



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF, MNDC, CNR

Introduction

This hearing dealt with cross applications. The landlord is seeking an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking to have a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities set aside and a monetary order for money owed or compensation for damage or loss under the Act, regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or the tenancy agreement?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about May 1, 2013. Rent in the amount of \$1720.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$825.00. The tenant failed to pay rent in the month(s) of February and on February 11, 2014 the landlord served the tenant with a notice to end tenancy. The landlord stated that they are seeking \$1720.00 of unpaid rent plus \$825.00 liquidated damages as per their tenancy agreement for a total claim of \$2545.00. The landlord stated the tenants were exaggerating the extent of damage in regards to the flood in their suite. The landlord stated that she had a staff member soak up all the water in the unit. The landlord stated that drains were put in on all the ground level patios two days after the flooding. The landlord stated that the repairs were conducted as quickly as possible.

The tenants gave the following testimony:

The tenants stated that on January 10, 2014 their unit was flooded from overflowing water from their patio. The tenants stated that due to heavy rain and lack of drain on the patio it caused damage to the carpets and portions of the drywall in the unit. The tenants stated that the landlord allowed the tenants to remove the carpets due to the smell and moisture. The tenants stated that the landlord replaced the flooring about four days after the carpet was removed. The tenants stated it took nineteen days for the landlord to replace the drywall. The tenants stated that they did not pay the February rent as they felt the landlord “didn’t deserve it” for having taken nineteen days to remediate the suite. The tenants felt the unit should have been repaired in “two days, or probably one day”.

Analysis

All documentary evidence and testimony was considered when making a decision. As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Both parties advised that the tenants moved out on March 1, 2014; accordingly I dismiss the landlords request for an order of possession and the tenants request to have the notice set aside.

The landlord is seeking \$1720.00 in unpaid rent. The tenants acknowledged that they withheld rent without having the consent of the landlord or an order from the Branch. Based on the above I find that the landlord is entitled to \$1720.00.

The landlord is seeking \$825.00 for liquidated damages. I find the provision in the landlords’ agreement to be poorly worded and unclear. While it clearly states that if the tenant wishes to end the tenancy early, they could pay liquidated damages in which case the landlord had the option of treating the tenancy as being at an end, the second sentence begins “at the landlords option” which could mean “in the event the tenant ends the fixed term early” or “in the event the landlord elects to treat the agreement as being at an end” or both. In this case, the landlord expressly stated that she did not consider the agreement as being at an end but wished to hold the tenant to the strict terms of the contract. However, given the unclear wording of the liquidated damages

provision, I find that the provision can easily be construed to mean that upon payment and acceptance of liquidated damages, the agreement is at an end. While this is not the manner in which the landlord wishes to interpret the contract, I find that the rule of *contra proferentum* applies. This is a rule of contractual interpretation which provides that an ambiguous term in a contract is construed against the party that imposed the term, which in this case is the landlord. This hearing was conducted six weeks after the date the tenants vacated yet the landlord did not provide any evidence to the steps or costs incurred to rent the unit. Based on the above I dismiss the landlords claim for liquidated damages.

As for the monetary order, I find that the landlord has established a claim for \$1720.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$825.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$945.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenants advised that they were not seeking any monetary compensation and that they filed an application to dispute the landlords claim. Based on the tenants' information I dismiss their application in its entirety.

Conclusion

The landlord is granted a monetary order for \$945.00. The landlord may retain the security deposit. The tenants' application 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: April 14, 2014

Residential Tenancy Branch

