



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RP, OPR, MNR, 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 an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a notice to end tenancy for unpaid rent;
2. For a monetary order for money owed;
3. To have the landlord make repairs to the rental unit; and
4. 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.

Preliminary and procedural matters

At the outset of the hearing the parties agreed that the tenants vacated on or about October 23 or 24, 2017. Therefore, I find it not necessary to consider the landlords' application for an order of possession or the tenants' application to cancel a notice to end tenancy. Further, I find it not necessary to consider the tenants request for repairs. I dismiss these issues in their respective claims.

Further, the balance of the tenants' claim is claiming for loss of business income and associated costs due their failed business venture. I find I have no jurisdiction to hear

matters that relate to loss of business income. Therefore, I decline to hear this portion of their claim due to lack of jurisdiction.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to keep all or part of the security deposit?

Background and Evidence

The parties entered into a fixed term tenancy, which began on June 1, 2017 and was to expire on May 31, 2018. Rent in the amount of \$2,750.00 was payable on the first of each month. The tenants paid a security deposit of \$1,375.00. The tenancy ended on or about the October 24, 2017.

The landlords testified that the tenants failed to pay rent for September and October 2017. The landlord seeks to recover unpaid rent in the amount of \$5,500.00.

The landlords testified that the tenants sent them an email on October 11, 2017, that they would be vacating on November 1, 2017. However they determined the rental unit was abandoned on October 24, 2017. The landlords testified that they advertised the rental unit on popular websites and have not found a new renter, as of the hearing date. The landlords seek to recover loss of rent for November and December 2017, in the amount of \$5,500.00.

The tenants testified that they rented this particular property because it has a separate outbuilding that was ideal to open a daycare centre. The tenants stated that the landlords were supported of their plans for the daycare. The tenants stated that after they spent considerable money it was determined that they were unable to obtain a daycare license, as the area they intended to use was not permitted and no final occupancy had been given.

The tenants testified that there was an agreement that the tenancy agreement would be voided if they were unable to obtain a daycare.

The landlords testified that the rent was \$3,000.00 per month and that it was originally going to be reduced to \$2,500.00 for a period of six months, or until the tenant daycare was filled. However, that agreement was cancelled and they agreed to a rent of \$2,750.00. The landlords argue this is a residential tenancy agreement not a commercial agreement.

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 landlords 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.

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case the tenants were living in the premise for the month of September and October 2017 and failed to pay rent. I find the tenants breached the Act when they failed to pay rent, and this caused losses to the landlords. I find the landlords are entitled to recover unpaid rent for September 2017 and October 2017, in the amount of **\$5,500.00**.

In this case the tenants gave the landlords notice on October 11, 2017, to end the tenancy on November 1, 2017, as they were unable to obtain a daycare license and could not afford the rent.

In this matter, if the primary reason to renting the premises was to start a daycare, it would have been reasonable for the tenants to determine the feasibility of a daycare centre prior to entering into a fixed term residential tenancy agreement, such as have the premises inspected prior to signing the agreement on May 9, 2017. The tenancy agreement has no clause that the tenancy agreement was not valid, if they were unable to obtain a daycare license.

I find the tenants' breached section 45(2) of the Act as the earliest they could legally end the tenancy was May 31, 2018, as specified in the tenancy agreement.

In this case the landlords were given approximately two weeks to find a new renter for November 1, 2017; I find this did not give the landlord sufficient time to mitigate the loss. I find the landlords are entitled to recover loss of rent for November 2017 in the amount of **\$2,750.00**.

However, I find the landlords' application to recover loss of rent for December 2017, is premature as there is still a possibility to have the premises re-rented. The landlords have a duty to do whatever is reasonable to mitigate the loss; this might include lowering the rent.

I find that the landlords have established a total monetary claim of **\$8,350.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,375.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$6,875.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

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

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: December 05, 2017

Residential Tenancy Branch