



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, OLC, RRP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on March 20, 2015.

Preliminary Matters:

At all material times SG was acting as an agent for the landlord. She is not a party to the tenancy agreement. I ordered the application against SG be dismissed without liberty to re-apply as she is not a landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order for repairs?
- b. Whether the tenants are entitled to a monetary order?
- c. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

On October 16, 2013 the parties entered into a tenancy agreement in writing that provided that the tenancy would commence on November 1, 2013 and continue on a month to month basis. The rent was \$1300 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$650 and a pet damage deposit of \$150 for a total of \$800 at the start of the tenancy.

At the end of November 2015 the tenants gave the landlord written notice they would be vacating the rental unit on December 31, 2015.

On December 8, 2015 the tenant was disturbed by a slow leak in the bedroom. The leak got progressively worse over the next 5 days. During that period the tenant made 8 calls to the landlord but the landlord failed to response. On or about December 13, 2015 the ceiling collapsed releasing vermiculite and asbestos into the master bedroom and throughout the rental unit.

On December 15, 2015 the tenant contacted an environmental clean up serviced and their tests confirmed the presence of asbestos in the vermiculite and gave a quotation of \$18,000 to complete the abatement process. The tenant testified that the rental property must be treated in a proper way to comply with Workers Compensation standards. He testified that certain of his belongings must be taken to the dump and are no longer of any value. Other belongings can be abated and he can still use. The landlord testified he intends to demolish the house.

Analysis:

After carefully considering the evidence I determined the landlord is responsible for the tenants' reasonable losses. I find the landlord failed to respond in a prompt and necessary fashion to deal with this emergency.

Repair Order:

The tenants have suffered losses to two types of belongings. One type of belongings, if properly remediated can be returned to the tenant without the risk of contamination. The second type of belongings is contaminated to such an extent that they must be disposed of to a hazardous products area of the dump and cannot be returned to the tenants.

With respect to the first type of loss I determined the landlord is responsible for the retrieval of the tenant's belongings in a condition they are no longer dangerous to the health of the tenants. I order that the landlord retain the services of an environmental control contractor specializing in asbestos risks and that contractor is to remediate the tenants' belongings so that they can be returned to the tenants without contamination. Those belongings are to be remediated and returned to the tenants by May 20, 2015.

I further ordered that if the landlord fails to return the tenant his belongings as provided above by May 20, 2015 the tenant is at liberty to file another application seeking a monetary order for the loss of these belongings.

I determined the second type of belongings include the two beds in the rental unit, clothes, the bedding, pillows and quilt, 3 rugs, the couch and recliner and the two dog beds. Those belongings are contaminated to such an extent they must be disposed of by an expert and put in the hazardous area of the dump. The landlord is responsible for this. The tenants are entitled to monetary compensation for the loss of these belongings as set out below.

Monetary Order:

With respect to each of the tenant's claims I find as follows:

- a. The tenants claimed the sum of \$2700 for the loss of a bed and a futon. He estimated the bed was 3 to 4 years old and the futon was 2 years old. I determined the amount claim is unreasonable. I determined the depreciated value of the loss to the tenants is \$1500.

- b. I determined the tenants are entitled to \$100 for the cost of one month storage locker.
- c. I determined the tenants are entitled to \$500 for the cost of replacing clothes lost in the rental unit.
- d. The tenants claimed \$500 for the cost of bedding, pillows and a quilt. The tenants failed to present supporting documentation proving the quantum of loss. In the circumstance I determined the tenants are entitled to \$300 of this claim.
- e. I determined the tenants are entitled to \$300 for the cost of three rugs that were purchased 8 months ago being a reasonable sum for those items.
- f. The tenants claimed the sum o \$1500 for a couch and recliner. The couch was 3 to 4 years old. The recliner was 10 years old. I determined the tenants are entitled to \$750 of this claim.
- g. I determined the tenants are entitled to \$80 for the cost of two dog beds.

I dismissed the tenants' claim for the return of their security deposit and pet damage deposit. The Residential Tenancy Act provides that a tenant cannot make a claim for these items until 15 days after the later of the end of the tenancy or the date the tenants give the landlord their forwarding address in writing. The policy reason behind this provision is that it gives the landlord an opportunity to file a claim against the security deposit. The tenants failed to prove they gave the landlord their forwarding address in writing. As a result their claim is premature. The tenants have liberty to re-apply once they have provided the landlord with their forwarding address in writing and waited 15 days.

I dismissed the tenants' claim of \$18,000 for the cost of hiring a remediation company as the tenants have not paid money to the remediation company and have no interest in entering into a contractual relationship with one. This is the landlord's loss and responsibility.

Summary:

I ordered the landlord AJS to pay to the tenants the sum of \$3530 plus the sum of \$100 in respect of the filing fee for a total of \$3630.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 22, 2015

Residential Tenancy Branch

