



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on February 4, 2015 seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other.

A detailed review was conducted of the 41 pages submitted into evidence by the Landlords and the 23 pages submitted by the Tenants. I informed the Tenants that serving photographs via fax was not a suggested method of service as photographs turn primarily black once faxed. I informed the Tenants that I would consider their oral description of their photographs. I explained that I would not accept additional submissions of photographs after the hearing as their evidence was late to begin with.

The Tenants raised the issue that their own evidence was served late to the respondent Landlords and to the RTB. The Tenants' evidence was received by fax at the RTB on August 12, 2015, five days prior to this hearing.

The Landlords did not raise any issues about receiving this evidence late. The Landlords stated that they had an opportunity to review the Tenants' evidence and they were prepared to proceed and respond at this hearing.

The Landlords made no mention of a second submission of evidence during the review of evidence or any other time during the hearing. After conclusion of this hearing I was informed that the RTB received a late submission of evidence from the Landlords. That evidence consisted of 6 pages received by fax on August 14, 2015. As the contents of the Landlords' second evidence submission was not referenced during the hearing it will not be considered in my Decision.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) How and when did the tenancy end in accordance with the Act?
- 2) Should the security deposit disbursement be ordered in this Decision?
- 3) Have the Tenants proven entitlement to monetary compensation pursuant to the *Residential Tenancy Act (the Act)*?

Background and Evidence

The undisputed evidence was the Tenants entered into a month to month tenancy that began on September 1, 2014. Rent of \$1,050.00 was due on or before the first of each month and on September 1, 2014 the Tenants paid \$525.00 as the security deposit. The Tenants vacated the property as of February 15, 2015. The Landlords were given the Tenants forwarding address for service during the move out inspection.

Both parties were represented at the move in and move out inspections. A Landlord and Tenant signed the condition inspection report form at move in on September 15, 2014 and at move out report on approximately February 17, 2015.

The Tenants testified that from the onset of their tenancy there were issues that were never fully resolved. Three repairs were to be completed as noted on their move in condition report and included the installation of a range hood, smoke detectors and repairs to the kitchen cabinet doors. The cabinet doors were never replaced as promised.

The Tenants argued that after they moved into the unit they notified their Landlords of other repair issues which pertained to improper outside lighting at their entrance; a broken grate in the ground at their entrance; problems with car fumes coming into their unit from the garage; and problems with the heat being shut off.

The Tenants referenced several text messages from their documentary evidence which were sent between them and the Landlords regarding the repair issue requests. The Tenants stated that their email dated January 16, 2015 was sent to the Landlords outlining their acceptable timelines for repairs.

The Tenants submitted that sometime prior to the January 2015 repair email their son had to be taken to hospital via ambulance and the paramedics had told them that their entry was not safe. They also informed the Landlords that they themselves and their guests had tripped and fallen at their entry.

The Tenants asserted that after their January 16, 2015 emails their access to the garage was cancelled. Their communications with their Landlords became strained shortly afterwards. Then on February 4, 2015 a municipal by-law officer knocked on their door and told them they had to leave as they were living in an illegal suite.

A tenancy addendum was submitted into evidence by the Tenants which states in part "2. Tenants are to take care of garbage disposal, and will be permitted storage in the garage for it".

The Tenants stated that they attempted to reach a mutual agreement with the Landlords to end their tenancy and when that failed they made application for Dispute Resolution. The Tenants referenced the February 6, 2015 text messages and noted that in the text # 50 the Landlords told them not to talk to them until the hearing.

On February 6, 2015 the Tenants gave their notice to end their tenancy effective February 28, 2015, in text message # 32 as submitted in their evidence. They vacated the property by February 15, 2015 and did not pay anything towards February 1, 2015 rent.

The Tenants now seek compensation in the amount of \$3,555.00 which is comprised of:

- 1) \$2,100.00 return of rent previous paid for compensation for the repairs that were never completed;
- 2) \$525.00 as the return of their security deposit; and
- 3) \$930.00 compensation for moving expenses that they described as being \$2,000.00 less \$1050.00 for February 2015 rent.

The Landlords disputed all of the items being claimed by the Tenants. They argued that they had attempted to attend to all of the Tenants' repair issues when they were brought to their attention.

The Landlords testified that the text messages submitted into evidence by both parties show how they were accommodating to the Tenants' requests. The Landlords argued that there were several times they offered the Tenants the opportunity to reduce their rent payments to accommodate any delays in repairs and each time the Tenants were happy to accept the reduction. They did their best to try and resolve the issues and to make the Tenants happy; therefore, they should not have to pay money to the Tenants for compensation.

The Landlords confirmed that a by-law officer wanted to inspect the rental unit. However, the Tenants were not ordered to move. They submitted a copy of a letter from the municipality which outlined the Landlords options with respect to the rental suite.

The Landlords asserted that they filed their own application for Dispute Resolution for unpaid rent and damages and were asking that the security deposit be applied to the unpaid February rent. Therefore, they dispute having to return the security deposit until their application is determined.

The RTB Record indicates the Landlords' application for unpaid rent and compensation for damages was filed on August 5, 2015. The Landlords' hearing is scheduled to be heard on February 16, 2016.

The Landlords argued that they are not responsible for the Tenants' moving expenses. They submitted the Tenants' moved themselves by their own choice. The Landlords asserted that they provided the rental unit in the way they had promised too and they attempted to resolve all of the Tenants' concerns. The Landlords argued that the evidence clearly shows that they had already provided compensation in the form of reduced rent and the Tenants readily accepted it.

