



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

Tenant P.G. and her two daughters attended the hearing. Tenant P.G. (the "tenant") provided testimony on behalf of the tenants. The property manager L.T. (the "landlord") provided testimony on behalf of the landlord.

Issues

Are the tenants entitled to monetary compensation for loss?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The rental unit is a two bedroom apartment in a 49 unit building which was built in the 1960's. The tenancy began December 15, 2017 and ended on October 31, 2018. The monthly rent as per the agreement was \$1720.00 per month. The tenants paid a security deposit of \$860.00 at the start of the tenancy which has since been returned in full by the landlord.

The tenants are seeking compensation in the amount of \$6880.00 which is equivalent to four month's rent plus \$500.00 in moving expenses. The tenants were also originally seeking return of the security deposit but this part of the claim was withdrawn in the hearing as the tenants acknowledged the deposit was returned in full at the end of the tenancy.

Tenant P.G. testified that the landlord was aware of an ant infestation before entering into the lease and failed to inform her of the infestation. The tenant claims the landlord did not deal with the infestation properly which impacted the enjoyment of the rental unit. The tenant testified that she reported the ant issue to the landlord shortly after moving into the rental unit. The tenant acknowledges the unit was treated initially on December 29, 2017 and also subsequently on March 1, 2018 and on July 31, 2018. The tenant submits that during the entire tenancy she was in the process of moving but couldn't find alternative accommodation. The tenant acknowledges that the landlord permitted her to break her lease as early as January 2018 but she couldn't afford to move at this time and the landlord was not agreeable to pay for moving expenses.

The landlord testified that the tenant had the opportunity to do a walk through and inspect the rental unit before signing the lease as well as speak to the previous tenant regarding any issues with the rental unit. The landlord acknowledges having an issue with ants and rodents in the building but states that the landlord immediately responds and performs necessary treatments upon any reported issues. The landlord testified that the tenant was asking to get out of her lease right from the beginning of the tenancy. The landlord agreed to allow the tenant to break the lease but did not agree to pay any moving costs. The landlord submits they took proper steps to respond to the pest issue and the tenant could have done her due diligence before entering into the lease if pests were such a concern to her. The landlord further argues that there was barely any ants in the tenants unit and her claims are exaggerated. The landlord submits that the tenant notified the landlord of the issue on December 22, 2017. The landlord submitted a letter from the pest control company which states the rental unit was treated for ants on December 29, 2017, January 8, 2018, March 1, 2018, May 24, 2018, July 31, 2018 and September 19, 2018. The landlord submits that the tenant remained in the rental unit for 10 months after being told she could break the lease without any penalty.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

I find the tenant has failed to establish that the landlord was not complying with the Act, the regulation or the tenancy agreement. I find the landlord took appropriate action to treat the rental unit soon after the issue of ants was first reported to the landlord on December 22, 2017. As evidenced by the letter from the pest control company and the tenant's own testimony, the landlord responded and treated the unit as early as December 29, 2017, just 7 days after it was first reported, and also continues to perform follow up treatments throughout the tenancy. Although having ants in the rental unit may have been an inconvenience to the tenants, I find there is insufficient evidence that the infestation was so severe that it resulted in a loss equivalent to four months' rent. Further, I find that the tenant had every opportunity to inspect the rental unit prior to entering into the tenancy. I also find that although the landlord may have had previous issues with ants or other pests, there is insufficient evidence that the landlord rented the unit to the tenant knowing it was infested with ants. Ants as well as other pests are a common issue which is not necessarily under the control of the parties. What is important is that the landlord takes appropriate steps to remedy the issue once it is reported and I find the landlord did that in this case.

Further, I find the tenant did not take reasonable steps to minimize the alleged damage or loss. The tenant testified that she continuously sought alternative accommodation but was not successful in securing any for over 10 months after she was advised that she could break her lease if she was not happy. The tenant has not submitted any evidence to support that she was actively seeking alternative accommodation. I find it was not reasonable for the tenant continue to reside in the rental unit for over a 10 month period if the issue with the ants was nearly as bad as she alleges. Further, if the tenant felt that the landlord was not taking appropriate actions to remedy the issue, the tenant could have at any time filed an application for and order requiring the landlord to

treat the ant issue rather than waiting 10 months and then seeking compensation for four full months after vacating the rental unit.

The tenants claim for compensation for reimbursement of four months' rent and moving costs is dismissed without leave to reapply.

As the tenants were not successful in this application, the tenants' claim for recovery of the filing fee is also dismissed.

Conclusion

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: January 29, 2019

Residential Tenancy Branch