



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR

Introduction

This was a cross-application hearing for Dispute Resolution.

The Landlord applied requesting a monetary order for unpaid rent or utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act*, ("the Act") regulation, or tenancy agreement; to keep the security deposit in satisfaction of the claim; and to recover the fee for the application.

The Tenants applied for compensation for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the return of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Is the Tenant entitled to the return of rent paid for April 2016?

Is the Tenant entitled to the return of the security deposit?

Is the Landlord entitled to liquidated damages?

Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that they entered into a tenancy agreement to start on April 15, 2016, as a 1 year fixed term tenancy to continue thereafter as a month to month tenancy. Rent in the amount of \$1,450.00 is to be paid of the first day of each month. The Tenants paid a security deposit of \$725.00 to the Landlord.

The Tenants testified that they never moved into the rental unit. They testified that they viewed the rental unit on March 19, 2016 for about 30 minutes while the existing tenants were still living there. They testified that there was over-whelming interest in the unit and that they signed the tenancy agreement. The Tenants testified that when they entered the rental unit on April 16th they noticed a bad stench that smelled like urine. They testified that they did not notice a stench during the initial viewing, or when they went back to the unit for a second viewing.

The Tenants testified that the Landlord informed them that she would see about getting new carpet installed in the rental unit. The Tenants testified that after the carpet was removed the smell was still present. The testified that the Landlord stated she could look into the floor boards to see if that was part of the problem.

The Tenants testified that they were planning to live and work out of the rental unit and they don't feel they were getting what was agreed to in the contract. The Tenants also submit that the electrical service was not sufficient for their needs and they had concerns about damage to doors and the condition of the deck.

The Tenants submit that the rental unit was not fit for human habitation. The Tenants started looking for a rental unit elsewhere and asked the Landlord to end the lease agreement with them. The Tenants testified that they notified that Landlord that they were not moving in and they were ending the tenancy. They testified that they returned the keys to the Landlord on April 22, 2016.

The Tenants testified that they could not recall if they provided the Landlord with their forwarding address in writing.

The Tenants are claiming for the return of \$725.00 for ½ month of rent paid for April 2016, and for the return of the \$725.00 security deposit.

In response, the Landlord testified that the Tenants broke the fixed term tenancy agreement.

The Landlord testified that the Tenants were accepted for the rental unit starting on April 15th 2016. She testified that despite the Tenants having two opportunities to view the rental unit with no concerns, they suddenly complained that they could smell cat urine. The Landlord testified that the Tenants asked if the carpet could be replaced and the Landlord agreed. She testified that the hallway and living room carpets were ripped out two days later. She submits that the next day the Tenants stated that they did not want the rental unit any longer.

The Landlord has provided documentary evidence of receipt for painting, and cleaning of the rental unit that was performed by a repair and maintenance service at the rental unit on April 12, 2016.

The Landlord testified that the tenancy agreement has a liquidated damages clause that requires the Tenants to pay \$750.00 as liquidated damages for the Landlords costs of re-renting

the rental unit, if the Tenant ends the fixed term tenancy early. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the rental unit was rented out for the month of May 2016, so there is no claim for loss of rent against the Tenants. The Landlord makes a total monetary claim in the amount of \$1,425.00 as follows:

- Liquidated damages in the amount of \$700.00
- Rent for half of April 2016, in the amount of \$725.00
- Recovery of the filing fee in the amount of \$100.00

The Landlord has already received April 2016, rent in the amount of \$725.00 and asks to keep \$700.00 from the security deposit in satisfaction of the claim for liquidated damages. The Landlord testified that she did not receive written Notice of a forwarding address from the Tenants.

Section 16 of the *Act* states that the rights and obligations of a Landlord and Tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the Tenant ever occupies the rental unit.

Section 45 (3) of the *Act* states that 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, the Tenant may end the tenancy effective on a date that is after the date the Landlord receives the Notice. A Notice to end a tenancy given under this section must comply with section 52 regarding the form and content of a notice to end tenancy.

Analysis

Based on the evidence and testimony before me, I find that the tenancy took effect on March 11, 2016, when the parties signed the tenancy agreement. I find that the Landlord took reasonable steps to deal with the concerns of the Tenants. There is insufficient evidence before me to prove that there was a health or safety risk that made the rental unfit for human habitation.

I find that the Tenants have not provided sufficient evidence that there was a breach of a material term of the tenancy, and even if there was a breach, the Tenants did not provide the Landlord with proper Notice of the breach; a reasonable deadline to fix the breach; and that failure to do so would end the tenancy. I find that the Tenants did not end the tenancy in compliance with the provisions in section 45(3) of the *Act*.

I find that the Landlord is entitled to keep the \$725.00 that the Tenant's paid for rent for April 2016. I also find that because the Tenants ended the fixed term tenancy early, the Landlord is entitled to liquidated damages.

I order that the Landlord can keep \$700.00 of the security deposit in satisfaction of the Landlord's claim for liquidated damages.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord's claim was successful, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I order that the Landlord can keep the remaining \$25.00 from the security deposit in partial satisfaction of this claim.

I find that the Landlord is entitled to a monetary order in the amount of \$75.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenants ended the tenancy early. I order that the Landlord can keep the \$725.00 she received for April 2016, rent. I order that the Landlord can keep the security deposit of \$725.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order in the amount of \$75.00 for the amount remaining for the recovery of the filing fee.

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: July 12, 2016

Residential Tenancy Branch