



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, MNSD, 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 filed by the Tenant was sufficiently served on the landlords by mailing, by registered mail to where the landlords reside on March 17, 2015. I find that the Application for Dispute Resolution filed by the Landlord was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on August 13, 2015. 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 landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on June 1, 2013, end on May 31, 2014 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$850 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$425 on May 17, 2013.

The tenant testified that on March 6, 2015 she received a message from the Property Manager that there was a problem with a leak in her unit. She was out of town at the time. She immediately contacted the landlord who attended to the suite.

She returned from out of town on March 9, 2015 and discovered extensive damage to her rental unit. There were fans and dehumidifier machines operating. She determined the rental unit was unlivable and spent the night at a friend's place. She talked to the landlord at that time and he advised he was unsure of the timeline for restoring the rental property. The landlord did not get back to the tenant. The landlord testified that he and his wife left to go out of the country for a week at this time.

The landlord testified the machines were removed on Tuesday, March 10, 2015. The tenant testified the machines were removed on the Wednesday.

The tenant produced a video and photographs of the condition on the rental unit.

On March 15, 2015 the tenant e-mailed the landlord advising the landlord that because of the flooding and the resulting unlivable conditions that she had vacated the rental unit as of March 13, 2015. The letter gives a forwarding address and asks that the deposit be returned.

The tenant filed a claim with the Residential Tenancy Branch on March 17, 2015.

The landlords take the position the tenant failed to give proper notice and they claim the sum of \$850 for loss of rent for April based on the following:

- They testified the rental unit was livable. In particular it was not unsanitary. While the flooring was a complete write off a bare concrete floor does not constitute unlivable.
- The fans and dehumidifier machines were removed on March 10, 2015.
- They completed the renovations to the suite around the middle of April. They testified they did not feel any rush as the tenant had vacated the rental unit.

Landlord's Application - Analysis

The Residential Tenancy Act provides that where a tenant wishes to end a month to month tenancy, the tenant must give the landlord a clear month notice on or before the end of the rental payment period that is effective at the end of the ensuing rental payment period. It further permits a tenant to end the tenancy if the landlord has breached a material term of the tenancy. Section 45(3) provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

I am satisfied based on the evidence presented that the rental unit was not livable and that the landlords breached a material term of the tenancy agreement. However, the Act requires that the tenant give the landlord written notice and a reasonable period to correct the situation. The Notice given by the tenant did not give the landlord an opportunity to correct the situation. Thus the tenant failed to end the tenancy under the provisions of section 45(3) as she failed to give the landlord a reasonable time to correct the situation.

However section 7(2) of the Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

- 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.

I determined the landlords failed to do whatever is reasonable to minimize the loss based on the following evidence:

- The rental unit was not livable at the time the tenant vacated the rental unit on March 13, 2015. A reasonable prospective tenant would not have rented it in that condition.
- The landlords failed to act diligently in repairing the rental unit. They testified the flooring was not finally installed until the middle of April. The landlords testified it was not urgent as the tenant had vacated. In my view the landlord has failed to fulfill the obligation to mitigate by delaying in the repairs.
- The landlords failed to produce any evidence as to their efforts to advertise in order to find other tenants.

As a result I order that the application of the landlord be dismissed.

Tenant's Application:

Policy Guideline #16 includes the following statement:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

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

- a. I determined the tenant is entitled to compensation as the tenant could not live in the rental unit for the period March 7, 2015 to the March 31, 2015. I am satisfied the rental unit was not livable. It was even more difficult for the tenant as the landlords went out of the country and the tenant had not idea how long it would be before the repairs were completed. I determined the tenant is entitled to reimbursement of the rent in the sum of \$685 for the period March 7 to 31, 2015.
- b. The tenant seeks an order for the return of her security deposit. The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit. The Policy Guideline also provides that an arbitrator must order the return of the security deposit where the landlord's claim has been dismissed.

The Application of the Tenant did not seek a claim for the doubling of the deposit and she filed before the expiry of 15 days from giving the landlord her forwarding address in writing. However, the landlords' claim has been dismissed. As a result no order is made for the doubling of the security deposit. I determined the tenant is entitled to the return of the security deposit in the sum of \$425.

- c. I dismissed the tenant's claim of \$150 for moving expenses. The tenant failed to produce receipts to prove this claim.

- d. I dismissed the tenant's claim of \$550 for alternative accommodation. The tenant testified she stayed with a friend. She failed to produce receipts or evidence that she incurred this expense. The tenant failed to prove she paid this sum.

In summary I ordered that the landlords pay to the tenant the sum of \$1110 plus \$50 for the cost of the filing fee for a total of \$1160.

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: August 25, 2015

Residential Tenancy Branch

