



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, RP, OPR, MND FF.

Introduction

In the first application the tenant seeks a repair order following a fire in her suite as well as the cost to replace a television and a rebate of rent.

In the second application the landlord seeks an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent, a monetary award for rent and for costs relating to clean up after the fire, the costs of a lab test for asbestos and a lock change.

Since the applications were made, the tenant vacated the premises and the landlord now has possession back.

As the tenant has left, her request for a repair order and the landlord's request for an order of possession are not longer necessary.

It is confirmed that no rent has been paid for August 2015.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either party is entitled to any of the remaining relief requested?

Background and Evidence

The rental unit is a two bedroom apartment in a nine unit apartment building.

The tenancy started in May 2013. The monthly rent was \$850.00, due on the first of each month. The landlord holds a \$425.00 security deposit.

On July 9, 2015 at about 2:00 a.m. there was a fire in the rental unit.

The landlord lives in the building. He was awakened and pulled a fire alarm. Before the fire department arrived he applied a fire extinguisher to what he describes as a portable air conditioning unit that was burning near a window in the tenant's suite.

The fire department attended. It would appear that they put out a small fire in the curtain near that appliance.

The landlord says the tenant had installed the air conditioner without his approval and that the electrical system in the building was not suitable for it. He says the fire was caused by the tenant's air conditioner malfunctioning.

He claims that three people spent 150 hours over the next two weeks cleaning the tenant's unit from all the chemical retardants from the fire extinguisher and those applied by the fire department. He claims \$3000.00 for this expense because, though he made no insurance claim, \$3000.00 is what the deductible is under his policy.

The tenant apparently stayed elsewhere during this time and then re-occupied the premises July 25th.

The landlord presents the fire department report. It does not determine the cause or location of the initial fire.

He presents a lab bill for an asbestos test he says the tenant demanded of him before she would move back. The report, costing \$135.00 proved negative for asbestos.

The landlord says that the tenant left the suite about August 28th without any notice. As well, he says she left virtually all her belonging in the suite including a fridge stocked with food.

He says that the tenant changed the locks without his knowledge in April 2015, though she gave him a key when it was demanded.

The tenant testifies that she had a water cooler not an air conditioning unit. She says it was not plugged in and so couldn't have caused the fire. She speculates that someone passing by had lit on fire the curtains inside her open window. She speculates that the burning curtains caused the water cooler to catch on fire.

She says the asbestos test was a requirement of the local government.

She says she gave the landlord written notice before August 1 that she would be leaving September 1. She says that the landlord showed the suite to “many people” in August.

Ms. B.B., another tenant in the building, testified that she was at the fire and that it was the tenant’s water cooler that appeared to have been on fire. It was badly melted. She says it was she who pulled the fire alarm and called 911.

Analysis

On the evidence presented at this hearing it is not reasonably possible to determine whether the fire that damaged the tenant’s rental unit was caused by a defect in the rental unit itself, perhaps an electrical defect, or was caused by the tenant’s appliance (whether it was an air conditioner or a water cooler) or whether it was caused by a third party.

As a result, I find that the landlord and the tenant must bear their own loss resulting from the fire. The landlord must bear the cost of cleaning and repairs, including the asbestos testing, and the tenant must bear the cost of being inconvenienced.

The tenant has not paid the August rent. The landlord is clearly entitled to have been paid that money and I award him \$850.00.

The landlord has not persuaded me that he is entitled to loss of September rental income. Though he says he did not know the tenant left the premises, the photos he submitted, showing what the tenant left behind, were submitted to the Residential Tenancy Branch on September 8th and may have been taken as early as August 8th. As well, the tenant’s evidence was not contradicted that the landlord showed the premises to prospective tenants in August. He would only have done so if the tenant had given him notice to end the tenancy, as she claimed.

I dismiss the landlord’s claim for the cost of a lock change. The tenant was wrong to unilaterally change the lock in April, but she provided the landlord with a key and he has not suffered loss.

The tenant claims damage to her television, caused, she says, during the landlord’s clean up. She has not provided any evidence about what the damage is, nor any independent evidence about the cause of the damage. Additionally, she has not provided any particulars about the type or value of the item. For these reasons I dismiss her claim regarding the television.

Conclusion

The landlord is entitled to a monetary award of \$850.00 plus recovery of the \$50.00 filing fee. I authorize him to retain the \$425.00 security deposit in reduction of the amount awarded.

The tenant's claim is dismissed.

The landlord will have a monetary order against the tenant for the remainder of \$475.00.

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 24, 2015

Residential Tenancy Branch

