



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC MNSD OLC O FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated January 14, 2017, as amended by Amendments to an Application for Dispute Resolution, received at the Residential Tenancy Branch on January 19, 2017, and January 23, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for cause;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit;
- an order that the Landlord comply with the *Act*, Regulations, or a tenancy agreement;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants attended the hearing on their own behalves. The Landlord attended the hearing on his own behalf. All parties in attendance provided a solemn affirmation.

The Tenants testified that the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail, as were the subsequently filed amendments. The Landlord acknowledged receipt.

The Landlord submitted documentary evidence in response to the Tenants' Application. The Landlord testified it was served on the Tenants by regular mail on or about April 13, 2017. The Tenants acknowledged receipt.

No further issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary and Procedural Matters

An amendment, received at the Residential Tenancy Branch on January 19, 2017, confirmed the Tenants wished to cancel their request to cancel a notice to end tenancy for cause as they moved out of the rental unit. Accordingly, this aspect of the Tenants' Application has not been considered further in this Decision.

In addition, the Tenants confirmed the Landlord returned the security deposit to them. Accordingly, this aspect of the Tenants' Application has not been considered further in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, Regulations, or a tenancy agreement?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

A Monetary Order Worksheet, dated January 19, 2017, indicated the Tenants sought to recover rent paid to the Landlord for the period from November 23, 2016 to January 31, 2017, inclusive. However, a hand-written document submitted by the Landlord confirmed the Tenants were reimbursed rent for January 29-31, 2017. The Tenants did not dispute this was received.

The parties acknowledged that a leak impacting the rental unit occurred at the rental property on or about October 19, 2017. Repairs were undertaken and, as stated in the Tenants' Application, "the wooden floor of the living room + den was removed" on November 22, 2016, although some carpeting in one of the bedrooms was also impacted. The Tenants confirmed the Landlord installed dryers for several days after the flooring was removed to address the moisture.

According to the Tenants, the conditions made it difficult for them to be in the rental unit. The Tenants testified they observed a white powder from the exposed concrete. They claimed this had health impacts for S.A. The Tenants also testified that they are required to maintain high grades as part of their program of study, and that the condition of the rental unit made this difficult and stressful. The Tenants testified that from November 22 to December 19, 2016, they returned to the rental unit only to sleep and did not use the kitchen. Further, the Tenants testified they moved out of the rental unit on December 19, 2016, and removed all of their furniture from the rental unit on January 9, 2017. The Tenants submitted photographic images depicting the interior of the rental unit after the removal of flooring.

The Landlord was apologetic about any impact the flood and resulting repairs had on the Tenants. However, the Landlord indicated he was unaware of the timing of the Tenants' departure. He also claimed to be unaware the Tenants did not use the kitchen. The Landlord included with his documentary evidence a copy of an email dated December 29, 2016, in which the Tenants advised they were moving out on January 3, 2017. On January 4, 2017, the Landlord sent an email to the Tenants that questioned why the Tenants continued to occupy the suite in spite of their email of December 29, 2017. The Landlord submitted that while he was open to ending the tenancy early, communication was poor. As far as he was aware, the Tenants had use and occupancy of the rental unit, and noted the lack of proof the Tenants did not occupy the unit. Submitted with the Landlord's documentary evidence was a Mutual Agreement to End a Tenancy, with an effective date of January 28, 2017. The Tenants testified that they had to sign the document.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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 for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, 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 did what was reasonable to minimize the damage or losses that were incurred.

The Tenants' sought to recover the full amount of rent paid for the period from November 23, 2016 to January 28, 2017. After carefully considering the parties' evidence and submissions, I find the Tenants have not discharged the burden on them to establish they are entitled to the relief sought. First, they applied to recovery the full amount of rent paid without acknowledging they obtained some benefit from staying in the rental unit until December 19, 2016, and keeping furniture in the rental unit until at least January 7, 2017, without making any other submissions with respect to the value of the loss.

Second, I find there is insufficient evidence before me to conclude the Landlord violated the *Act*, Regulations, or a tenancy agreement. The parties acknowledged the flooding occurred through no fault of either party. On the other hand, the preponderance of evidence was that the Tenants did not confirm their intention to move out of the rental unit on January 3, 2017, until December 29, 2016. In any event, the Tenants overhauled and left their furniture in the rental unit until January 7, 2017.

Third, while there may have been some disruption to the Tenants, I find there is insufficient evidence before me to conclude there was a sufficient basis to vacate the rental unit and end the tenancy. First, the photographic images submitted by the Tenants depict the rental unit where flooring was removed. However, there was insufficient evidence of the presence of a white powder, or of the health impact of the powder on S.A. Further, the Tenants' own testimony was that they continued to live in the rental unit for almost one month after the floors were removed. There was also insufficient evidence with respect to the Tenants' program of study, or of any impact of the repair work on their grades.

Finally, I find there is insufficient evidence before me to conclude the Tenants did what was reasonable to minimize the loss. Rather, they moved out on December 19, 2016, without advising the Landlord, and kept their furniture in the rental unit after the stated date of vacancy.

In light of the above, I find that the Tenants' Application is dismissed.

Conclusion

The Tenants' Application is dismissed.

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: June 15, 2017

Residential Tenancy Branch