



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF,

Introduction

This hearing dealt with cross applications by the parties. The landlord is seeking a monetary order for loss of revenue and an order to retain the security deposit in partial satisfaction of the claim. The tenants are seeking a monetary order for compensation for damage or loss under the Act, regulation or the tenancy agreement and seeking an order to have the security deposit returned. Both parties attended for the conference. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to any of the above under the Act, the regulations or the tenancy agreement?

Background, Evidence and Analysis

The parties agree to the following: The tenancy began on August 28, 2012 and ended on September 29, 2012. The tenancy was to be for a fixed term of one year. The tenants were obligated to pay \$1250.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$625.00 security deposit.

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. Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in making a decision. As this matter was conducted over three separate days and almost 5 hours of hearing time, all issues,

evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in each parties application.

As both parties have filed an application I will deal firstly with the tenant's claims and my findings as follows:

Tenants First Claim – The tenants are seeking half a month's rent as compensation for having to live with a spider infestation and an unsafe unit. The tenant's gave the following testimony; a copper pipe runs along the wall under the cabinet into the rear of the refrigerator, they fear that the exposed piping is a hazard to their 26 month old twins, the tenants feel that this was a major safety hazard to their small children, the tenants discovered many spiders in the unit and informed the landlord that same day of September 7, 2012, on September 14 and 15, 2012 the landlord put traps outside the unit and provided bug spray to the tenants, on September 18 and 21 2012 the tenant sent e-mails to the landlord advising the spider problem was getting worse, stopped sleeping in the unit on September 22, 2012 as they would spray at night and didn't want to breathe in the chemicals, on September 24, 2012 the tenants sent a letter by registered mail to the landlord informing them they will be moving out due to the spider infestation, the tenants feel that when the they informed the landlord of the problem the landlord did little to correct the problem.

The landlord gave the following testimony in regards to this issue; did not have any spider problem prior to these tenants moving in nor after them moving out, the tenants had "hundreds of unpacked boxes stacked in the suite, the spiders must have come with them", they did the walk through at the beginning of the tenancy and the tenants never mentioned anything about the copper line, the copper line is a very thin flexible tubing that provides filtered water to the refrigerator and was not a danger to the children, due to some miscommunication the parties did not actually speak to one another until September 15, 2012, the landlord purchased bug spray the following day, the landlord was advised that the tenant's stopped sleeping in the suite on September 22, 2012, was attempting to deal with the spider problem as quickly and as efficiently as possible but feels the tenants didn't give them enough time to rectify the matter as they decided to move after only 7 days after they had spoken and assessed the problem.

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 did a walk through with the landlord at the outset of the tenancy and at that time there was no mention or concern in regards to the copper line. The tenant's also did not provide sufficient evidence in terms of what they did to mitigate this issue. The tenants were not able to satisfy me of the "dangerous nature" of this tubing. The tenants have provided some photos that show that there were some spiders in the unit however they were unable to demonstrate the "massive infestation" they referred to on several occasions. The tenant's gave testimony that the problem arose on September 7, 2012, but did not speak to the landlord directly until September 15, 2012 and that they stopped sleeping in the unit on September 22, 2012. I do accept that the tenants were upset with the spiders and that it did cause some inconvenience however they have failed to provide sufficient evidence of negligence on the part of the landlord. In addition the tenant's gave a very limited and restricted window of opportunity for the landlord to mitigate and correct this situation. As provided above, the tenant's must prove all four points in making a claim for compensation. They have not satisfied me that the landlord was negligent in his duties and I therefore find that the tenancy was still in effect when the tenants gave notice. I dismiss this portion of the tenant's application.

Tenants Second Claim – The tenants are seeking \$450.30 for moving costs. As I've already stated in the tenant's first claim, I find that the tenancy was in effect and therefore the tenants moved of their own volition in breach of the tenancy agreement. This portion of the tenant's application is dismissed.

Tenants Third Claim – The tenants are seeking \$26.88 for bug spray and insect board traps. The landlord acknowledged this cost and does not dispute it. The tenant is entitled to \$26.88.

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

Landlords First Claim – The landlord is seeking the recovery of one months' loss of revenue in the amount of \$1250.00. The landlord provided the tenancy agreement that

was signed by both parties and was to be for a fixed term. Both parties agree that the tenants' moved out prior to the fix term expiring and based on my finding that the tenancy was still in effect, I find that the landlord has proven this portion of his claim and is entitled to \$1250.00.

As the tenant's have not been successful in their application they're not entitled to the recovery of the filing fee.

Section 72 of the Act allows for the offsetting of costs and is appropriate in the matter before me.

The landlord has established a claim for \$1250.00 and is also entitled to the recovery of his filing fee of \$50.00 for a total of \$1300.00 I order that the landlord retain the deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$675.00 – \$26.88 that the tenants are entitled to for a total of = \$648.12. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to a monetary order of \$648.12.

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: March 08, 2013

Residential Tenancy Branch

