



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of the security deposit paid to the Landlord, for compensation for loss or other money paid and for the return of the filing fee for the Application. The claims were made under the *Residential Tenancy Act* (the “Act”).

Both parties appeared at the second hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed as to the evidence they exchanged and received from each other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

There was one previous hearing in this matter on October 27, 2015, which dealt only with the request by the Landlord to adjourn due to a medical procedure. An interim decision was made and should be read in conjunction with this decision. The Landlord has supplied the evidence as was ordered in the interim decision. The matter proceeded on November 19, 2015.

As for the claim against the security deposit, the Tenants failed to provide the Landlord with their forwarding address in writing to return the deposit to, as required under section 38 of the Act.

The Landlord was put on notice at the hearing on November 19, 2015, that the Landlord now has the forwarding address and must deal with the security deposit pursuant to section 38 of the Act and the tenancy agreement between the parties.

Therefore, the Tenants' Application for return of the security deposit is dismissed with leave to reapply.

The Landlord was informed that if he did not return it within 15 days of the hearing date of the November 19, 2015 hearing, the Tenants could then re-apply for double the deposit.

I also cautioned the Landlord that since no condition inspection reports had been done, he had extinguished his right to claim against the deposit for damages under section 24 of the Act. I explained to the Landlord that if he did not return the deposit the Tenants would be entitled to double the deposit. I also explained to the Landlord he may still bring a claim for alleged damages, but he has extinguished the right to claim against the deposit. The Landlord confirmed he understood this.

I also cautioned the Landlord for charging a full month of rent for the security deposit, since under the Act the Landlord is only allowed to retain a security deposit equivalent to half of one month of rent. The Landlord acknowledged he understood this.

Issue(s) to be Decided

Are the Tenants entitled to any monetary compensation?

Background and Evidence

This tenancy began on January 1, 2014, with the parties entering into a written fixed term tenancy agreement for a one year term. The initial rent was \$1,900.00 per month and the Tenants paid a security deposit to the Landlord of \$1,900.00. This deposit was subsequently reduced by the parties when the parties entered into a second fixed term tenancy for a three month period and the rent was increased to \$2,400.00. At that time the deposit was reduced to \$1,200.00.

The Tenants vacated the rental unit, although was a dispute regarding when they had actually moved out and when the Landlord had changed the locks.

I also note the parties do not agree whether or not the first fixed term tenancy agreement required the Tenants to vacate at the end of the term, or whether it reverted to a month to month tenancy. The Tenants allege that the Landlord fraudulently changed the first tenancy agreement to require the Tenants to vacate at the end of the

term. The Tenants allege the Landlord did this to force them to pay a large increase in rent. The Landlord denied this and stated the Tenants had falsely accused him of this.

The Landlord stated that the rent was reduced at the outset due to work being done on the building where the subject rental unit is located but it had been the intention of both parties to increase the rent to \$2,400.00 following the end of the first fixed term tenancy agreement. The Landlord testified there was scaffolding around the building and that the usual rate of rent was \$2,400.00, but it had been reduced due to the work. The Landlord stated he always used a fixed term tenancy agreement which requires the renters to vacate at the end of the term, in case he does not like the renters.

The Tenants had a photograph in evidence, cropped tightly around a box similar to the one on the tenancy agreement, where it indicates a tenancy would continue on a month to month basis. The Landlord alleges the Tenants' photograph was not of the original tenancy agreement. The Tenants alleged that the photograph was taken at the start of the tenancy and their copy of the original agreement had gone missing following a visit to the rental unit by the Landlord.

In regard to the compensation sought by the Tenants they seek \$1,500.00 in compensation for dealing with construction on the building, lack of repairs to the rental unit, for losses due to mold in the rental unit and for their loss of over \$5,000.00 in possessions they allegedly lost due to the mold, silver fish and moths in the suite.

In particular, the Tenants claim for losses due to the mold in the rental unit. On March 5, 2014, the Tenants sent the Landlord an email setting out issues in the rental unit regarding mold, and other damage they recorded, which they did not want to be blamed for. As explained above, the Landlord had not performed a condition inspection report at the outset of the tenancy, and it appears the Tenants were trying to establish issues with the rental unit that was present when they moved in.

The Landlord replied to the email and had a mold inspection performed at the rental unit on March 6, 2014. There was a copy of this report in evidence, prepared by a company hired by the Landlord, which set out that there was some mold in the rental unit around the windows, and the bathroom fan needed repair. The report sets out that the mold could be cleaned around the windows and the fan should be repaired.

The Tenants testified that they had to clean the mold around the windows in the rental unit approximately every month and a half. The Tenants testified that it was not too bad in the summer, but when it rained water could enter around the windows and mold would form. Whenever it was raining or humid out the mold would return.

The parties agreed the building was under remediation for most of the tenancy, but could not agree on the extent of this work.

The Tenants testified that the Landlord did not repair the bathroom fan and this caused the mold.

The Tenants provided photographs of mold which they allege was around the windows and blinds. The Tenants testified that the windows leaked in the rain.

The Landlord questioned the photographs and suggested these may not even have been taken inside the subject rental unit. The Landlord had provided photographs of the rental unit which appear to have been taken for display purposes, as the rental unit appears “staged” for advertising.

The Landlord testified that he did not fix the fan because he did not think it was broken. He submitted that if the rental unit was so bad then why did the Tenants want to stay in the rental unit on a month to month basis. He testified that all the claims of the Tenants were false and were an insult to his intelligence.

Lastly, I note that throughout the hearing both parties accused each other of providing false evidence and testimony.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

As the Tenants testified during the hearing that they were not seeking a return of the additional money they paid in rent under the second tenancy agreement, I find it is not necessary to make findings on the issue of whether or not the first fixed term tenancy agreement required the Tenants to vacate the rental unit at the end of the first term. I also make no findings on the issues at the end of the tenancy with the Landlord changing the locks either on April 2 or 3, 2015, as these were not losses that were claimed for.

However, as to the issues of mold and lack of repairs, I find that the Tenants have proven the Landlord failed to maintain the rental unit as required under section 32 of the *Act*.

I find the Landlord's own report from a mold expert informed him that the bathroom fan needed to be repaired. Poor circulation of air, in particular moist air from the bathroom, may result in mold forming. Furthermore, as the windows were leaking in the rental unit there was additional moisture coming into the rental unit. I find the Landlord failed to address this issue when he neglected to follow the advice of his own expert and have the fan repaired.

Nevertheless, I find the Tenants had insufficient evidence to support a claim for \$1,500.00 in losses due to this. For example, they provided no substantive evidence that they had to throw out possessions that were damaged by mold.

Based on their own testimony and evidence, I find that the Tenants had to do some extra cleaning to remove the mold every month and a half, from March 2014 to the end

of the tenancy in March 2015. This leads me to conclude the Tenants suffered nominal losses due to the breach of the Landlord.

Therefore, I award the Tenants the nominal amount of **\$250.00** for having to clean the mold from the rental unit over the course of the year from the time they reported this to the Landlord in writing. As the Tenants had limited success with their application I award them only half the filing fee for the application, in the amount of **\$25.00**

I find that the Tenants have established a total monetary claim of **\$275.00**, comprised of \$250.00 in nominal damages and the \$25.00 toward the fee paid by the Tenants for this application. I grant the Tenants an order under section 67 for the balance due of **\$275.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord 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 final and binding on the parties, except as otherwise provided under the Act, and 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 19, 2015

Residential Tenancy Branch

