



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF
 MNR MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed on February 12, 2014, seeking to obtain a Monetary Order for unpaid rent and to recover the cost of the filing fee for their application.

The Tenants filed on April 24, 2014, seeking to obtain a Monetary Order for emergency repairs, return of their security deposit, and to recover the cost of the filing fee for their application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to a Monetary Order?
2. Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on June 1, 2013. The Tenants were required to pay rent of \$900.00 on the first of each month and on May 30, 2013 the Tenants paid \$450.00 as the security deposit. The parties attended the move in condition inspection on May 28, 2013 and the move out inspection on November 15, 2013.

The Landlord testified that the Tenants sent them an e-mail on October 15, 2013 to end their tenancy effective November 15, 2013. The Landlords responded on October 21, 2013, by e-mail, and informed the Tenants that their notice would not be effective until November 30, 2013.

The Landlord provided evidence that the Tenants placed a stop payment on their November 1, 2013 rent cheque and argued that the Tenants signed the move out condition inspection report form agreeing to put their security deposit towards partial payment of November 2013 rent. They are now seeking compensation for the balance owing of November 2013 rent in the amount of \$450.00.

The Landlord stated that they were dealing with some financial difficulties because the upstairs tenants vacated the house, without paying rent, and then these downstairs Tenants put a stop payment on their November rent cheque prior to moving. As a result, they decided not to continue to rent and put the house up for sale. They have subsequently sold the property. The Landlord confirmed that they made no effort to advertise or re-rent the unit prior to listing and selling the house.

The Tenant testified that they are seeking \$500.00 for reimbursement of the fees they paid for bed bug treatment. He indicated that they had found out on October 3, 2014 that there were bed bugs in the unit and they were trying to work with everyone on this situation but there were miscommunications. The Tenant stated that the Landlord was arranging to do fumigation of the bed bugs and dropped off an information sheet for what they had to do for the treatment. He point out that the information sheet stipulates that everything had to go through the dryer so the heat of the dryer would kill the eggs and bugs.

The Tenant argued that after doing his own research he determined that fumigation was not effective for the elimination of bed bugs so they made arrangements with the upstairs tenants for a heat treatment in order to kill all stages of the bed bugs. Their share of the treatment was \$500.00 for which they are claiming in their application. He

said he was advised at the *Residential Tenancy Branch* to include his security deposit of \$450.00 in his claim which totals the \$950.00 written on his application.

The Tenant submitted that they had entered into a verbal agreement with the male Landlord that if the house was left clean and all the garbage was hauled away that they would be even if they agreed to let the Landlords keep their security deposit. Four months later, the Landlords file an application to seek money for rent for a period when they did not reside in the house, which the Tenant argued was a breach of their verbal agreement.

The Tenant confirmed that he had not submitted documentary evidence to support his submission that fumigation is not an effective method of treatment for bed bugs. The Tenant acknowledged that he did not provide evidence to support they had paid \$500.00 for the cost of the bed bug heat treatment.

In closing, the Landlord stated that they had approached the Tenants about the cost of the bed bug treatment but were told they could not afford to pay for it. She was aware that as owner of the house she was required to ensure proper pest control was maintained so they had scheduled a professional pest control company to inspect the house and who confirmed the presence of bed bugs. The Landlords had arranged for the professional pest control company to do the treatment but later cancelled when the Tenants decided to pay for the heat treatment.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement, despite any disputes they may have with their landlord.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the Tenants were required to pay rent on the first of each month; therefore, they were in breach of section 45 (1) of the Act when they ended their tenancy on November 15, 2013. The Tenants agreed to have their security deposit of \$450.00 put towards the \$900.00 November 2014 rent. That being said, the Landlords made no effort to re-rent the unit in order to mitigate their loss of \$450.00 for the remainder of November rent. Rather, the Landlord decided to sell the house, listed it and subsequently sold it.

Based on the above, I find the Landlords did not mitigate their loss of rent and therefore, the Landlords have not met # 4 of the criteria for the test for damage or loss, as listed above. Accordingly, I dismiss the Landlords' claim, without leave to reapply.

The Landlords have not been successful with their application; therefore I decline to award recovery of the filing fee.

The Tenants have sought \$950.00 which includes the return of their \$450.00 security deposit plus \$500.00 for fees paid for pest control. As noted above, the Tenants signed the move out condition inspection report form agreeing to apply their security deposit towards rent. Accordingly, I dismiss their claim for the return of their security deposit, without leave to reapply.

Section 32 of the *Act* requires a landlord to 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 to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The evidence supports that the Landlords hired a professional pest control company to conduct treatment for the presence of bed bugs, in accordance with section 32 of the Act. It was the Tenants who refused that treatment and made a personal choice to hire a company to perform a different method of treatment.

In the absence of evidence to support the Tenants' allegations that fumigation was not an effective form of treatment, and in the absence of proof that the Tenants paid \$500.00 for a heat treatment, I find there to be insufficient evidence to meet all four criteria of the test for damage or loss, as listed above, as there is no evidence the Landlords breached the Act, and there is no evidence of the actual amount of the alleged loss. Accordingly, I dismiss the Tenants' claim of \$500.00, without leave to reapply.

The Tenants have not been successful with their application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlords' application, without leave to reapply.

I HEREBY DISMISS the Tenants' application, without leave to reapply.

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: May 30, 2014

Residential Tenancy Branch

