



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Onni Property Management Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The tenants seek a monetary order for money owed or compensation for damage or loss and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

During the hearing, the landlord confirmed that he was withdrawing the \$150.00 claim for professional carpet cleaning. The tenant also confirmed that he was withdrawing his claim for \$1,500.00 in moving costs. As such, no further action is required for these portions of the application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?
Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on December 7, 2012 on a fixed term tenancy ending on November 30, 2013 as shown by the submitted copy of the signed tenancy agreement dated November 24, 2012. The monthly rent was \$3,800.00 payable on the 1st of each month and a security deposit of \$1,900.00 was paid on October 6, 2012.

The landlord seeks an amended monetary claim of \$7,600.00 for the loss of rental income for the last 2 months (\$3,800.00 per month) of the fixed term lease as the tenants vacated the rental unit early. The tenants seek a monetary claim of \$9,000.00 which consists of \$900.00 per month for 10 months as the rental unit was not as advertised/misrepresented and was unready for occupation.

Both parties confirmed that the tenancy ended on September 30, 2013 after the tenant gave notice to vacate the rental unit on August 31, 2013 by email before the end of the fixed term tenancy.

The tenant disputes this claim stating that the landlord had misrepresented the rental and that it was not as advertised. The tenants state that safety was compromised by the landlord and that some adjacent units were advertised for \$1,400.00 less per month. The tenants state that the elevator would drop several feet without reason causing concerns of safety. The landlord disputes this stating that the rental unit provided as listed in the signed tenancy agreement. The landlord that there were deficiencies that were noted and dealt with as soon as they were notified. The tenants dispute this stating that amenities (stores) were promised to open and that there would be no parking allowed in front of each unit. The tenant states that he was given verbal assurances as part of his tenancy that the stores would open. The landlord disputes this stating that the only amenities promised were the ones noted in the signed tenancy agreement, ie. stove and oven, dishwasher, refrigerator, carpets and window coverings as listed. The tenants state that the garage door was not working, that the water was not hooked up, the freezer did not make ice cubes, on one occasion for 6 hours a plumber attended to fix issues disturbing the tenants infant. The landlord dispute these claims stating that at no time were the tenants locked out of the garage. The garage key system was upgraded to fobs, there were no promises of hooking up the refrigerator to a water supply so that ice could be made. The tenant states that the fire alarms would go off constantly disturbing their infant. The tenant states that the landlord's rental property was not ready for occupation.

The landlord disputes the tenants claims and states that the landlord responded to the tenants concerns over safety such as the elevator. The landlord states that the issue of the elevator was reported to the landlord on September 20, 2013 just prior to the end of the tenancy on September 30, 2013. The landlord states that the tenants issues over maintenance were dealt within a reasonable amount of time after being notified.

Analysis

I accept the evidence of both parties and find based upon the tenant's direct testimony that the tenancy ended prematurely on September 30, 2013 before the end of the fixed term on November 30, 2013 as shown by the signed tenancy agreement and the undisputed testimony of both parties. The landlord has established a claim for loss rental income of \$7,600.00 for the last two months on the fixed term tenancy at \$3,800.00 per month.

I find on a balance of probabilities based upon the evidence of both parties that the tenants have failed to establish a claim for compensation that the landlord's rental unit was not as advertised and was unready for occupation.

The tenant's monetary claim is based upon the average advertised rent of units in the rental property after the tenants entered into a fixed term tenancy for 1 year at \$3,800.00 per month as opposed to the signed tenancy agreement for a monthly rent with the landlord. The tenant's claim is for the lack of amenities (stores) that failed to open during their tenancy near the rental property. As well, I find that the tenant's concerns over maintenance were dealt with reasonably by the landlord once they were notified and that the inconveniences suffered by the tenant were as a result of the landlord's reasonable actions in responding to the tenants concerns. The onus or burden of proof lies with the party who is making the claim. In this claim it is the tenant. 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 their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant's monetary claim is dismissed.

The landlord has established a monetary claim of \$7,600.00. The landlord is also entitled to recovery of the \$100.00 filing fee. I order that the landlord retain the \$1,900.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$5,800.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is granted a monetary order for \$5,800.00.

The landlord may retain the security deposit.

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: July 22, 2014

Residential Tenancy Branch

