



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR MNSD

Introduction

This hearing dealt with (a) an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim; and (b) an application by the tenant for a monetary order for (i) compensation for loss of quiet enjoyment of the rental unit and (ii) return of the security deposit.

In their original applications, the parties had both requested numerous other orders but when the tenancy came to an end on October 20, 2015 when the tenants vacated the rental unit, the number of live issues was reduced. As a result, this hearing only dealt with the matters raised by the tenants at the hearing.

Further, I noted at the outset of the hearing that the tenant's application contained no documentary evidence at all. The tenant claimed that he had faxed some materials into the RTB but I was unable to find any such evidence. Equally, the landlord advised that she had not received an evidence package from the tenant. As a result, the decision reached herein is based on the testimony of the parties at the hearing and the documentary evidence submitted by the landlord.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on June 15, 2015. The rent was \$1050.00 due in advance on the first day of each month. A security deposit of \$525.00 was paid at the start of the tenancy. On August 31, 2015 the landlord served the tenants with a 10 Day Notice to End Tenancy. The tenants disputed that Notice on September 4, 2015.

Ultimately, the tenants vacated the rental unit on October 20, 2105. The tenants did not pay any rent for September or October.

Some other details about the tenancy that are relevant to the claims before me are as follows.

- The tenants had two dogs. The landlord was aware of the dogs. However, the landlord began receiving complaints from the Strata Council for the building which claimed that the tenants had three dogs and that the tenants were not picking up after them, thus damaging the common areas of the residential property. The tenant maintained at the hearing that they had only two dogs and that on perhaps two occasions they had had an overnight guest who also had a dog.
- There was also an evening approximately a year ago when the tenants returned to their unit to find that the lock would not open. The lock to the rental unit was changed at that time. A key for the new lock was never given to the landlord. Subsequently, after the landlord had served the tenants with the 10 day Notice, the landlord gave the tenants a 24 hour notice that they would be coming to inspect the unit but they didn't have a key. This was an issue because the tenants were unable to be there at the time the landlord was coming to inspect and did not want the landlord entering in their absence. As a result, the landlord arranged to have the lock changed to gain access to the unit.
- The tenant testified that the landlord had said at one point in September after serving the Notice that she didn't care about the rent but just wanted them out. The landlord acknowledged that she had said this because she was so frustrated with the tenants and did, in fact, just want them out at that point. However, the landlord explained that she never intended that they would stay in the unit indefinitely without paying rent. She wanted them to leave as soon as possible and did not think the tenancy would continue until late October.
- The tenant stated in his application that on several different occasions in August, the landlord had breached the tenants' right to quiet enjoyment by entering the unit without 24 hour notice, threatening his animals, looking through the window of the unit and encouraging dogs to bark, making threats and refusing to help when other occupants of the building were disrupting the tenants.

Analysis

Landlord's Claim

Monetary Claim: The landlord has made a monetary claim comprised of the following:

| | |
|----------------|------------------|
| September rent | \$1050.00 |
| October rent | \$1050.00 |
| Lock change | \$ 168.00 |
| Strata fines | \$ 100.00 |
| TOTAL | \$2368.00 |

I shall deal with each of these items in turn.

September and October rent (\$2100.00) – At the hearing the landlord acknowledged that she had told the tenants to just leave and that she didn't care about the rent. She did state however that she did not expect the tenants to remain in the unit for most of October. I find that the landlord's position on this is reasonable. While she may have just wanted them out in September, I do not believe that she intended for the tenants to stay indefinitely rent free. I therefore find that the landlord has established a claim in the amount of \$1050.00 in respect of October's rent.

Lock Change (\$168.00) – The landlord has claimed reimbursement for the cost of having to change the lock on the rental unit to gain access in September. However, I do not believe the landlord is entitled to reimbursement for this expense. To my mind, the landlord should have either arranged to get a key to the unit when the lock was changed a year earlier or simply have waited to go into the rental unit when the tenants were there. The decision to change the lock in September was the landlord's choice and cannot, in my opinion, be made the responsibility of the tenants.

Strata Fines (\$100.00) – I am satisfied based on the documentary evidence submitted by the landlord that the tenants are liable for this claim. The letter from the Strata Corporation is specific and detailed and sets forth the reasons for the fines being imposed.

Security Deposit Claim: The landlord has requested an order permitting retention of the tenants' security deposit in partial satisfaction of the above claim. I have found that the landlord has established a monetary claim in the amount of \$1150.00 and I am satisfied that the landlord is entitled to retain the deposit to partly satisfy this established claim.

Tenants' Claim

Loss of Quiet Enjoyment - The tenant has claimed \$1050.00 – essentially one month's rent – as compensation for loss of quiet enjoyment. The tenant did not elaborate on his reasons for making this claim at the hearing but rather just gave a brief summary in his application of several events in late August that disrupted the tenancy. As stated above, the tenant claimed that evidence in support of his claim had been submitted to the RTB but after due inquiry I was unable to locate any such evidence. In any event, the lack of detail surrounding the disruptions asserted by the tenant and the fact that the tenant is not being held liable for the rent for September, I am not satisfied that the tenant has established this claim.

Security Deposit – The tenant has requested return of the security deposit. However, I have already ordered that the landlord may retain the deposit in partial satisfaction of the amount owing to the landlord by the tenant. I therefore dismiss the tenant's claim for return of the deposit.

Conclusion

I find that the landlord has established a total monetary claim of \$1150.00 as outlined above. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1200.00. I order that the landlord retain the deposit and interest (\$0.00) of \$525.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$675.00. 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: November 10, 2015

Residential Tenancy Branch

