



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF
 MNDC, FF, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord and the tenants have applied for monetary orders for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fees.

The landlord was assisted by an agent, and the landlord and the landlord's agent each gave affirmed testimony. Both tenants also gave affirmed testimony, and the parties were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for costs associated with re-renting the rental unit?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for return of rent paid, costs of a storage unit, and an e-transfer fee.

Background and Evidence

The landlord's agent (LD) testified that the parties entered into a written tenancy agreement on December 18, 2016 for a month-to-month tenancy to begin on January 1, 2017, for rent in the amount of \$1,150.00 per month payable on the 1st day of each month.

The landlords collected a security deposit from the tenants in the amount of \$575.00, all of which was returned to the tenants on January 24, 2017.

The tenants were moving into the rental unit from a different community and arrived late at night. The landlord had given the tenants a lock-box code so they could get in when they arrived, and the parties agreed to a time to complete the move-in condition inspection report. When the landlord arrived, the tenants refused to participate or move in because it wasn't to their standard. The tenants said it wasn't what the landlords had said it was and pointed out a lot of things. There was some broken glass in a window but one pane was intact so it was not unlivable. There were also mouse droppings behind the fridge that was missed by a cleaner. The landlord was more than willing to address such items so they could live there, and expected issues to be noted on the move-in condition inspection report.

The landlord's agent further testified that the tenant's photographs provided as evidence for this hearing show a dirty toilet, but it looks like it just needed a flush. The rental unit was re-rented, and the landlord has provided a letter from the new tenant stating that the new tenant viewed it on January 16, 2017 and will be moving in on February 1, 2017.

The landlord's agent did not understand the tenants' motive, and testified that the tenants' U-Haul wasn't at the rental unit when the landlord arrived, so questions whether or not the tenants had any intention of moving in.

The landlords claim \$575.00 + GST of \$28.75, for a total of \$603.76 for the tenants' failure to honour the written tenancy agreement, and stated that those are the costs that a realtor would charge. A copy of a quote from a realtor has been provided. The landlords advertised the rental unit strictly on Kijiji, a free advertising web-site. The landlord had a lot to do, was expecting a baby, had 3 showings very quick and the rental unit was rented again right away. The landlord would not have had to spend that time showing it if the tenant had honoured the agreement.

The landlord (DD) testified that he has a number of rental units and uses standard procedures. The tenants wanted to view the rental unit by Skype; and the landlord showed parking, railings, doors. The tenants signed the tenancy agreement on December 18, 2016, paid the security deposit to hold the unit.

The landlord further testified that the cleaning lady hadn't been able to move the fridge, so the landlord cleaned up behind it. Then the tenants told the landlord the place was unlivable. The landlord was willing to block a window and replace it. A couple of scuff marks were on the floor and a screw was missing from a cupboard, which the landlord repaired.

The first tenant (MJR) testified that the tenants took the photographs on January 15, 2017 before the landlords arrived at the rental unit. The rental unit was not what was presented to the tenants, and was not a secure residence because of broken windows. The upstairs bathroom window was cracked, and despite telling the tenants there was a fence for the tenants' dog, there was a gap in it. The tenants found mouse droppings behind the stove and fridge and a hole in a wall.

The tenants had arrived at 3:00 a.m. and the landlord's agent met them at 8:30 a.m. The tenants told her they felt lied to and showed her cigarette burns in the kitchen floor and windows. She was upset, ripped the key out of the tenant's hand and stormed off.

The landlords later called the tenants but hadn't offered to repair anything or a resolution. The tenant's husband met with the landlord who said he wasn't aware that the tenants had a dog even though the lease had a pet addendum. The tenants chose this property because they had a dog. The landlord said he didn't want a dog, said the windows are secure and told the tenants they were ridiculous about mouse droppings.

The tenants obtained another apartment on March 15, 2017 and had to give up their dog because they couldn't find a place that would accept the dog. The tenants seek a monetary order for the return of the \$1,150.00 rent paid, \$3.00 for the cost of the e-transfer to the landlords, and \$236.00 for storage, for a total of \$1,489.00.

The second tenant (MTW) testified that it was a material term of the tenancy for the tenants to have their dog, and the inability to move into the rental unit lead to the tenants having to get rid of the dog.

The tenants slept in their car the first night, not feeling comfortable staying at the rental unit, and no resolution was offered by the landlord until well after the landlords took the keys. The tenants were not given any opportunity to occupy the rental unit and don't believe they legally did.

Analysis

The tenants entered into a written tenancy agreement to rent the premises even though the tenants had not visibly seen it, other than by Skype. I find that the contract is binding. The tenants seek justification for not moving into the rental unit due to its condition, however, I do not accept that the tenants could not have moved in and found another place to live, giving the landlords the appropriate notice to move out, especially considering the letter of the new tenant. The landlords have collected rent that I find they are entitled to collect, and the tenant's application is dismissed.

A landlord may not claim property management fees from a tenant, whether or not the landlord actually hires a property manager. The cost of re-renting a rental unit is a cost bourn by a landlord unless the tenancy agreement provides for liquidated damages in the case of a fixed term tenancy, which in this case it does not. Therefore, the landlord's application is also dismissed.

Since neither party has been successful with the application, neither party is entitled to recovery of the filing fees.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

The tenants' application is also 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