dispute resolution 22 months after the tenancy ended. The male tenant gave testimony that he had “delivered it personally “to the landlord. The female tenant later testified that it was “dropped off” with the secretary at the landlord’s office. These contradictions in the tenants own testimony raises more questions than it answers. Based on the disputing testimony of the landlord and the contradictory testimony of the tenants I am not satisfied that the tenants have provided their forwarding address in writing within the timeline prescribed under Section 39 of the Act and therefore dismiss this portion of the tenants application.

The tenant’s application is dismissed in its entirety without leave to reapply.

I will deal with the landlord’s claims and my findings as follows;

Landlords First Claim – The landlord is seeking the recovery of one month’s loss revenue in the amount of \$2900.00. The landlord provided the tenancy agreement that was signed by both parties and was to be for a fixed term. The landlord became aware on January 2, 2011 that the tenant’s had vacated without notice when he discovered the unit empty. Both parties acknowledged the agreement and that the tenant’s vacated one month early on December 31, 2010. I find that the landlord has proven this portion of his claim and is entitled to \$2900.00.

Landlords Second Claim – The landlord is seeking \$20,300.00 of loss of revenue for 8 months. The landlord stated that several days after the tenants moved out the house was “ransacked and all; metal, copper, pipe, wiring and bits of steel were stripped from the house and all walls smashed in”. The landlord feels that if the tenant’s did not abandon the unit early it would not have been damaged and feels that they should be responsible for the loss of revenue. The tenant’s adamantly dispute this claim. The landlord was contradictory in this portion of his application. He stated earlier that he became aware that the tenants had vacated on the “2nd or 3rd of the month” but then later stated he didn’t know until after the vandals had damaged the house. I find that the landlord was fully aware that the home was empty as he earlier testified and was fully aware the tenancy was terminated prior to the vandalism occurring. The landlord has not provided any basis for this portion of his claim. I dismiss this portion of the landlords’ application.

Landlords Third Claim – The landlord is seeking \$1000.00 to cover the insurance deductible for the vandalism and damage. As I have already stated in the second claim, the landlord has not been able to satisfy me that the tenant’s were responsible for any of that damage and accordingly dismiss this portion of the landlord’s application.

Conclusion

The landlord has established a claim for \$2900.000. I find that since the landlord has been only partially successful in his application he is entitled to the recovery of only \$50.00 of his filing fee. I order that the landlord retain the deposit of \$1450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1500.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without 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: January 29, 2013

Residential Tenancy Branch

