



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HENRY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD, MNR, FF

Introduction

In the first application the landlord seeks to recover half a month's rent lost as the result of the tenants ending the fixed term tenancy before expiry of the term.

In the second application the tenants seek recovery of their deposit as well as a monetary award for damages for lack of heat in the rental unit, groceries lost because of a refrigerator failure and cleaning costs.

The tenant Ms. T.H. and the landlord's representative and sole owner, Mr. L. attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenants breached the tenancy agreement by leaving early and that the landlord has suffered loss? Does it show that the tenants suffered loss because of a fridge failure or that the premises were not reasonably clean at move in or that there was insufficient heat provided?

Background and Evidence

The rental unit is a two bedroom apartment. The tenancy started April 1, 2016 for a one year fixed term. The monthly rent was \$1275.00 due on the first of each month. The landlord holds a \$637.50 security deposit.

On May 10 the tenants gave the landlord a written notice that they were moving at the end of May. The notice included a forwarding address. The notice does not give any reason for the move.

The tenants vacated at the end of May. It does not appear that the landlord conducted a move-out inspection though one was done on move-in.

Earlier, the landlord's representative Mr. L. had texted the tenants that he would return the deposit money 15 days after they moved out. The tenants inquired of the deposit after they moved. The landlord sent them a registered letter which they thought contained their deposit money. It did not. It contained the landlord's application and notice of hearing, issued June 14, 2016.

The tenant Ms. T.H. testifies that on move in the premises were not clean. She shows photos of a dirty area of parquet flooring, a mound of dust or debris in a corner, some small bags of garbage left by the previous tenants and a light fixture spattered with cooking oil or grease.

Ms. T.H. testifies that shortly after move-in the fridge began to fail. She contacted the landlord about it on April 14. The landlord replaced the fridge on April 20. She says that she lost food through spoilage as a result. After the fridge was replaced she restocked it with food at a cost of \$307.12 and seeks that amount from the landlord.

Ms. T.H. was pregnant at the start of the tenancy and gave birth in the first days of May. Shortly thereafter she contacted the landlord to say there was insufficient heat in the rental unit. The landlord checked with other tenants in the building and they were all happy with the heat and so he did nothing.

Ms. T.H. is convinced the heat in her unit was supplied by electrical baseboard heaters. The landlord says it is hot water heat. The tenant's photo of the thermostat; a "motor" thermostat, corroborates the landlord's position. Motor thermostats are to control the valves in steam or hot water heating systems. It is likely that the landlord had turned off the boiler for the heating system with winter's end and did not want to restart it.

Ms. T.H. testifies that the stove was deficient. The numbers of the dial panel had worn out. She says she could not determine which element was on or at what temperature the stove was. As a result she accidentally burned the underside of her forearm on the outside of the stove.

Mr. L. says this was a fixed term tenancy agreement, he could not find a replacement tenant until mid June and so the tenants must pay for half June's rent.

He produces a move-in report signed by the tenant Mr. A.S. indicating "all was good" and that the landlord was not required to repair or clean anything.

He says if the rental unit was too cold it was because the tenants had an unauthorized cat and kept the windows open to reduce the odour.

He says he attended to all the repairs the tenants raised with him and that they appeared happy.

He says that he did not conduct a move-inspection with the tenants because he was too busy.

Analysis

The Landlord's Claim

When a tenant repudiates a fixed term tenancy by leaving before the end of the tenancy a landlord has choices to make. Residential Tenancy Policy Guideline #3 "Claims for Rent and Damages for Loss of Rent" provides that the landlord may:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the *Act* or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the

notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement. However, where a tenant has abandoned the premises and the tenancy has ended with the abandonment, notice must only be given within a reasonable time after the landlord becomes aware of the abandonment and is in a position to serve the tenant with the notice or claim for damages.

In this instance the landlord did not notify the tenants of his intention to hold them responsible for rent if he could not find a tenant. To the contrary, he indicated that they would get their security deposit back. In these circumstances the landlord's right to claim for loss of rental income has been lost. His claim is dismissed.

The Tenants' Claim

Cleaning

The move-in condition report does not remark on the cleanliness of any particular portion of the rental unit. The tenants' evidence satisfies me that the premises were not reasonably clean and that the condition of the rental unit was not readily apparent when they initially viewed it because the previous tenants and their belongings were still there.

However, the tenant's evidence at hearing does not justify the amount of cleaning shown to have been done by her cleaner at a cost of \$300.00. I consider \$150.00 to be fair compensation for cleaning what has been shown and I award that amount to the tenants.

Grocery Loss

The fridge failed slowly, over about six days. The tenants also had a freezer in the rental unit. The tenants no doubt suffered some food loss but \$307.12 worth of food is simply not believable. The tenant's provide a photo of the inside of the fridge when it was failing and very little food is observable. Having regard to all the circumstances, I award them \$100.00; what might be considered to be the normal level of perishable food contained in a fridge.

Heat

The tenant provided a photo taken during the cold period showing the thermostat in the unit. The thermometer range is from 50 degrees to 90 degrees Fahrenheit. The thermometer needle is perched across the "7" in 70 degrees. This is within the range of normal heating the landlord was obliged to provide. I dismiss this item of the claim.

Stove

As the tenants' application makes no claim in regard to the stove or Ms. T.H.'s burn, I decline to make any decision about the stove's adequacy.

Conclusion

The landlord's claim is dismissed.

The tenants are entitled to a monetary award of \$250.00 plus recovery of the \$100.00 filing fee. The tenants are also entitled to recover their \$637.50 security deposit.

The tenants will have a monetary order against the landlord in the amount of \$987.50.

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: October 27, 2016

Residential Tenancy Branch