



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNSD, FF
 Tenant: MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by both parties.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled an order to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for compensation for damage or loss resulting from the landlord's non-compliance with the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on August 16, 2012 as a month to month tenancy for a monthly rent of \$950.00 due on the 1st of each month with a security deposit of \$475.00 and a pet damage deposit of \$500.00 paid. The tenancy ended on July 14, 2013.

The parties confirm the landlord has returned the deposits less \$195.00. The parties also confirm that the male tenant had signed the move out condition inspection agreeing to allow the landlord retain \$195.00 for carpet cleaning.

During the hearing the female tenant testified that while she did not agree that they should be held responsible for the additional carpet cleaning she accepts that the male roommate had signed off on that issue.

The parties agree that on or before February 19, 2013 there was a flood in the rental unit of unknown specific causes other than an a faulty toilet. The tenants submit that the rental unit was unlivable for a period of 6 days for which they seek compensation in the equivalent of 100% of the per diem rate of rent for the period.

In addition the tenants submit that restoration work was incomplete until May 8, 2013. The landlord confirms that May 8, 2013 was the approximate date of completion of all work.

The tenants submit, with photographic evidence, that the rental unit, while livable was not completely usable. The tenants submit that there were many boxes stored in the office area; there were closet doors removed and stored in the unit; the flooring was removed to concrete in some areas; the bathroom cabinetry was in the hall for several weeks.

The tenants seek compensation of 50% of the per diem rate of rent for the rental unit for the period from February 26, 2013 to May 8, 2013.

The tenants determined a per diem rate, based on a 31 day month, to be \$31.66 and that a total compensation would be \$1155.59 for this period. In addition the tenants seek \$189.96 for the period of February 19, 2013 to February 25, 2013 and \$60.00 for additional hydro costs due to restoration fans.

The tenants submit that their usual hydro bill was \$75.00 for a two month period and for this period it was \$140.00.

The landlord submits that he attempted to get some assistance from the strata corporation such as hotel accommodation for the tenants but he was unable to do so. As such the landlord submits that he is not in a position to offer the tenants any compensation.

Analysis

In regard to the landlord's claim I find that since the landlord had already received the male tenant's authorization to retain \$195.00 of the security deposit for additional carpet

cleaning there was no need for the landlord to submit an Application for Dispute Resolution as he had legal authority to retain that amount. I therefore dismiss the landlord's Application in its entirety.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

While I recognize the landlord took reasonable steps to have the rental unit restored after it was flooded I find the tenants were unable realize quiet enjoyment of the rental unit entirely for the period of February 26, 2013 to May 8, 2013 or at all for the period of February 19, 2013 to February 25, 2013.

I find that in this case there was a devaluation of the rental unit and the tenants are entitled to compensation. However, I do not find that the rental unit was devalued by 50%, given the tenants' willingness to stay in the rental unit and the absence of any serious complaints by the tenants to the landlord during this period of time, with the exclusion of the six days when the restoration work made the unit uninhabitable.

I therefore find that the tenants are entitled to compensation equivalent to 25% of their monthly rent, or \$475.00, for a period of the two months of March and April 2013 plus 2 days at 25% of the per diem rate of \$33.93 for February 27 and 28, 2013 or \$16.96 and 8 days at 25% of a per diem rate of \$30.65 for May 1 to 8, 2013 or \$61.30. I further find that the tenants are entitled to 100% rent abatement for the 6 days from February 19 to February 25, 2013, at a rate of \$33.93 per day, for a total of \$203.58. As such, I find a total compensation for loss in the value of the rental unit of \$756.84.

In regard to the tenant's additional claim for additional hydro costs I accept that the tenants would may have had an increase cost for hydro usage due the need for restoration fans, however the tenants have failed to provide any documentary evidence to establish any such increase. I dismiss this portion of the tenant's Application.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$781.84** comprised of \$756.84 compensation and \$25.00 of the \$50.00 fee paid by the tenants for this application as they were only partially successful in their claim.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: October 29, 2013

Residential Tenancy Branch

