



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on February 28, 2014.

Preliminary Matter

The Application for Dispute Resolution was filed on February 28, 2014. The tenant presented a considerable amount of oral testimony relating to an incident which took place on March 1, 2014. When it came time to the landlord to respond he stated that the arbitrator ought not to hear evidence relating to that incident as it occurred after the Application was filed and he had not been given sufficient time to prepare. After carefully considering the submissions of the parties I determined that it was not appropriate to hear evidence on that incident as it was not identified in the Application for Dispute Resolution and the landlord would be denied one of the fundamental principles of natural justice being right to have notice and an opportunity to prepare a defence.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for emergency repairs or repairs?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order for the return of all or part of the pet damage deposit or security deposit?
- d. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations or tenancy agreement?
- e. Whether the tenant is entitled to an order that the landlord provide services or facilities required by law?
- f. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The rental property is a large 50 year old home located close to the university. The applicant and some nine other tenants rented the rental unit pursuant to a one year fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2013 and end on August 28, 2014. The rent was \$6685 per month payable in advance on the day before the first day of the month.

The applicant testified his share of the rent was \$670 per year. He also testified the landlord demanded and obtained a full months rent as the security deposit. He testified he paid another tenant \$670 and that tenant forwarded the money to the landlord. The tenancy agreement provided that the tenants must pay a security deposit although it does not state how much was paid. The landlord disputes this evidence. He testified that he has received a security deposit in the sum of \$3342.50 which is half of a month rent.

The applicant and the landlord have an ongoing dispute. The applicant failed to present any documents or other similar evidence choosing to rely on the documents presented by the landlord.

The landlord testified the landlords have unfairly treated him. In particular, the room he is leaving in is substandard. Further, he has been subjected to verbal abuse, harassment and the landlord has breached his covenant of quiet enjoyment. The landlord disputes much of the evidence raised by the tenant and submits the tenant is merely attempting to get out of his obligations under the one year fixed term tenancy.

Application for a Repair Order:

The tenant testified that his room is extremely hot and does not have a window thus making it impossible to sub-let. The landlord testified that they are prepared to install a window.

As a result I ordered that the landlord install a window in the tenant's bedroom that complies with building standards within 2 weeks of receiving this order.

Application for a Monetary Order:

During the hearing I ruled that it was not appropriate for me to consider the tenant's claim for monetary compensation and breach of the covenant of quiet enjoyment to the extent that it relates to an incident that occurred after the filing of the within Application for Dispute Resolution. After discussion between the parties the tenant testified he wished to withdraw his monetary claim at this time. I determined that it was appropriate for the tenant to be given permission to withdraw his monetary claim on a without prejudice basis. As a result I ordered that the monetary claimed be dismissed as withdrawn. The tenant has the right to re-apply..

Application for the Return of the security deposit:

I dismissed the tenant's claim for the return of his portion of the security deposit. The tenancy is for a fixed term. There are other tenants in the rental unit that have entered

into a new fixed term tenancy with the landlord commencing September 1, 2014. The landlord is not required to return the security deposit or pet damage deposit until 15 days after the later of the end of the tenancy or the date the landlord has received the tenant's forwarding address in writing. The tenancy is ongoing. This tenant has not provided a forwarding address. The claim for the deposit is premature and accordingly it is dismissed.

Further, the applicant failed to prove that the landlord is holding a deposit in excess of what is permitted under the Residential Tenancy Act. The tenant paid his share of the deposit to another tenant. As a result the tenant's claim for the return of his share of the deposit is dismissed. The tenants (the 10 of the them) retain the right to make a claim for the deposit within 15 days of the later of the end of the tenancy or the date in which in the landlord receives their forwarding address in writing.

Application for an order that the landlord comply with the Act, Regulations or tenancy agreement and for an order tenant is entitled to an order that the landlord provide services or facilities required by law?

The tenant failed to present sufficient evidence to establish these claims and as a result these claims are dismissed.

Cost of the Filing fee:

I dismissed the tenant's claim for the cost of the filing fee. The landlord was prepared to install the window as evidenced by his e-mail and the within application was not necessary. The remainder of the tenant's application was not successful.

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 18, 2014

Residential Tenancy Branch

