



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenants. The landlord applied for monetary compensation and an order to retain the security deposit in partial compensation of the monetary claim. The tenants applied for recovery of the security deposit. The landlord and both tenants participated in the teleconference hearing.

The hearing first convened on March 26, 2013. On that date, several issues arose regarding the documentary evidence of the landlord and the tenants. I therefore adjourned the hearing and directed the parties to reassemble and resubmit their evidence where appropriate.

The hearing reconvened on April 25, 2013. Late in the reconvened hearing, after both sides had given testimony on their applications, the landlord sought to amend her application to increase her monetary claim. I declined the landlord's request to amend, as she had ample opportunity earlier in the dispute resolution process to submit or request an amendment to her application.

I have reviewed all testimony and other admissible evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Are the tenants entitled to recovery of the security deposit?

Background and Evidence

Undisputed Facts

On December 20, 2012, the tenants went to view the rental unit, and they filled out a rental application. On December 22, 2012, the landlord and the male tenant signed a tenancy agreement for a one-year fixed-term tenancy to commence on January 16, 2013, with monthly rent of \$1259 due on the first day of each month. The tenants paid the landlord a security deposit of \$600. The tenants did not move into the rental unit. On January 3, 2013 the landlord applied to keep the deposit. On January 23, 2013 the tenants applied for recovery of the deposit.

Landlord's Evidence

The landlord stated that at the end of December 2012, the tenants emailed the landlord to cancel the lease. The landlord advertised the unit on Craigslist and provided a list of interested persons who called or viewed the suite between January 4, 2013 and February 4, 2013. The landlord was not able to rent the suite until March 15, 2013. The landlord has applied for \$1259 in lost revenue, payable January 16, 2013.

The landlord acknowledged that she had a discussion with the tenants about having the male tenant repair the flooring in the rental unit, but that was a separate proposal and not part of the tenancy agreement. The landlord stated she had no idea why the start date of the tenancy was January 16, 2013; it was something the tenants wanted.

Tenants' Evidence

The tenants stated that they liked the rental unit but they did not want to rent it with the floors in the condition they were, as their infant daughter was just about to start crawling, and they did not want her to get injured on the old flooring. The male tenant is a hardwood floor refinisher, and he stated he could update the floor and would only charge the landlord for the cost of the materials. The tenants stated that they entered into two written agreements with the landlord, one of which was the tenancy agreement and the other of which was for the male tenant to repair the hardwood floor of the unit.

The tenants stated that on December 26, 2012 the landlord texted them and asked them if they still wanted to move into the unit without updating the floor. The tenants informed the landlord that they would not move in without updating the floor. The tenants stated that they thought the landlord was the one who cancelled the lease, because she knew that the tenants would not move in without the update to the floor.

Analysis

I find that the landlord is not entitled to lost revenue as claimed. I find that updating of the floor formed a material term of the tenancy, as the tenants would not rent the unit unless the floor was updated and the landlord was aware of that fact at the time that they entered into the tenancy agreement. When the landlord decided not to update the floor, she fundamentally breached the tenancy agreement, and the tenants were entitled to consider the agreement as void.

The tenants are entitled to recovery of their security deposit of \$600, as the landlord's claim was unsuccessful.

As the landlord's claim was unsuccessful she is not entitled to recovery of the filing fee for the cost of her application. As the tenants' application was successful they are entitled to recovery of the \$50 filing fee for the cost of their application.

Conclusion

The landlord's application is dismissed.

I grant the tenants an order under section 67 for the balance due of \$650. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 10, 2013

Residential Tenancy Branch

