



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss.

The Tenants submit that on May 15, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and stated that he is representing the Respondent at these proceedings.

On June 09, 2015 the Tenants submitted seven pages of evidence to the Residential Tenancy Branch, which the Tenants contend were served to the Landlord, via registered mail, on August 10, 2015. A Canada Post tracking number was cited that corroborates this submission. The Landlord stated that Landlord did not receive notification of this registered mail and the evidence package was not received.

The parties agreed to proceed with the hearing in the absence of the evidence package, with the understanding that the hearing would be adjourned if it was subsequently determined that I needed to view the documents submitted by the Tenants. After hearing the submission of the parties, including the Tenant's testimony regarding the documents submitted by the Tenants, I am satisfied that I can adjudicate this matter without physically viewing the documents submitted in evidence.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to a rent refund?

Background and Evidence

The Landlord and the Tenants agree that:

- they entered into a tenancy agreement for this unit, which was to begin on May 01, 2015;
- that a security deposit of \$600.00 was paid;
- the security deposit has been returned to the Tenants; and
- \$649.00 in rent was paid for May of 2015.

The Tenant with the initials ``G.N.`` stated that each Tenant agreed to monthly rent of \$649.00, which included internet. The Landlord stated that one Tenant agreed to pay monthly rent of \$649.00 and the other agreed to pay monthly rent of \$635.00, which included internet.

The Tenant with the initials ``G.N.`` stated that on May 01, 2015 her co-tenant informed her of the following deficiencies with the rental unit:

- there were no window coverings;
- construction debris needed to be cleaned from the rental unit;
- there were open holes in the wall, although she could not articulate what the holes were for;
- it was difficult to open the lock to the rental unit; and
- there was no refrigerator, stove, or microwave in the rental unit.

The Tenant with the initials ``G.N.`` stated that a used refrigerator was installed on May 02, 2015, which was noisy; and that used stove was installed on May 02, 2015 on May 03, 2015, which smelled.

The Landlord stated that:

- there were no window coverings in the unit;
- no cleaning was required;
- the ``open holes`` the Tenant refers to were cut outs for water valves, which are intended to be left open so the water can be turned off;
- the lock to the rental unit worked properly;
- the rental unit did not come with a microwave;
- a used refrigerator and stove were installed on May 01, 2015; and
- there was nothing wrong with the refrigerator or the stove.

The Tenant with the initials ``G.N.`` stated that she spoke with the Landlord on May 01, 2015 and he told her that he had not received a ``final inspection`` from the City. She stated that she obtained records from the City that show a final inspection was not completed until July 04, 2015.

The Landlord stated that he believes he had an occupancy permit for the rental unit for May 01, 2015; any reference to a ``final inspection`` on documents from the City may refer to something other than an occupancy permit; and the rental unit could be safely inhabited on May 01, 2015. He contends that the Tenants simply changed their minds about moving into the rental unit and that he should not be required to refund the rent that was paid for May.

The Tenant with the initials ``G.N.`` stated that the Tenants told the Landlord on May 08, 2015 that they did not wish to continue with the tenancy. The Tenant with the initials ``J.G.`` stated that she moved some of her property into the rental unit prior to May 08, 2015, but she neither Tenant stayed overnight in the rental unit.

The Landlord stated that the Tenants told him on May 07, 2015 or May 08, 2015 that they did not wish to continue with the tenancy.

The Landlord and the Tenants agree that Tenants never gave the Landlord written notice of their intent to vacate the rental unit or written notice of any problems with the rental unit.

Analysis

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

In adjudicating this matter I considered section 45(3) of the *Act*, which allows a tenant to end a tenancy without providing written notice to end a tenancy in accordance with the timelines established by section 45(1) of the *Act* 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.

On the basis of the undisputed evidence, I find that the Tenants never provided the Landlord with written notice of any of the deficiencies with the rental unit. Even if I were to conclude that any or all of the deficiencies with the rental unit constituted a breach of a material term in the tenancy agreement, I would find that the Tenants did not have the right to end this tenancy pursuant to section 45(3) of the *Act*, because they did not provide the Landlord with written notice of an alleged breach.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenants abandoned the rental unit in May of 2015.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. I find that there is insufficient evidence to establish that this tenancy agreement was frustrated. Even if I accepted the Tenants' evidence that a "final inspection" certificate had not been issued, the Tenants submitted no evidence to show that the rental unit could not be occupied without this certificate. Given that many "illegal suites" and suites without occupancy permits are safely are occupied throughout the province, I cannot conclude that the absence of a "final inspection" certificate renders the rental unit uninhabitable. I therefore find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

As the Tenants had not properly ended the tenancy prior to May 01, 2015, I find that they were obligated to pay all of the rent that was due on May 01, 2015, pursuant to section 26 of the *Act*. On this basis, I find that the Tenants are not entitled to a rent refund for the rent that was paid for May of 2015.

I find that the Tenants have failed to establish the merits of their Application for Dispute Resolution and I therefore dismiss the claim to recover the fee for filing this Application.

Conclusion

The Application for Dispute Resolution is dismissed in its entirety.

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: October 04, 2015

Residential Tenancy Branch

