



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The landlord applies to recover the first month's rent under a tenancy repudiated by the tenant on its commencement date.

Both 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

Was the tenant justified in refusing to move into the rental unit and pay rent?

Background and Evidence

The rental unit is a one bedroom, condominium apartment. Under a written tenancy agreement signed by the parties on October 5, 2020, the tenant was to take possession on November 1, 2020 at a monthly rent of \$1400.00, due on the first of each month. The tenant paid a \$700.00 security deposit prior to November 1, which the landlord still holds.

The tenant and his mother viewed the rental unit on October 4 and the tenancy agreement was signed the next day. The tenant notes that on October 4 the prior tenant's furniture was still in the rental unit, preventing a close inspection.

The prior tenant was moving out on October 31 and the landlord invited the tenant to move in that day. The tenant attended but declined to start his move in, describing the rental unit as being "disgustingly dirty" and saying he would come back the next day.

He informed the landlord who hired a professional cleaner to attend at 7:00 a.m. on November 1 to clean. The tenant attended at about 9:30 or 10:00 a.m., inspected the rental unit, took photographs and informed the landlord he would not move in at all.

The tenant says he put his belongings, waiting in moving trucks outside, into storage until he found replacement accommodation a week later.

The tenant produced photos of the state of the premises as he found them on the morning of November 1. He produced a photo of the clothes dryer vent, showing it to contain lint. He submitted a photo of the stove showing a ring or crust of burnt or scorched material on its glass surface. The tenant produces a picture of a baseboard said to be mold. Another photo shows small black debris under the sink, claimed to be rat droppings. He presented a photo of the floor claiming it to be dirty and of a baseboard claiming it showed evidence of mould. Last, the tenant produces a photo of the vertical blinds showing a dark stain at the bottom of one.

The landlord says that on the morning of November 1, the tenant spent only five minutes in the rental unit and that he could easily have directed the landlord's cleaner to attend to any questionably clean area.

Analysis

In order to entitle a party to abruptly and unilaterally end a tenancy agreement, the other party must have fundamentally breached the agreement or, in other words, the other party must have breached a material term of the agreement. Any non-fundamental breach or breach of a lesser term answers only in damages and does not give a party the right to end or "repudiate" the agreement.

Residential Tenancy Policy Guideline 8, "Unconscionable and Material Terms" defines a "material term" as:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of

the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

It is a term of every tenancy that the landlord provide and maintain the rental unit in a state of decoration and repair that, a) complies with 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 occupancy by a tenant (*Residential Tenancy Act*, s. 32(1)).

In this case I find the evidence presented by the tenant to fall short of proving the landlord to have been in fundamental breach of his obligations; to have breached a material term of the tenancy agreement.

The dryer trap lint is, in my view, a minor thing. The stove picture does not clearly delineate any insects as alleged and is, in whole, a minor cleaning issue. The first baseboard staining is composed of two small dark rivulets running from the wood portion of the patio door sill, no doubt the result of water ingress and a minor thing. The second baseboard complaint appears to be two small spots on another area of the patio door sill, perhaps drips or a spill and do not appear to be mould, as claimed. They are minor complaints. The dark debris under the sink is not readily identifiable as rodent dropping and could have been cleaned with the swipe of a damp cloth. The dirty floor photo shows some small dust or lint along the bottom edge of a baseboard in a corner, a very minor matter. The stain on the blinds is readily apparent when the blinds are closed but is a minor matter.

In the circumstances of this case, if it could be said that the landlord breached s. 32(1) of the *Residential Tenancy Act*, the breach was not a fundamental one. There was no breach of a material term entitling the tenant to repudiate the tenancy agreement he had signed.

In any event, Guideline 8 also states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant

- must inform the other party in writing: that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;

- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

The tenant did not go through this process and so cannot rely on the breach of material term to justify his repudiation of the tenancy agreement.

As a result, the November rent of \$1400.00 came due and was payable on November 1, 2020. The landlord is entitled to a monetary award for that rent, plus recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord is entitled to a monetary award totalling \$1500.00. I authorize him to retain the \$700.00 security deposit in reduction of the award. The landlord will have a monetary order against the tenant for the remainder of \$800.00.

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: February 16, 2021

Residential Tenancy Branch