



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed, for the return of the security deposit and to recover the filing fee.

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.

Issues to be Decided

Is the tenant entitled to money owed?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The parties entered into a tenancy agreement on June 5, 2017, that was to commence on July 1, 2017. Rent in the amount of \$985.00 was payable on the first of each month.

The tenant testified that they rented the property without physically see it as they were moving from another province. The tenant stated that when they arrive at the rental premises it was not suitable for living.

The tenant testified that the rental unit was extremely dirty from the previous renter. The kitchen cupboard doors were removed and or hanging off the cupboards. There was mould on windows. The bathroom surround was mouldy and the floor around the tub was rotting. Filed in evidence are photographs of the rental unit.

The tenant testified that they called in a company to look at the rental unit and they determined that the rental unit was not safe to occupy. Filed in evidence is a copy of the letter.

The tenant testified that they did not move into the rental unit because they believe they had a right to back out of the contract, as the landlord was not providing a premise that was suitable for occupation. The tenant seeks to recover the rent they paid in advance to the landlord and the security deposit they paid.

The landlord testified that the previous renter was expected to be out in the middle of June; however, they did not vacate until June 26, 2017. The landlord stated that they told the tenant that the previous renter left the rental unit dirty. The landlord stated that the tenant stated that they would clean the rental unit.

The tenant argued that they expect to do some cleaning; however, they were not expecting it to be in this extremely dirty state or the state of repair. The tenant stated that they could not move their family into the premises under such condition.

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 tenant has 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.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

...

In this case, the tenant did not move into the rental unit due to the condition of the rental premises. The kitchen cupboards were in a state of repair, there was mould on windows the floor was rotting, and the rental unit was extremely dirty. The evidence of the landlord was that the previous renter left it dirty.

The photographs and the letter submitted by the tenant as evidence, support the tenant's version that it was not suitable to occupy. The landlord did not provide any documentary evidence to the contrary.

I find the landlord breached the Act when they failed to provide the rental unit suitable for occupation. Therefore, I find the tenant is entitled to recover July 2017, rent in the amount of **\$985.00**.

I further find that the tenant is entitled to the return of their security deposit in the amount of **\$492.50**.

I find that the tenant has established a total monetary order of claim of **\$1,577.50** comprised of the above described amounts and the \$100.00 fee paid for this application. I grant the tenant a formal order pursuant to section 67 of the Act.

The tenant must deduct from the monetary order, the security deposit, if it was returned prior to this decision

Conclusion

The tenant is granted a monetary order for the return of July 2017, rent and for the return of their security deposit.

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 11, 2017

Residential Tenancy Branch