



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR MNSD MNDC FF

Introduction

This hearing originally convened on June 30, 2015, pursuant to the landlord's application for monetary compensation and an order to retain the security deposit in partial compensation of the claim. At the outset of the hearing the tenants stated that they had also filed an application for a monetary claim, but their file could not be scheduled to be heard with the landlord's application. I determined that it was appropriate to deal with both applications together, and I therefore adjourned the landlord's application and joined it with the tenants' application.

The hearing reconvened on September 2, 2015 at 9:30 a.m. On that date, only the male tenant called in. As the landlord did not attend the hearing, and the tenant appeared and was ready to proceed on both files, I dismissed the landlord's claim without leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

On December 27, 2014 the landlord and the tenants signed an agreement for a tenancy that would begin on January 1, 2015.

The tenants submitted that they arrived at the rental unit on January 2, 2015 to discover that the previous tenant(s) had not yet vacated the unit, and the landlord had not ensured that the doors and windows were secure and lockable. The tenants submitted that this was a fundamental breach of the tenancy agreement by the landlord.

The tenants submitted that on January 4, 2015 they discovered that on December 4, 2014, the previous tenant's boyfriend, a convicted killer, had shot a police officer at the rental unit address. The tenants were also informed that the rental unit had been a drug house. The tenants submitted that the landlord was aware that the tenants would be moving in with their three minor children, and the landlord fundamentally misrepresented the unit as being a nice place in a nice neighbourhood.

The tenants vacated the rental unit the following day. The tenants have claimed expenses totalling \$3,129.90 for moving into and out of the rental unit.

Analysis

Under section 45 of the Act, if the landlord breaches a material term of the tenancy agreement, and does not correct the situation within a reasonable time after the tenant gives the landlord written notice of the breach, the tenant may end the tenancy. In this case, the tenants did not give the landlord reasonable time to correct the breach of the agreement and the tenants cannot therefore rely on section 45.

However, I accept the tenants' evidence that the landlord fundamentally misrepresented the rental unit as being safe. I find it reasonable for the tenants to fear for their safety in a house where serious criminal activity had occurred and where the associates of the previous tenant may return to that location. I find that if the landlord had disclosed this information to the tenants they would not have agreed to rent it, and they would not have incurred the expenses they did for moving to and from the unit. I grant the tenants their monetary claim in its entirety.

As the tenants' application was successful, they are entitled to recovery of the \$50 filing fee for the cost of their application.

Conclusion

The landlord's application is dismissed without leave to reapply.

I grant the tenants an order under section 67 for the balance of \$3,179.90. This order may be filed in the Small Claims 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: September 22, 2015

Residential Tenancy Branch

