



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: MNR, MNSD, MNDC, FF

Introduction

The landlord applies for a monetary award for unpaid rent, loss of rental income and liquidated damages arguing the tenants wrongfully repudiated a fixed term tenancy agreement.

Issue(s) to be Decided

Does the relevant evidence show on a balance of probabilities that the tenants unlawfully ended the fixed term tenancy? If so, what if any damage has the landlord incurred as a result?

Background and Evidence

The rental unit is the two bedroom middle floor of a house located near the University of British Columbia. The tenants, two young students from Taiwan and Singapore, viewed the property in April 2013 and signed a tenancy agreement for a fixed term tenancy to begin August 1, 2013 and end August 31, 2014 at a monthly rent of \$2000.00 (later adjusted to \$1800.00). A \$900.00 security deposit was paid. The August rent was paid.

The tenants re-attended at the property in late August. A move-in condition inspection was done and a report signed indicating that the condition of the premises was acceptable. It would appear that shortly after that, one or both sets of the tenants' parents viewed the premises and were of a different view.

On August 23 the tenants emailed the landlord stating concerns with: 1) safety because of so many “boys” living in the house and neighbouring house (also operated by the landlord) and because the fence was not sturdy, 2) the carpeted floors and kitchen appliances seemed very old and dirty and one tenant had bad allergies to dust, mold and cats, and, 3) the doors and windows did not appear to be very sturdy and were not sealed property, causing safety concerns and poor sound and wind insulation.

At hearing the tenants argued that the landlord had warranted that the lower suite in their house would be tenanted by girls.

The email closed with the paragraph:

Due to the above, both our parents have asked that we terminate the lease. Sorry about the sudden change of plan. Unfortunately, as both our parents are not happy with the living conditions of the house, we don't have much choice but to end the lease.

The landlord put the tenants on notice that she would hold them responsible for lost rent. However, the landlord was able to re-rent the premises for an additional \$25.00 per month starting September 1 and so did not suffer a rent loss and did not pursue that claim at this hearing.

The landlord relies on a liquidated damages clause in the tenant agreement charging one half month's rent in the event tenants leave before the end of the fixed term.

Analysis

The documentary evidence shows that the premises were acceptable to rent in April when the lease was signed. The move-in report shows that the premises were acceptable on August 21 when the tenant began to move in. The deficiencies they now claim were of a nature to be readily observable on reasonable inspection and so the absence of any complaint about them in the official move-in inspection report, leads me to conclude they were not a problem until the tenants' parents made them a problem.

A party to an agreement cannot rely on an oral representation made concurrent with the agreement. It must be in the written agreement. That is what written agreements are for. I therefore cannot give credence to the tenants' allegation that the landlord warranted that only girls would tenant the lower suite in the house. Even if I am wrong, the fact that there were not girls tenanted the lower suite when the tenants arrived in

August, would not have been a fundamental breach of the agreement justifying these tenants in repudiating it.

Conclusion

The tenants were not justified in repudiating their fixed term tenancy agreement with the landlord. The landlord is entitled to rely on the liquidated damages clause. No challenge was made to the legality of that clause.

I therefore award the landlord \$900.00 liquidated damages, plus the \$50.00 filing fee. I authorize the landlord to retain the \$900.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants jointly and severally for the remainder of \$50.00.

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: October 10, 2013

Residential Tenancy Branch

