



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation for damages under the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenants' application was filed on January 3, 2017. On June 16, 2017, the tenants submitted additional evidence. The tenants did not comply with the Residential Tenancy Branch Rules of Procedures and did not give the landlord a fair opportunity to respond. Therefore, the evidence filed on June 16, 2017, is excluded.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary order?

Background and Evidence

The fixed term tenancy began on May 15, 2016 and was to expire on September 1, 2017. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants paid a security deposit of \$900.00 and a pet damage deposit of \$450.00. The tenancy ended on December 23, 2016.

The tenants claim as follows:

a.	Return of December 2016, rent	\$1,800.00
b.	Compensation equal to 3 months of rent	\$5,400.00
c.	Moving costs	\$1,296.75
	Total claimed	\$8,496.75

The tenants testified that on December 6, 2016, their landlord informed them that there was a serious mould issue and that it could compromise someone with a low immune system.

The tenants testified that they were concerned for the safety of their two infant children who were born prematurely and they temporarily moved in with their parents that lived up island, as the alternative housing suggested by the landlord was not suitable.

The tenants testified that they should be compensation for their moving costs, return of December 2016, rent and compensation equal to 3 months for the inconvenience.

The landlord testified that on December 2, 2016, they were informed by the tenants of a leak in the roof. The landlord stated that on the same day they had the roof and attic inspected. The landlord stated that they informed the tenants of the report, and that the tenants decided that they wanted to find alternate accommodation. The landlord stated that they attempted to find alternative housing for the tenants; however, the tenants accepted none of the units presented.

The landlord testified that on December 9, 2017, the male tenant informed them that would hold off moving to a new home as he had an interview schedule for up island.

The landlord testified that the tenants are not entitled for moving cost or any compensation as it was their personal choice to move out of the geographical location and it was due to the male tenant getting a job, not due the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard,

that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the landlord had the roof and attic inspected. The landlord immediately informed the tenants of the finding, which recommend people with poor immune systems not to occupy the structure. The landlord attempted to find new accommodations for the tenants; however, the female tenant and the two infants went to stay with their parents while the male tenant remained in the rental unit until December 23, 2016. I find the tenants were still living in the rental unit and are not entitled to return of rent.

Further, while I accept there was a problem with the roof and in the attic, I find the landlord's action was reasonable. The landlord immediately responded to the tenants concern and took appropriate action. I find the tenants have failed to prove a violation of the Act by the landlord.

Further, the landlord took reasonable steps to try and find alternate living accommodation for the tenants, which the tenants did not accept them. The tenants did not want to relocate to new housing as the male tenant had a job interview that was located in the same area that the female tenant was staying with the children and their parents.

I find the tenants are not entitled to moving cost, as these cost were incurred because of their relocation. I further find the tenants did not suffer any loss that would justify three months of rent, while I accept this was an inconvenience, it was also a benefit for their family as they were released from their fixed term agreement, allowing the male tenant to obtain a job closer to the other family members.

Based on the above, I dismiss the tenants' application without leave to reapply.

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: July 20, 2017

Residential Tenancy Branch