



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

In the first application the landlord seeks a monetary award for unpaid rent, the cost of a private investigator to locate the tenants and for the cost of a pest control service. In the second application the tenants seek return of the security deposit and damages for what they allege was a substandard premises caused by the landlord's failure to repair.

The landlord's original claim had removed the tenant A.H.'s name because her whereabouts were unknown. By agreement of all, her name was added as a respondent to the landlord's claim.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities, that either side is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a three bedroom house. The tenancy started in June 2012 for a one year fixed term to May 31, 2013 and then on a month to month basis. The monthly rent was \$1400.00. The landlord holds a \$700.00 security deposit.

The tenants vacated the premises in mid-February 2013. The landlord and his family, including Ms. N.B. his daughter and agent at this hearing, were visiting India at that time. Ms. N.B. says they only discovered the tenants had left when they returned to Canada in mid-March.

Shortly after move-in the tenant Ms. A.H. emailed one of the landlord's daughters with a list of items that needed attention in the home. She indicated in the email that if a reasonable arrangement could be made, the tenants themselves could undertake the

work and offset the cost against rent. The landlord's agent says the landlord agreed for the tenant Mr. St.C. to attempt some or all the repairs. That would seem to be the case as the tenant Ms. A.H. testifies that shortly after that the tenants presented the landlord with a list of 13 items they would need to perform a repair to the "back entrance laundry room." The tenants routed this list to the landlord by the unusual method of putting it in their own mailbox sometime in June 2012. Ms. A. H. testified that the landlord, who, she says, had purchased the house only as recently as June 1, 2012, was trying to defraud someone, perhaps the government, by receiving his mail at the dispute address. She testified that it was his habit to come around "every couple of months" and check the tenants' mailbox for mail addressed to him.

There is no evidence of any further written contact between the parties about any repair issues until January 7, 2013 when the tenant Ms. A.H. testifies she mailed the landlord a letter "further to our telephone conversation January 6, 2013" complaining about rats coming through that same laundry room back entrance. The tenant knew the landlord and his family were at that time in India and would be there for some months. The landlord's agent, his daughter Ms. N.B., says no such letter was ever received by the landlord. It was not in his mailbox when he returned to Canada.

The tenant Ms. A.H. says she mailed to the landlord another letter, dated January 31, 2013, giving notice for the end of February due to "unfit living conditions." She was aware the landlord was then in India. Ms. N.B. says there was no such letter found in the post on the landlord's return. The tenant Ms. A.H. acknowledges that though she knew the landlord was out of the country for some months when she sent this and the January 7th letter, she did not phone the contact person the landlord had given her to alert him to either letter.

On returning to Canada in mid-March 2013 and after having post dated rent cheques for 2013 either returned NSF or marked Stop Payment, the landlord discovered the tenants had gone. The tenants did not provide a forwarding address. The landlord's agent Ms. N.B. says she telephoned the tenant Ms. A.H. and was informed the tenants could not afford the place; both tenants were out of work and Ms. A.H. was going back to school. Ms. N.B. says that Ms. A.H. told her the landlord would be paid when she got her tax refund back. The tenant also told the landlord the premises had rats. After that the tenant Ms. A.H. changed her phone number (perhaps due to work changes) and the tenant Mr. J. St.C. had only text service on his phone.

To find the tenants the landlord hired a private investigator at a cost of \$73.50 who located the tenant Mr. J.St.C. at a barber/hair dressing school, where he was ultimately served.

The landlord hired a pest control company at a cost of \$168.00 who inspected the premises and left some "mouse treatment."

For reasons not completely explained the landlords did not attempt to re-rent the premises. They ultimately found new tenants for June 1. The tenant Ms. A.H. testified in response that she had driven by the place in May and there were obviously people living in the house.

Analysis

I regret to say that I have little faith in the tenants' version of events. Their suggestion that putting their materials list in their own mailbox for retrieval by the landlord was proper communication is simply not rational. Their notion of mailing important documents to the landlord while his is off in India for months and without taking steps to otherwise notify the landlord or his agents is more consistent with avoidance and deception than with tenants making a good faith attempt to notify their landlord. In regard to repairs to the house, I accept the landlord's version that he thought all was fine and that the tenants were either attending to the repairs themselves or were otherwise satisfied. With regard to the alleged rat problem, it has not been proved at this hearing and, indeed, on the evidence of Ms. N.B. was more likely a minor mouse issue if anything at all.

I find that the tenants were not justified in ending their tenancy before the end of the fixed term. There was no breach of a material term sufficient to allow them to repudiate their agreement. I find that they are responsible for \$1400.00 for unpaid January rent, \$1400.00 for unpaid February rent and \$1400.00 for unpaid March rent.

I find that the landlord, upon finding the premises abandoned in mid-March, failed to mitigate his loss by attempting to re-rent the premises in a timely fashion. Had he made that attempt I find it likely that he could have re-rented the property for May 2013. I award the landlord \$1400.00 for loss of rental income for April 2013, but no further.

In regard to the pest control inspection costs of \$168.00, I find that the cost was reasonably but unnecessarily incurred as a result of the tenant Ms. A.H.'s allegation over the telephone to Ms. N.B. on or about March 14. I award the landlord the \$168.00 claimed.

I find I must dismiss the landlord's claim for the private eye costs. That cost is in the nature of a disbursement incurred in the bringing of the landlord's claim. It falls into the category of "fees and disbursements" similar to professional process server fees. My jurisdiction in awarding fees and disbursements is, apparently, limited to awarding recovery of the filing fee, which I do in this case.

Conclusion

The tenants' application for an award in excess of the security deposit is dismissed.

The landlord is entitled to a monetary award of \$5768.00 plus the \$100.00 filing fee. I authorize the landlord to retain the \$700.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants jointly and severally in the amount of \$5168.00

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: September 09, 2013

Residential Tenancy Branch

