



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

In the first application, brought December 10, 2018, the landlords seek to recover loss of rental income resulting from the tenant's alleged wrongful ending of the tenancy. They also seek recovery of the cost of a property manager, advertising and utilities.

In the second application, brought March 8, 2018, the tenant seeks recovery of the security deposit and mailing costs.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenant end this tenancy in accordance with the law? If not, what damage or loss, if any, have the landlords incurred? If so, what damage or loss, if any, did the tenant incur?

Background and Evidence

The rental unit is the two bedroom, ground level portion of a house. The landlord reserved the upper portion, of the house, a bachelor suite, for themselves as a recreational unit which they would occupy only on occasion for a few days at a time.

There is a written tenancy agreement. The tenancy started in May 2016. The most recent tenancy agreement shows a fixed term tenancy from August 1, 2018 to August 32, 2019. At the end of the tenancy the tenant was required to vacate the rental unit so that the landlords could occupy it..

The rent was \$960.00 per month. The tenant paid a \$465.00 security deposit.

The parties agree that the tenant's rent was below market rent because the tenant was responsible to pay all utilities for the whole house, meaning she would pay for things like power and water used by the landlords during those times they occupied the upper portion.

The parties disagree about whether these "utilities" included internet. During this tenancy the tenant maintained an internet connection which the landlords were permitted free access to via a wifi connection.

The tenant spent time away from the rental unit. It was the habit of the parties that if the landlords came to use the upper portion and if the tenant was away, Mr. J.P. would enter her rental unit, turn up the hot water heater and plug in the internet modem.

The tenant was planning to be away for a significant portion of the month of September 2018. In order to reduce her costs she contacted her internet service provider and arranged to have her service "suspended" for that period. She informed Mr. J.P. of that fact and he requested that she not do so.

The tenant suspended the service and went away. The landlords came to use their upper portion. It is not clear whether the landlords entered the tenant's rental unit at that time but likely they did in order to turn up the water heater and plug in the modem.

The modem did not work for the landlords because the tenant had suspended service. They called the provider, Telus, to say the tenant's service was not working.

It appears that a Telus serviceman attended and was given access to the tenant's rental unit to install a new modem. It is not disputed that the entry was made without the tenant's knowledge and without her express consent. Oddly, it appears the wifi then worked for the landlords even though the tenant had suspended her service.

On the tenant's return in mid-October she was surprised to see that her internet was on. However, the new modem would not work for her. She spent considerable time, many hours over six days she says, dealing with Telus to make it work.

There is some evidence that Telus had tried to contact her for permission to enter but Telus eventually admitted to the tenant that they should not have tampered with her modem without her permission. They compensated her with three months of free internet and television; a value of about \$330.00.

It's the tenant's view that the landlord Mr. J.P. committed a fraud by contacting Telus when he knew the tenant had suspended her internet service.

The tenant is also of the view that the landlords had entered her rental unit up to perhaps ten times while she was away regarding the repair of water damage.

On her return and with the discovery of the modem change the tenant requested that the landlords agree to a mutual end of tenancy by an email October 31. Her email indicated that she had found an opportunity at a new location. The landlords did not agree and about a week later the tenant gave the landlords written notice purporting to end the tenancy for their material breach of the tenancy. She stated she would vacate by November 30, which she did.

The landlord Ms. B.P. testified that Mr. J.P. and she arrived in September and entered the rental unit to do a door repair. The modem light was on but there was no internet. They contacted Telus and were under the impression Telus had arranged things with their customer, the tenant. The tenant has always paid for internet for the premises.

Since the tenant gave her notice they advertised the premises for rent. On the advice of a property manager they retained, they requested new tenants pay \$1200.00 per month, not the \$960.00 this tenant was paying and with the same utilities arrangement; meaning the new tenant would be responsible for paying utilities for the entire house.

They have not found a new tenant. They seek only two months of rental loss.

The landlords also rented out the upper portion in mid December, furnished, for \$900 per month, utilities included.

The landlords occupied the tenant's former rental unit for a period December 18 to Christmas.

Analysis

The Landlords' Claim

Material Breach

It is a fundamental term of any tenancy agreement that the tenant is entitled to exclusive occupation of her rental unit. Arguably, a landlord who violates this term by entering without consent or in accordance with the law is committing a fundamental breach or "breach of a material term" as the *Residential Tenancy Act* (the "*Act*") puts it.

It is apparent that the landlord did enter in September while the tenant was away, for the purpose of repair work. I find that this entry or entry was with the tenant's express or implied consent in order to deal with a door problem or perhaps water damage issues. It was not a fundamental breach.

The entry of the Telus workman was without the tenant's consent. However, I consider it likely that the landlords' were operating under the belief that Telus had obtained the tenant's consent and that the matter was a case of miscommunication and not an overt breach of the tenant's right to exclusive possession or an illegal entry on the landlords' part.

I conclude that the tenant did not have the right to end this fixed term tenancy base on a claim that the landlords had breached a material term of the tenancy and had failed to rectify the breach within a reasonable time.

It is unfortunate the Telus' actions cause the tenant such inconvenience but that is a matter between Telus and the tenant; one they appear to have settled between them.

Loss of Rental Income

As the result of the tenant's early and unwarranted ending of the tenancy the landlords have suffered a loss of rental income. Residential Tenancy Policy Guideline 3: "Claims for Rent and Damages for Loss of Rent" provides that in these circumstances a landlord is obliged to attempt to mitigate, to take reasonable steps to reduce any loss by re-renting the premises at a reasonably economic rent. I find they sought out a new tenant in a reasonable fashion. The fact that they rented out the upstairs and may have spent a few days in this rental unit did not affect their ability to re-rent this rental unit.

The landlords sought a new tenant at a rent considerably over that of the rent this tenant was paying. They say that the property manager they hired assessed the \$1200.00 asking rent as a reasonable rent in the market. The burden of showing that a claimant has failed to mitigate is on the respondent, the tenant in this circumstance, and there is no evidence for me to conclude that \$1200.00 was not a reasonably economic rent in the market.

I find that as a result of the tenant's repudiation of the tenancy agreement the landlords have loss December and January rent totalling \$1920.00.

Remainder of Landlords' Claim

I dismiss the landlords' claim for recovery of \$480.00 to hire a property manager. They did not use a property manager when this tenancy was signed. If they wish to incorporate the use of a property manager in their business of residential renting, that is their choice and not an item that in my view this particular tenant should be responsible for in these circumstances.

I dismiss the landlords' claim for Fortis costs, the evidence they have presented does not include any actual bills or usage statements for the relevant time period and is to speculative to base an award upon.

I award the landlords \$33.60 for advertising costs. These are costs that are a direct result of the tenant's early termination of the tenancy.

I dismiss the landlords' claim for registered mail costs relating to the pursuit of their application. Those costs are in the nature of "fees and disbursements" and an arbitrator's power in that regard are limited to the awarding recovery of any filing fee.

The Tenant's Claim

The tenant is entitled to have her \$465.00 security deposit offset against the landlords' award.

I dismiss the tenant's claim for postal costs as her claim of a material breach has failed and for the same reason the landlords' claim for postal costs was dismissed.

Conclusion

The landlords are entitled to an award of \$1953.60 plus recovery of the \$100.00 filing fee.

The tenant is entitled to offset the \$465.00 security deposit. As her claim regarding breach of a material term has failed, I decline to award her recovery of her filing fee.

The landlords will have a monetary order against the tenant for the difference of \$1588.60

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: April 17, 2019

Residential Tenancy Branch