



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *CNR, MNDC, FF*

Introduction

This hearing dealt with an application by the tenant for an order to set aside a 10 day notice to end tenancy and for a monetary order for cleaning and for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard.

The landlord acknowledged receipt of evidence submitted by the landlord but the tenant did not. The landlord stated that she sent the tenant the evidence by registered mail but was unable to provide a tracking number. Therefore the landlord's evidence was not used in the making of this decision. Both parties gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to a monetary order?

Background and Evidence

The tenancy began on November 15, 2015. The monthly rent is \$1,600.00 due on the last day of each month. A copy of the tenancy agreement was filed into evidence.

The landlord testified that the tenant visited the rental unit twice before deciding to rent it and during the visits; the tenant spoke about repairs, but did not mention cleaning. The tenant stated that he moved in on November 15, 2015 and noticed that the rental unit needed cleaning. The tenant filed copies of messages between the two parties. The tenant agreed that he had notified the landlord about the lack of hot water shortly after he moved in but did not refer to the condition of the rental unit with regard to cleaning.

On November 17, 2015, the tenant was informed by the landlord that the repair person had checked out the hot water tank and mentioned that there was dirt under the tank that was picked up by the sensor resulting in the shut off of the power supply to the tank. The tenant agreed to clean under the tank and did so immediately.

The next message to the landlord is dated November 18, 2015 and informs the landlord that the hot water tank is still not working. During the hearing, the tenant testified that he cleaned under the tank one more time after which the hot water supply was restored.

The tenant agreed that he did not inform the landlord about the rental unit needing cleaning but assumed that the landlord allowed the tenant to move in early to clean the unit. The landlord stated that the tenant asked for \$450.00 for cleaning after the landlord asked for rent for the period of November 15-30, 2015.

The tenant argued that he requested access only to the rental unit on November 15, 2015 in order to ready the unit for occupation on December 01, 2015. The tenant paid rent for December on December 01, 2015, but refused to pay rent for the latter half of November 2015.

On December 07, 2015, the landlord served the tenant with a notice to end tenancy for nonpayment of rent in the amount of \$800.00 for the period of November 15-30, 2015. The tenant made application to dispute the notice in a timely manner.

On January 01, 2015, the tenant paid rent and the landlord accepted it. The landlord did not issue a receipt for 'use and occupancy'. A receipt stating rent is accepted for use and occupancy only lets the tenant know that the tenancy has not been reinstated.

Analysis:

Based on the sworn testimony of the both parties, I find that by accepting rent and not informing the tenant that the tenancy was not reinstated, the landlord had in fact reinstated the tenancy. Therefore, the notice to end tenancy is set aside.

Regarding the tenant's claim for \$450.00 for cleaning, I find that the tenant did not notify the landlord that rental unit needed cleaning and therefore did not give the landlord an opportunity to have the unit cleaned professionally. However, the landlord agreed that the floor beneath the hot water tank needed cleaning and this was done by the tenant.

Based on the approximate time and effort it would take to clean under a hot water tank, I find it appropriate to award the tenant \$40.00 for his efforts. The balance of the tenant's claim for cleaning is dismissed.

Since the tenant is successful in his application to set aside the notice to end tenancy, I award the tenant the recovery of the filing fee of \$50.00.

Overall the tenant has established a claim of \$90.00. The tenant may make a onetime deduction of this amount from a future rent. The landlord is at liberty to serve the tenant with a notice to end tenancy for rent owed.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant may make a onetime deduction of \$90.00 from a future rent.

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: January 19, 2016

Residential Tenancy Branch