In closing the Tenants confirmed that the Landlords had tried to keep them happy. However, their pictures show that the cabinet doors were never replaced, the metal grate had broken clips

which made it unsafe, and they were not allowed to use the garage even though their tenancy agreement provided them access.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Regarding the End of Tenancy

Section 45 (1) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) of the *Act* provides, in part, that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

Regarding Disbursement of the Security Deposit

Section 21 of the *Act* provides in part, that unless the landlord gives written consent, a tenant must not apply a security deposit as rent.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Regarding Monetary Compensation

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The End of Tenancy

There was evidence of a January 3, 2015 email issued from the Landlords outlining a three week timeframe when the Landlords could attend to some of the Tenants' repair requests. The Tenants responded with an email dated July 6, 2015 outlining some of their other concerns; however, there were no time frames for requests outlined in the Tenants' email.

While I accept the Tenants' submissions that they had requested repairs there was no evidence before me that the items they requested repaired would constitute a breach of a material term of their tenancy agreement. Accordingly, I find the repair issues presented by the Tenants would not meet the requirements to end this tenancy pursuant to section 45(3) of the *Act*.

On February 6, 2015 the Tenants sent a text message issuing their notice to end tenancy effective February 28, 2015. The tenancy agreement was a month to month tenancy requiring rent to be paid on or before the first of each month. Therefore, the proper effective date of the Tenants' February 6, 2015 notice would be March 31, 2015 and not February 28, 2015, pursuant to section 45 of the *Act*.

Notwithstanding the requirements of section 45 of the *Act*, the Tenants vacated the property and returned full possession to the Landlords upon completion of the move out inspection on February 17, 2015.

Based on the above, I find the Tenants' ended this tenancy in breach of section 45 of the *Act*. I conclude that the end date of the tenancy was **February 17, 2015**, pursuant to section 44(1)(d) of the *Act*. That being said, despite the tenancy ending on February 17, 2015, the Tenants' legal obligations to the tenancy agreement did not end until March 31, 2015 which was the legal end of tenancy based on their February 6, 2015 notice.

Regarding Disbursement of the Security Deposit

Section 38 of the *Act* stipulates provisions for disbursement of the security deposit once a tenancy has ended and section 21 of the *Act* prohibits a tenant from applying their security deposit to a payment for rent without the landlord's written consent.

In this case the Tenants made application for Dispute Resolution on February 4, 2015 seeking disbursement of the security deposit which was thirteen days prior to the end date of the tenancy. Therefore, I conclude that the Tenants' application for the return of their security deposit was premature, as their tenancy had not yet ended and they did not have the Landlords' written consent to apply the security deposit to their rent. Accordingly, the request for the security deposit is dismissed.

The Landlords have submitted evidence that they filed an application for Dispute Resolution seeking to offset the security deposit against their claim. Therefore, I hereby order the security deposit disbursement to be determined with the Landlords' application.

Regarding Monetary Compensation

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Upon review of the text messages and emails submitted into evidence by both parties it is evident that the parties initially had an amicable relationship. There was sufficient evidence in those communications to support the Landlords' submissions that they attempted to remedy repair issues as they were raised by the Tenants.

The Tenants submitted evidence regarding an incident where their minor child had to be rushed to the hospital via ambulance. It was during that incident that they said the issue(s) regarding their entry access were raised by first responders. Shortly afterwards the landlord-tenant relationship became adversarial.

I cannot imagine a more traumatic or emotionally upsetting situation for a parent than to witness their child needing emergency medical care. I have no doubt that any concerns for access which may have been stated by the first responders would have continued to weigh heavily on the Tenants' mind. That being said, there was insufficient evidence before me to prove the rental unit did not meet the requirements of section 32 of the *Act*.

In addition, there was no evidence to support the Tenants were issued an eviction order due to their suite being illegal. Rather, there was evidence that the municipality was communicating with the Landlords regarding the requirement to register the rental suite.

When parties enter into a tenancy agreement a landlord is required to provide the rental unit for the tenant's use and the tenant is required to pay the landlord rent for that usage. In this case, the Tenants paid their rent up to January 31, 2015 and continued to fully occupy the rental unit up until they returned possession to the Landlords on February 17, 2015. There was no evidence before me that prove the Tenants were entitled to 50% of their total rent returned.

There was however, conflicting evidence regarding restricted usage of the garage. The tenancy agreement addendum stipulated that the Tenants were to manage the garbage removal and were to store the garbage in the garage. That being said, there was insufficient evidence to prove the tenancy agreement provided the Tenants storage in the garage for anything other than garbage or for them to have access to their rental unit through the garage.

A Landlord has the right to determine where garbage is to be stored on the property until the garbage pickup day. Therefore, I find there was insufficient evidence to proof the Landlords breached the *Act* when the garbage storage location was changed.

After consideration of all of the above, I find there was insufficient evidence before me to prove the Landlords breached the *Act*, *Regulation*, or tenancy agreement. Therefore, the Landlords are not liable to pay compensation to the Tenants pursuant to section 7(1) of the *Act*. Rather, the Tenants had an obligation under section 7(2) of the *Act* to mitigate their losses, such as seeking assistance or orders for repairs through dispute resolution. They made application seeking only monetary compensation and then vacated the property which does not meet the test for mitigation.

Accordingly, I dismiss the Tenants' monetary claim in its entirety, without leave to reapply.

Conclusion

The Tenants were not successful with their application and their claim was dismissed without leave to reapply.

The security deposit disbursement was ordered to be decided with the Landlords' application.

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, 2015

Residential Tenancy Branch

