



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, OLC, MNDC

Introduction

This hearing dealt with an application by the tenant seeking an order for the landlord to comply with the Act, regulation or tenancy agreement, an order to have the landlord make emergency repairs for health or safety reasons, an order to have the landlord make repairs to the unit site or property and a monetary order. Both parties participated in the conference call 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.

Preliminary Matter

At the outset of the hearing the tenants advised that they are intending on moving out as soon as possible and no longer seek any repair orders. The tenants advised that for the purposes of this hearing their only claim is a monetary one.

Issues to be Decided

Are the tenants entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenants gave the following testimony:

The tenancy began on or about August 1, 2014 however the tenants received possession of the unit several days earlier at no cost. Rent in the amount of \$1650.00 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 tenants stated that they had rented a different property from this landlord several years prior and got along with him quite well. The tenants stated that despite numerous requests to view the property they were never afforded the opportunity. The tenants stated that the home is in disrepair and is in need of immediate attention. The tenants stated that they were unable to have a landline phone or cable service connected due to the poor condition of the home.

The tenants stated that they hired their own inspector to examine the home. The tenants stated that the third party inspection report clearly supports their position. The tenants are seeking the return of all rent paid to date, the return of the security deposit, the cost to hire the private inspector, the higher than normal cell phone costs due to the lack of a traditional landline and internet connection for a total monetary claim of \$5475.50.

The landlord gave the following testimony:

The landlord stated that the tenant made several inquiries over several months about a possible unit to rent. The landlord stated that the tenant was very aggressive in her pursuing him for a place to rent as she had difficulties with her previous landlord. The landlord stated that he was purchasing an older home and that if it was possible he would try to accommodate. The landlord stated the tenant did in fact view the property on July 6, 2014. The landlord stated that the tenant contacted him on July 11, 2014 to sign a tenancy agreement.

The landlord inquired with the tenant to make sure the unit was suitable for her and she confirmed that it was. The landlord stated that the tenants' son is the cause of all the problems and that he was not provided a reasonable amount of time to address the

issues. The landlord stated that he has always maintained his properties and that he continues to do so. The landlord stated that once he was informed of the alleged issues he made attempts to correct them but the tenants' ceased communication and filed for dispute resolution on August 6, 2014. The landlord stated that he received calls from the "gas company" that the tenants have yet to connect their service. The landlord stated that the tenants have paid rent for only seven days for the month of October and have withheld the remaining amount. The landlord stated that he believes the tenants never intended on staying long and that the reason they rented his house was to leave the issues with the previous landlord behind. The landlord stated that he has no problem if the tenants wish to break the lease and leave.

Analysis

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in making a decision. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim, in this case the tenant. 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 tenant took possession of the unit in late July and hired a home inspector to inspect the property. The inspection took place on July 31, 2014. The tenant issued a letter dated August 5, 2014 to the landlord citing deficiencies in the home. The tenant requested a reply from the landlord by August 12, 2014 and if an agreement could not be reached they would file for dispute resolution after that, however the tenant filed for dispute resolution the following day. The tenants have failed to satisfy all four grounds

as noted above to justify compensation, specifically #2-4. I accept the home requires some repairs and is worn. The landlord did not misrepresent the home to the tenants at any point. The tenants' only correspondence was dated August 5, 2014. The tenants filed for dispute resolution the following day thus negating any opportunity for the landlord to address these issues. In addition the tenants did not explain why they chose to hire a home inspector rather than notify the landlord of the issues to give him an opportunity to address them. The tenants have not provided sufficient evidence to justify that they are entitled to compensation. Based on all of the above and on the balance of probabilities I dismiss this portion of their application.

The tenants have not been successful in their application.

Conclusion

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: October 08, 2014

Residential Tenancy Branch

