



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit for health or safety reasons, pursuant to section 33;
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to the landlord to provide services or facilities required by law, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and the three tenants attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to speak as an agent and settle this matter on behalf of the landlord owners of this rental unit at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application.

The tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's written evidence package.

At the outset of the hearing, the tenants confirmed that they wanted to withdraw their entire Application, with the exception of the monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and for recovery of the filing fee. Accordingly, the remaining portions of the tenants' Application are withdrawn.

The tenants confirmed that they wished to amend their Application to add the relief to obtain a return of their security deposit, a return of their post-dated cheques from the landlord, a declaration that this tenancy is ended due to the landlord's breach of a material term of the tenancy agreement, and a declaration that they are not required to fulfill clause 12 of their tenancy agreement addendum. The tenants stated that they were also seeking an increase in their monetary claim from \$1,900.00 including the filing fee to \$5,809.02 including the filing fee. The tenants provided this information in their written evidence package. The landlord consented to these amendments, as he had notice of the tenants' claims by way of the tenants' written evidence package that was served to him and that he reviewed prior to this hearing. In accordance with my authority to do so under section 64(3)(c) of the *Act*, I amend the tenants' application to add the above relief, given the landlord's consent.

Issues to be Decided

Are the tenants entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a monetary award for the return of their security deposit?

Are the tenants entitled to a declaration that this tenancy is ended due to the landlord's breach of a material term of the tenancy agreement?

Are the tenants entitled to a declaration that they are not required to fulfill clause 12 of the tenancy agreement addendum?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this fixed term tenancy began on April 1, 2015 and was to end on March 31, 2016. Both parties agreed that the tenants vacated the rental unit on June 27, 2015 but that they gave notice to end this tenancy effective on July 1, 2015. Monthly rent in the amount of \$1,850.00 was payable on the first day of each month. A

security deposit of \$925.00 was paid by the tenants and the landlord continues to retain this deposit.

The tenants stated that they are seeking to be released from their fixed term tenancy agreement early, due to the landlord's breach of a material term of the tenancy agreement. The tenants confirmed that they had rats in their rental unit, which they say the landlord did not deal with in an appropriate or timely fashion. The landlord disputes the tenants' claims, stating that he hired a pest control company and ensured that the rat problem was dealt with in an appropriate and timely fashion.

The tenants sought the following monetary compensation in their Application:

- \$1,850.00 for rent compensation;
- \$2,700.00 for health risk compensation;
- \$610.44 for cleaning and supplies;
- \$110.00 for storage unit rental;
- \$477.24 for moving expenses;
- \$11.34 for registered mailing of this Application; and
- \$50.00 for the filing fee for this Application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed to mutually end this tenancy effective on July 1, 2015;
 - a. The landlord agreed that the tenants are released from the obligations of the fixed term of their tenancy agreement which was to end on March 31, 2016;
 - b. The landlord agreed to waive the landlord's rights to pursue any loss of rent or other claims against the tenants, due to the early end of this tenancy on July 1, 2015;
 - c. The landlord agreed that the tenants are not required to fulfill clause 12 of the tenancy agreement addendum, regarding the tenants' obligation to professionally clean the carpets at the end of this tenancy;

2. The landlord agreed that July 2015 rent of \$1,850.00 has been deemed paid by the tenants to the landlord;
3. The landlord agreed to return the tenants' entire security deposit of \$925.00 and post-dated rent cheques from July to November 2015, to the tenants, by way of mail to be sent out no later than July 13, 2015;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenants' Application at this hearing and any potential claims or applications that the tenants may have against the landlord, arising out of this tenancy;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of any potential claims or applications that the landlord may have against the tenants, arising out of this tenancy;
6. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood that the terms of this settlement agreement are legal, final, binding and enforceable, which settle all aspects of this dispute.

This settlement binds the landlord and the landlord owners of this rental unit, as the landlord confirmed that he had authority to settle this matter on the landlord owners' behalf, as their agent at this hearing.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to return the tenants' entire security deposit of \$925.00 to the tenants.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the tenants' favour in the amount of \$925.00. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord fails to abide by condition #3 of the above monetary agreement. The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order in the event that the landlord fails to abide by condition #3 of the above monetary agreement. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' Application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, an order to the landlord to make emergency repairs to the rental unit for health or safety reasons, an order to the landlord to make repairs to the rental unit, and an order to the landlord to provide services or facilities required by law, is withdrawn.

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 09, 2015

Residential Tenancy Branch

