



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, O, FF, MNR, MNSD

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to allow the tenant to reduce rent for repairs services or facilities agreed upon not provided by releasing the tenant from the lease.

The landlord's application is a request for a monetary order for \$1160.00 and recovery of the \$50.00 filing fee.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

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Issue(s) to be Decided

Tenant's application

Should the tenants be released from their lease and the requirement pay any further rent due to a breach of the tenancy agreement?

Landlord's application

Has the landlord established a monetary claim against the tenants in the amount of \$1160.00?

Background and Evidence

A security deposit of \$377.50 was collected on April 8, 2013 and this tenancy began on May 1, 2013.

The tenancy agreement was for a fixed term with an expiry date of April 30, 2014.

The tenants vacated prior to the end of the term, on January 28, 2014.

The rent was paid in full to the end of January 2014.

On January 20, 2014 the tenant gave the landlords written notice that there was a breach of the tenancy agreement, as smoke was entering the rental unit in numerous places, and requested that the breach be rectified by January 28, 2014 or they would be vacating.

The tenants stated at the hearing that the alleged breach was not rectified by January 28, 2014 and therefore they vacated the rental unit and are requesting that they be released from the obligation to pay any further rent.

The tenants further stated that they had, on numerous occasions, verbally informed the landlords of the problem of smoke entering their unit, thereby making it uninhabitable.

The landlords stated that they are unaware of any previous verbal reports of problems with smoke entering the rental unit however they did get a written statement from the tenants on January 20, 2014, alleging a breach of the tenancy agreement due to smoke entering the unit.

The landlords further stated that after receiving the written statement from the tenants they took immediate action to attempt to resolve the issue and had in fact canvassed the surrounding rental units to try and identify the suite from which the smoke was coming. They subsequently found that the smoke was most likely coming from unit 206 and therefore they gave the tenant up 206 written notice not to smoke inside the rental unit.

These tenants however vacated the rental unit on January 28, 2014, and therefore they do not believe they were given a reasonable length of time in which to rectify the breach.

The landlords believe that the tenant should be held liable for the lost rental revenue for the month of February 2014.

Analysis

First of all, during the hearing the tenants have agreed to pay the landlords claim for \$45.00 for cleaning, and \$250.00 for return of the move-in bonus.

Secondly the landlords have agreed to waive their claim for \$110.00 for carpet cleaning.

Therefore the only the only thing left for me to make a decision on, is whether or not to hold the tenant liable for lost rental revenue for the month of February 2014, or to allow the tenant to end the tenancy early due to an alleged breach.

In this case, as stated above, the tenants were alleging a breach of their right to use and enjoyment of the rental unit due to smoke entering the unit, however it's my finding that the tenants did not give the landlord a reasonable amount of time to rectify the breach after giving the landlord **written** notice of the alleged breach.

Section 45(3) of the residential tenancy act states:

If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives **written** notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenants have argued that they had verbally informed the landlord of the problem on numerous occasions, however as stated above the tenants are required to give written notice and then allow the landlord a reasonable period of time.

In this case the tenants gave written notice of the alleged breach on January 20, 2014, and subsequently vacated the rental unit on January 28, 2014, and I find that 8 days is not a reasonable amount of time to allow the landlord to rectify the alleged breach.

It is my finding therefore that the tenants are liable for the lost rental revenue of \$755.00 for the month of February 2014.

I also allow the landlords request for recovery of their filing fee since I have allowed a large portion of the landlords claim.

Therefore the total amount I have allowed combined with the amounts agreed upon by the tenants is as follows:

February 2014 lost rental revenue	\$755.00
Cleaning costs	\$45.00
Return of move-in bonus	\$250.00
Filing fee	\$50.00
Total	\$1100.00

The landlords however have already withdrawn \$780.00 from the tenants account on February 3, 2014 through an automatic withdrawal, and therefore that leaves a balance of \$320.00.

Conclusion

I have allowed \$1100.00 of the landlords claim, however since the landlord has already withdrawn \$780.00 from the tenants account on February 3, 2014, that leaves a balance of \$320.00. I therefore order that the landlord may retain the full \$780.00 that was withdrawn from the tenants account, and may also retain the \$320.00 of the tenant security deposit.

I have issued an order for the landlords to return the remaining \$57.50 to the tenant.

The tenant's application to be released from the tenancy agreement is dismissed.

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: March 25, 2014

Residential Tenancy Branch

