



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain a refund of first and last month's rent paid to the landlord; and
- b) To recover filing fees for this application.

Service:

The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to a refund of rent paid to the landlord?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. A very significant amount of documentary evidence was provided also. It is undisputed that both parties were out of Province, the tenants saw an advertisement for a house for rent and planning to move into the Province, they responded on February 3, 2015. On February 3, 2015, the landlord responded and offered to have someone meet them at the house to view it but she said it had to be cleaned as renters had moved without notice. The tenants said they were out of town working but if required to view, they could have family look at it for them; they wanted to fill out an application. The landlord replied that they were asking for first and last month's rent due to the previous bad experience and were considering the applications. They noted they were having ducts etc. cleaned. Further communication on February 4 resulted in the landlord saying they did not need security or pet damage deposits and the tenant saying "And no rush if you need to do anything for the house prior to moving in" and the landlord asking "you didn't want to send someone to have a look at it after we get it cleaned out?"

The tenants say they are “looking to secure a place asap” and “we are super flexible so whatever needs to be done on the house doesn’t have to be rushed”. The landlord asked about a move-in date and the tenant replied again on February 4, 2015 that “30th will do”. The tenancy agreement was prepared and signed by both parties stating it began on March 1, 2015 for a fixed term to February 29, 2016 with a rent of \$1700.

On February 5, 2015, the landlord advised by email that a friend inspected the house and there was about \$1000 worth of work to do but it would be ready by the 1st and they could show it to the tenant’s family while the work was being done. The tenant replied, “Not a worry, you can tell them no rush...it might be the first week into March...so don’t worry about rushing for us if it doesn’t get done by time we go in we’re not fussy at all”. The landlord offered to give a key on the 1st to the tenants’ family if they were not in town.

On February 12, 2015, the tenant emailed they were flying home on February 23, 2015 and wanted to know if they could move in a couple of days early. On February 13, the landlord said they should be able to get in early but they were unsure of a date as they were dealing with painting and garbage. Once they were sure, they could set up a date for the tenants to meet with someone. The tenant replied they were in town February 23 to March 2 so they could arrange during the week to meet, check out the place etc. then plan for a weekend move. On February 22, the tenant said they would probably start moving over on Wednesday (i.e. 25th) as services were being switched that day. The landlord replied everything should be done by the end of next week.

On Monday, February 23, 2015 the tenants apparently went over to view the home and sent a text message at 2:30p.m. saying they could not move into a house like this. It is not disputed that they could not enter the house itself but the garage and yard still had garbage. The landlord states that there were no pulled blinds and the very clean house was visible through the windows. They said they were getting the garbage all removed and in fact, it was all removed by February 27, 2015. Photos and invoices were provided as evidence. The tenant said she was going to have her husband call later. Apparently this was a heated phone call and then a second call; the tenant only recorded a second call, not the first one. On February 23, 2015 the tenant emailed that after the male landlord’s phone call, ‘we both agreed that this rental could not proceed’.

The landlord listed the property for sale and possession date was May 28, 2015. He said it was his Father’s home but dealing with tenants long distance had become too stressful. On February 26, 2015 at 6:14 p.m., the male landlord offered to return the last month’s rent to the tenants but the tenants said they wanted all the money back. Unfortunately some disrespectful emails were exchanged between the parties when the

rental contract broke down, the tenants got a news agency involved and the landlord got Police involvement because of the emails continuing after two weeks of the rental breakdown and the tenants threatening to lien the home.

Analysis:

I find most communication was done by email as both parties were living out of the area. All written evidence was considered but I decline to consider recorded telephone calls which the evidence indicates are not complete.

I find there was a fixed term tenancy agreement signed in February, 2015 for a term beginning March 1, 2015 to February 29, 2016. According to section 45 of the Act, a tenant's notice to end a fixed term tenancy is not effective until the end of the tenancy. Until then, they are liable for the rent. However, in this case, the landlord mitigated his damages by putting the property up for sale and the new owners took possession on May 28, 2015. I find the tenancy was at an end on May 28, 2015.

The tenants allege they had cause to end the tenancy because the garage which was essential to their tenancy was not cleaned out and the backyard was a mess. However, I find the weight of the evidence is that the garage was cleaned out by the beginning of the tenancy, in fact it was done on February 27, 2015. I find the weight of the evidence is that the tenants turned up without an appointment to inspect the home on February 23, 2015, two days before the landlord said they could move in. I also find they had assured the landlord by email that they were not fussy and the landlord could take their time to finish up what had to be done. I find the weight of the evidence is that they had insufficient cause to end this tenancy; there is no evidence that the house was uninhabitable or that the garbage from garage and back yard would not be removed before the official date of the beginning of the tenancy. I find the tenants are liable to pay rent until the date the landlord called an end to the tenancy by giving possession to a buyer (May 28, 2015). I find the tenants liable for the landlord's rental loss of \$1535.48 for March, 2015 ($1700/31 \times 28$). The balance of the \$3400 payment will be returned to the tenant. I decline to make any award for harassment as it appears both parties were equally at fault when language was heated after the rental agreement broke down.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover their filing fees for this application.

Calculation:

Rent on deposit with landlord	3400.00
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Less rent for May 1-28, 2015	-1535.48
Less filing fee to tenant	-50.00
Total Monetary Order to Tenant	1814.52

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: June 25, 2015

Residential Tenancy Branch

