



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEALNEY PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The landlords and the tenants convened this hearing in response to applications.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages to the rent;
2. To keep all or part of the security deposit and pet damage deposit (the "Deposits"); and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. For a monetary order for compensation under the Act;
2. Return all or part of the Deposits; and
3. To recover the cost of filing the application.

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 parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary and procedural matter

Landlords' application

On May 11, 2017, the landlords applied for monetary compensation for damages in the amount of \$1,200.00. In the landlords' evidence filed on September 21, 2017, they increased their monetary claim to \$5,775.00. However, the landlords did not file an amendment to their claim. Therefore, the landlords are limited to the amount claimed in their application.

Issues to be Decided

Are the landlords entitled to a monetary order for damage?

Are the tenants entitled to a monetary order for compensation under the Act?

Are either party entitled to the Deposits?

Background and Evidence

The tenancy began on May 1, 2016. Rent in the amount of \$1,900.00 was payable on the first of each month. A security deposit of \$950.00 and a pet damage deposit of \$300.00 were paid by the tenants. The tenancy ended on April 30, 2017.

The parties agreed a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the report.

Landlords' application

The landlords testified that the tenants rented a farm. The landlords stated the tenants removed all the livestock; however, they left large amounts garbage, pallets, moulding hay and other items. The landlords seek to recover the cost of removal of these items in the total amount of \$1,545.00. Filed in evidence are receipts.

The tenant testified that they agree these items were left behind. The tenant stated that the farmland was flooding at the time and they were unable to remove them. The tenant stated that the landlord did not give them an opportunity to remove these items later.

The landlords responded the tenants had no difficulty removing the livestock. The landlord stated the tenants only took what they felt was of value to them.

The tenants' application

Aa 2 Month Notice to End Tenancy for Landlord's use of Property was served on the tenant indicating that the tenant is required to vacate the rental unit.

The reason stated in the notice to end tenancy was that;

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenant testified that landlord did not move into the rental unit. The tenant stated that there is a big lock on the gate.

Utilities

The tenant testified that they seek compensation for utilities. The tenant stated that the agreement was that the utilities are shared between their unit and the lower unit. This was based on \$50.00 per person per month. The tenants seek to recover the amount of \$100.00 for three months.

The landlord's agent testified that the tenants claim for utilities is confusing, as they have not provided the utilities invoice for the period claimed. The landlord's agent stated that that the agreement was not \$50.00 per month per person, rather it was to be divided by the number of people residing in the premise, with the actual usage. The landlord's agent stated they spoke to the other occupants and they were told they paid their portion.

The landlord's agent testified that at no time during the tenancy did the tenants make these allegations; it was only after the tenancy ended.

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, each party has the burden of proof to prove their respective claim.

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-complying 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.

Landlords' application

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the parties agreed items, such as pallets, mouldy hay and other items were left behind. Even if I accept the tenant's evidence that the property was wet from heavy rain that does not relieve them of their obligations under the Act. The landlords are not obligated to give the tenants access to the property after the tenancy has ended. I find the tenants breached the Act, when they failed to remove the pallets, mouldy hay and other items from the property, and this caused losses to the landlord in the amount of \$1,545.00.

As the landlords have exceeded the amount claimed in their application, I find the landlords are entitled to recover the amount of **\$1,200.00**.

Since the landlords have reached the monetary amount claimed, I find it not necessary to consider the balance of their application.

I find that the landlords have established a total monetary claim of **\$1,300.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the Deposits of **\$1,250.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$50.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Tenants' application

Utilities

In this case, the tenants did not provided a copy of the full utilities invoice to show the actual usage, only page two was provided. Page 2 simply shows that tenants have not been paying the utility invoice.

I am not satisfied on the evidence presented by the tenants that any money is owed by the other occupants. Therefore, I dismiss this portion of the tenants' claim.

Compensation pursuant to section 51 of the Act

In this case the evidence of the tenant was the landlords did not move into the premises; however, there is no requirement for the landlord to live on the premises as the notice to end tenancy states "occupy" not live.

I have referred to the Black's Law Dictionary sixth edition for the legal meaning of occupy.

*Occupy. To take or enter upon possession of; to hold possession of; **to hold or keep for use**; to possess; to tenant; to do business in; to take or hold possession.*

[Emphasis added]

Since the tenants provided no evidence that the landlords are not holding or keeping the property for their use, such as re-renting, I find the tenants have failed to meet the burden of proof. Therefore, I dismiss the tenants' application for compensation pursuant to section 51 of the Act.

As the tenants' were not successful with any portion of their claim, the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The landlords are granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

The tenants' application is dismissed without leave to reapply.

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 26, 2017

Residential Tenancy Branch