



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant file an application seeking to have a notice to end tenancy set aside and a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided

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

Preliminary issues

At the outset of the hearing both parties advised that the tenants no longer live in the unit and the tenancy is no longer an issue; accordingly I dismiss the landlords application for an order of possession and the tenants application to have the notice set aside.

The tenants further advised that they will remove the remaining garbage left in the unit and drop off the keys by 1:00 p.m. Sunday August 24, 2014.

Background and Evidence and Analysis

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.

The tenancy began on or about March 24, 2005. Rent in the amount of \$825.00 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 \$350.00.

I will address the landlords' claims and my findings as follows.

Landlords claim – The landlord stated that the tenants failed to pay rent in the month(s) of July and on July 4, 2014 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of August. The landlord stated that the tenant also owes \$125.00 for hydro, \$85.00 for Fortis Gas and \$650.00 for a damaged pathway for a total claim of \$2510.00. The landlord stated that no monetary amount will begin to repair the damage to the unit, their home or their life due to the stress the tenants have caused them.

The tenants dispute this claim. The tenants stated that they tried to pay the July rent but the landlord was so angry they were unable to give him the money. The tenants stated that the landlord was stealing hydro from them and that the damage in the unit is from the landlords neglect, not the tenants.

The landlord did not provide any supporting documentation in regards to the damaged pathway or any bills reflecting the amount of unpaid utilities and I therefore dismiss that

portion of his application. In the tenants own testimony they acknowledged that they have not paid the rent for July and still have the keys to the unit. The tenants stated that they had moved out in early August; however they are still responsible for this months' rent. I find that the landlord is entitled to the unpaid rent for July and August and award him \$1650.00.

Tenants Claim – The tenants are seeking \$5000.00 compensation for having to deal with the landlords' abuse, harassment and poor living conditions. The tenants stated that the landlord is negligent in keeping the property maintained and clean. The tenants stated that they have lost “thousands and thousands of dollars in musical equipment, clothes, and books “due to a flood that the landlord was responsible for. The tenants stated that the landlord installed a drain that ran right over their unit. The tenants stated that on June 15, 2014 a flash flood caused thousands of dollars of damage and loss. The tenants stated that they have also had to live with an ongoing mice problem. The tenants stated that they have become sick with seizures and anxiety over this stressful situation.

The landlord adamantly disputes this claim. The landlord stated that the tenants have not incurred any loss and that there was not “a single drop of water in their suite”. The landlord stated that he is in fact the one dealing with severe stress due to the tenants and that he has become physically ill due to this situation.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants have not been able to satisfy me of any of the four grounds listed. The tenants have not provided sufficient evidence to support their claim and I must dismiss their application in its entirety.

As for the monetary order, I find that the landlord has established a claim for \$1650.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$350.00 deposit and the \$12.38 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1287.62. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$1337.62. The landlord may retain the security deposit and interest.

The tenants' application is dismissed in its entirety.

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: August 19, 2014

Residential Tenancy Branch

