



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application.

The landlord and one of the tenants attended the hearing, representing the other tenant as well. The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for damages for loss of quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that this tenancy began as a fixed-term agreement on August 15, 2014 expiring on November 15, 2014. Rent in the amount of \$2,295.00 per month was payable on the 15th day of each month. After the fixed term expired, the parties entered into another fixed-term agreement for rent in the amount of \$2,095.00 per month payable on the 15th day of each month and to expire on June 1, 2015. The agreement also provided for pro-rated rent for the final half month, at which time the tenants moved out of the rental unit. Copies of both tenancy agreements have been provided. At the

outset of the first tenancy the landlord collected a security deposit from the tenants in the amount of \$1,147.50, all of which has been returned to the tenants. The rental unit is an apartment in an apartment complex.

The tenant further testified that the tenants did not enjoy their stay for the last 3 months of the tenancy for several reasons. The tenants received over 200 emails from the landlord about water leaks, about requests to check on a parking spot, and all kinds of subjects. Copies of several emails have been provided. The landlord accused the tenants of causing water damage and was very aggressive verbally. One of the emails provided is an apology from the landlord for over-reacting.

The tenant also testified that a key to the parking area wasn't working well so the tenants asked the landlord in September, 2014 to replace it, but the landlord never did, and the tenants didn't ask again.

The landlord suggested a move-out condition inspection report be completed on a Sunday evening at 10:30 p.m. but the tenants didn't agree. The landlord was going to be away for the weekend, so the second opportunity was between 7:00 a.m. and 1:00 p.m. on the Monday morning. The tenants eventually agreed to 7:00 a.m. which caused the tenants to have to re-schedule work.

During the tenancy the landlord changed internet and television network from one supplier to another without reducing rent. The telephone was linked to the internet with the first supplier, but not the second, and the tenants lost that phone.

The tenants seek compensation in the equivalent of 1 month's rent for inconvenience and loss of quiet enjoyment of the rental unit.

The landlord testified that the rental unit was rented furnished through a company who links furnished rental apartments with tenants from all over the world, and the tenants came from another country. The landlord paid a percentage of the rent to that company, and after the first 3 month tenancy, the landlord cancelled the contract with the company and reduced the rent by the amount of the fees paid to the company. The tenants did not have a vehicle but sometimes used the parking spot for guests and the tenants had a second key to the parking garage. The landlord rented the spot to someone else and also reduced the rent for the tenants by the amount collected.

One of the reasons the landlord sent emails to the tenants is because the landlord does not reside on the rental property and had asked the tenants to check to see if the parking spot was being used. If the tenants didn't want to do that, they ought to have

said so. The parking spot was rented to someone else from February 2, 2015 until the end of the tenancy, so the tenants had no use for the parking garage.

Another reason for emails was in an effort to come to an agreement on when the move-out condition inspection would take place, and the tenants agreed to 7:00 a.m. on the Monday as evidenced in the emails.

Another reason for the emails was with respect to a leak in the rental unit that leaked into the suite below. It was an emergency situation and the landlord has provided a copy of a plumbing bill which states that the plumber suspects that, after removing the wall and investigating the source of the leak, the bathtub overflowed.

With respect to the telephone, the landlord pointed out that the tenancy agreement clearly shows that telephone is not included in the rent.

The landlord also testified that all her dealings with the tenants were polite and respectful.

Analysis

Where a tenant makes a monetary claim against a landlord for loss of quiet enjoyment of a rental unit the onus is on the tenant to establish that the tenant has suffered damages or that a loss exists, that it exists because the landlord failed to comply with the *Residential Tenancy Act* or the tenancy agreement, and what the tenant did to mitigate such damage or loss.

In this case, the tenants claim that the landlord sent too many emails to the tenants, but have not established that they were bothered by them or that they told the landlord to stop. The tenants also claim that the landlord was asked for a key to the parking garage in September, 2014 but the landlord failed to do so. The landlord testified that the tenants didn't have a vehicle and also had another key, and the tenant didn't dispute that or make a second request from September, 2014 to June 1, 2015. I fail to see how the tenants have suffered any damages as a result of the landlord failing to provide a second key. The tenants also claim that they were inconvenienced by having to re-schedule work in order to attend the move-out condition inspection, however the tenants agreed to that date and time in an email. If the tenants did not wish to do so, they ought to have told the landlord that.

With respect to the loss of the telephone system which was on the previous network, the tenancy agreement is clear that the telephone is not included in the rent, and I find that the tenants have failed to establish that any loss was suffered as a result.

In the circumstances, it seems that the tenants have applied for compensation to penalize the landlord, and I have no authority to make such an order. I find that the tenants have failed to establish that the landlord has failed to comply with the *Act* or the tenancy agreement, and the tenants' application is hereby dismissed.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

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: December 15, 2015

Residential Tenancy Branch

