



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, MNR

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 filed an application seeking an order for the return of their personal property and an order to have their pet and security deposits returned. Both parties participated in the conference call hearing. 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

The fixed term tenancy began on July 1, 2012 and ended on April 30, 2013. The tenants were obligated to pay \$1200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$600.00 security deposit.

The landlord gave the following testimony:

The landlord stated that the fixed term tenancy was to end on April 30, 2013. The landlord made attempts to negotiate new terms and sign a new lease with the tenants but the tenants were unwilling. The landlord made further attempts but received no response. On May 1, 2013 the landlord entered the suite to conduct mould remediation work. The landlord stated that the tenants were aware he would be conducting the work that day as the basement unit had become vacate that day as well. The landlord stated that he conducted the work with three other men in a fashion that was recommended and accepted industry wide. The landlord stated that the subject unit had no signs of mould and that all air quality tests came back well within normal limits. The landlord stated that the tenants did not pay rent for the month of May 2013 or the April 2013

utilities as part of their tenancy agreement. The landlord changed the locks to the unit on May 8, 2013 as he was “tired of having squatters living in my house”. The male tenant attended later that day to sign the condition inspection report. The landlord denies shoving the tenant as “picking a fight with a larger man isn’t the smartest thing to do”. The police attended shortly thereafter. The landlord stated that he invited the tenant along with the police to attend the unit and have the tenant remove any personal belongings, but the tenant refused.

The tenants gave the following testimony:

The tenants stated that they had every intention of extending their lease but were unable to get a hold of the landlord. The tenants stated that when they moved into the suite it was in poor condition. The female tenants’ parents visited Christmas 2012. The tenant’s mother stated the house looked like a “ghetto special”. The tenants’ father was in the unit one time for two hours to babysit. The tenant’s father stated that he developed a lung infection a week later from what he believed to be from the mould in the unit. The tenants stated that they had come to an agreement with the landlord that they would conduct the work to improve the property at no cost as long as the landlord covered the costs of materials. The tenants came home on May 1, 2013 to find the unit had had mould remediation work conducted. The tenants stated that pieces of drywall had not been handled properly or disposed of according to industry standards. The tenants stated that many work practices were not met when conducting this work. The tenants felt it was an unsafe place to live. On May 8, 2013 the male tenant attended the suite to participate in the move out inspection. During the inspection the “landlord got really close to me and said you want to go?” The tenant stated that he felt this was an invitation to fight. The tenant then left the unit and called the police. The police arrived shortly afterwards. The tenant stated the police told him that he couldn’t enter the suite as that would be trespassing.

Analysis

The relationship between these two parties is an acrimonious one. Both parties referred to multiple issues not applied for as part of this hearing. It was explained that only the issues applied for would be dealt with in this hearing and that the parties were at liberty to file a separate application if they are unable to resolve any other matters. Both parties indicated that they understood.

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.

I will deal with the landlords' application and my findings as follows:

First Claim - The landlords are seeking \$600.00 for unpaid rent for May 1-14, 2013. The tenants acknowledge that no payment had been made and that the unit was not vacated until May 8, 2013. The landlord was able to re-rent the unit on for May 15, 2013. I find that the landlord is entitled to \$600.00.

Second Claim - The landlords are seeking \$265.27 for April 2013 unpaid utilities as part of their tenancy agreement. The tenants acknowledge this clause and did not dispute the claim. The landlord is entitled to \$265.27.

Third Claim - The landlords are seeking \$2699.20 for painting and renovations. The tenants dispute this claim. The landlord provided an estimate for the costs however has not undertaken any of the work at this time.

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 landlord acknowledges that he is "not out of pocket any monies". In addition, the landlord has already re-rented the unit and it is not clear when and if the alleged renovations will be conducted. The landlord has not provided sufficient evidence to meet all four grounds as listed above and I therefore dismiss this portion of his application.

I will deal with the tenants' application and my findings as follows:

First Claim – The tenants are seeking \$260.00 for paving stones. The tenants stated that they have a receipt for that cost but were unable to provide it. The landlord agreed that he had given the “okay” to purchase paving stones and that he would “agree to \$200.00 total”. The tenant was not able to produce the receipt for this hearing. Based on the agreement of the landlord I find that the tenant is entitled to \$200.00.

The landlord holds \$1200.00 in deposits in trust. The landlord has been awarded \$865.27. I will offset the amount with the \$200.00 awarded to the tenants for a total of \$665.27 owing to the landlord. The landlord is entitled to withhold that amount from the deposits and to return the remaining \$534.73 immediately to the tenants.

As neither party has been completely successful in their application I decline to award either party the recovery of the filing fee and each party must bear that cost.

I grant the tenant a monetary order under Section 67 of the Act. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$534.73.

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: June 04, 2013

Residential Tenancy Branch

