



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 for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for her monetary loss or other money owed; and
- recovery of the filing fee.

The tenant and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their affirmed evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant submitted documentary and photographic evidence for this hearing, received by the Residential Tenancy Branch (RTB) on November 27, 2019; however, she confirmed that this evidence was not sent to the landlords. I informed the tenant her

documentary evidence would be excluded from consideration as the Rules require that an applicant send all their evidence to the respondents and the RTB.

I also informed the tenant she could read from and refer to her evidence in the hearing.

The landlords did not provide documentary evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award against the landlords and to recover the filing fee paid for her application?

Background and Evidence

While I have turned my mind to all the oral evidence, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy was to begin on November 1, 2019, for a monthly rent of \$1,500.

The tenant submitted she viewed the rental unit in September 2019, but could not move in until later, as she already had a rental unit. During a visit in mid-October, according to the tenant, she noticed the rental unit was not ready for occupation.

The tenant submitted that the landlords agreed she could move into the rental unit early, on October 27, 2019, but she saw on that date that the rental unit was not ready. The tenant said everything was all over the place and she was completely shocked.

The tenant said that the heat was not working and additionally, noticed and addressed with the landlord approximately 30 deficiencies with the rental unit.

The tenant said these deficiencies included holes in the wall, wires, including live wires, were hanging loose, and a microwave whose parts were missing. Other deficiencies the tenant noticed were no light in the stairwell, a mouldy cupboard, insects, and the electrical closet had construction material.

The tenant said she was dismayed and sent the landlord an email, to which the landlords did not respond until October 31, 2020. The tenant said she was surprised

the landlord would allow a tenancy to even start and she provided notice that she was leaving the rental unit.

The tenant said she requested compensation immediately, but was not successful.

The tenant submitted she had to sell furniture and was without a home for several months, as she thought the rental unit would be her home.

The tenant's monetary claim is \$2,544, which includes \$1,500 for the return of the November rent of \$1,500, as the rental unit was not liveable, movers fee for \$343, storage fees for \$251, community living fees of \$350, and the filing fee for \$100.

Landlords' response –

The landlord submitted that the tenant did move into the rental unit and all her belongings were in the rental unit before November 1, 2019.

The landlord explained that the residential property containing the rental unit is a 3500 sq.ft. community outreach house in an area of the city with a large homeless population. The home is run by a Board. The landlord said the tenant reached out to them on September 15, 2019 and she was invited to have dinner with the Board. The landlord said they have to meet anyone living in the home to ensure compatibility with all the residents.

The tenant asked questions about the utilities and subletting and on September 23, 2019, an offer was extended to the tenant to live in the rental unit. This rental unit was being added to the home, where one did not exist, to have a separate home from the rest of the community home.

As such, the tenant would be the first occupant of the rental unit, which also required a complete renovation, requiring construction, remodeling, and wiring.

The landlord said the tenant was happy with the project and gave notice to her current landlord on September 27, 2019. On October 4, 2019, the tenant signed the tenancy agreement.

During October, the landlord kept in contact with the tenant, to provide an update as to the work being done. The landlord submitted a primary concern for her was to ensure the rental unit had heat, to make is safe and comfortable for the tenant.

The landlord said that anytime the tenant made a request, they addressed it. For instance, the tenant wanted a smoke detector in both bedrooms, as well as a lock on each bedroom door, which they had done.

The landlord said she was in contact with the tradespeople, the electrician and pipefitter to ensure the heat was working.

The landlord submitted they wanted this project to work and tried everything to be a good landlord, but she had no control over tradespeople's schedules. For instance, the electrician cancelled a scheduled appointment, as he was sick, although the gasfitter made the appointment.

The landlord said that she hired someone to fix the microwave.

The landlord said that she offered their moving trucks and movers to facilitate the move.

The landlord said they tried their best to have all the work completed by the start of the tenancy, but that turning part of the home into a rental unit was a complete renovation.

The landlord said the home only had minor deficiencies, which were being addressed, but that it did not impact the liveability of the home.

The landlord said that as the tenant failed to pay rent for November, they suffered a loss of rent for the first month of the tenancy.

Analysis

Based on the relevant oral evidence, and on a balance of probabilities, I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the evidence is clear that the landlords and the tenant entered into a tenancy agreement, for a monthly rent of \$1,500 and a security deposit of \$750, and that the tenancy was to begin on November 1, 2019.

Residential Tenancy Branch Policy Guideline states that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances, such as the landlord is expected to provide the premises as agreed upon and in a state conforming with health and safety standards as required by law.

If the tenant believed the rental unit was not repaired or in a state as agreed upon, I find her remedy was to file an application for dispute resolution seeking orders for the landlords' compliance with the Act, in particular, section 32.

The evidence is that the tenant moved in a few days earlier than the agreed upon start day and then notified the landlord she was moving out.

I accept the landlords' evidence that the rental unit was undergoing a major renovation. I find the landlord provided sufficient evidence to show that they were diligent in their efforts to have all work completed by the start date of the tenancy and only minor work was left to be completed by the start date of the tenancy.

I therefore find that it was the tenant's choice to vacate the rental unit rather than file for dispute resolution.

I therefore find the tenant failed to minimize her losses, as required, and I therefore dismiss her application, without leave to reapply.

Conclusion

For the reasons above, I have dismissed the tenant's application.

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 22, 2020

Residential Tenancy Branch