



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, MNDL-S, FFL / MNSD, MNDCT

Introduction

On December 22, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request the return of the security deposit, and to request a Monetary Order for compensation for their losses.

On December 31, 2020, the Landlord submitted an Application for Dispute Resolution under the Act. The Landlord requested a Monetary Order to recover unpaid rent, for damages and compensation for losses, and to be compensated for the cost of the filing fee. The Landlord’s Application was crossed with the Tenants’ Application and the matter was set for a participatory hearing via conference call.

The Landlord and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

The parties testified that they exchanged the documentary evidence. The Landlord stated that he uploaded his documentary evidence to the Residential Tenancy Branch website; however, I could not find any evidence uploaded from the Landlord. The parties agreed to refer to each others evidence and bring up any concerns, if required, during the hearing. No concerns were raised about either of the parties’ evidence submissions.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Should the Tenants receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on August 1, 2019 and continued as a month-to-month tenancy. The rent was \$2,000.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,000.00.

The Landlord provided undisputed testimony that the Tenants sent him a text on November 18, 2020 to advise that they were moving out of the rental unit “most likely” on December 1, 2020. The Landlord stated that the Tenants moved out 10 days later and did not pay the December 2020 rent. The Landlord is claiming a loss of rent in the amount of \$2,000.00.

The Tenants testified that they have dealt with mold issues in the rental unit since they moved in. The Tenants advised the Landlord that there was mold and that they were experiencing health issues and all parties agreed to have a professional analysis conducted in the rental unit.

The Tenants submitted a Certificate of Mold Analysis, dated December 2, 2019, that indicated there were “elevated” levels of mold in the living room and in both bedrooms of the rental unit.

The Tenants submitted photos taken during the inspection that depict mold and moisture in the bathroom walls and attic.

The Tenants submitted an Inspection report that noted mold on the walls, blinds, windows, in the attic and on the bathroom walls/drywall. The report recommended throwing away the contaminated blinds.

The Tenants stated that the Landlord conducted some remediation of the attic and roof and by the time spring and summer 2020 came around the conditions were better in the rental unit.

The Tenants testified that in the fall of 2020, when it became wet and cold, the mold showed up again and the Tenants began to suffer resulting health affects. The Tenants submitted 17 photos from November 2020, to demonstrate the significant amount of mold and moisture built up on the walls, behind a poster and on the floor in one of the bedrooms. The pictures also revealed where mold had spread onto one of the Tenant's bed frames and dresser.

The Tenants testified they spent extra time cleaning the unit to keep it free from mold and had to maintain high heat in the unit in an attempt to keep it dry. The Tenants stated that the living conditions were not healthy to continue living in the rental unit and that they felt they could not keep living there.

The Tenants are requesting the return of the security deposit and compensation in the amount of \$1,000.00 to assist in replacing a bed frame, mattress and dresser that was damaged by the mold.

The Landlord did admit that there were some mold issues in the rental unit but that he did his best to mitigate the damages by fixing the roof, replacing gutters and improving the drain tile. Although the Landlord argued that the wooden furniture could have been cleaned and did not need to be replaced, he did acknowledge that the mattress could have been damaged by the mold.

The Landlord had initially claimed damages for the blinds that were thrown out; however, after hearing the Tenants' testimony withdrew this part of the claim.

The Landlord acknowledged that he did not conduct a move-out inspection with the Tenants, nor did he complete a condition inspection report at the time of move-in or move-out. The Landlord described the rental unit as requiring more cleaning and stated that it cost him \$126.00 to clean the unit after the Tenants had moved out.

Analysis

Section 45(1) of the Act authorizes a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, I find that the Tenants failed to provide the Landlord with proper notice to end the tenancy. I accept that the Tenants texted the Landlord on November 18, 2020

and moved out approximately 10 days later. According to the Act, if the Tenants had provided written notice to the Landlord on November 18, 2020, the effective date of the end of tenancy would be for December 31, 2020. As such, I find that the Landlord has successfully established a claim of one month's rent, for December 2020, in the amount of \$2,000.00.

I accept the Landlord did not conduct condition inspections or reports pursuant to sections 23 and 35 of the Act. As such, I find it difficult to hold the Tenants accountable for the undocumented cleaning. I find the Landlord has failed to provide sufficient evidence that he incurred a loss in regard to the cleaning of the rental unit and therefore, dismiss this part of the Landlord's claim.

I find that the Tenants provided compelling evidence that there was substantial mold and moisture in their rental unit and that it would have penetrated their furniture. I also find, based on the testimony and evidence of the Tenants that the moisture and mold would have negatively affected their entitlement to quiet enjoyment of their rental unit. Although the Tenants did not provide specific replacement value for their furnishings, I find that their claim for \$1,000.00 to put towards a replacement bed frame, mattress and set of drawers is reasonable. For these reasons, I find that the Tenants have established their monetary claim for compensation in the amount of \$1,000.00.

I find that both the Tenants and the Landlord have been partially successful with their claims and for this reason, I make no awards to compensate any party for their filing fees.

In summary, I find that the Landlord has established a \$2,000.00 monetary claim for unpaid rent and the Tenants have established a \$1,000.00 monetary claim for the damaged furniture. As such, I find that the Tenants owe a balance of \$1,000.00 in unpaid rent to the Landlord. As the Landlord is still holding the security deposit, I authorize the Landlord, pursuant to section 72(2) of the Act, to keep the Tenants' security deposit of \$1,000.00, in full satisfaction of the Landlord's monetary claim.

Conclusion

The testimony and evidence submitted by both parties regarding their Applications has been reviewed and analysed. As a result, I authorize the Landlord to keep the Tenants' security deposit to fully satisfy and close both the Tenants' and the Landlord's Applications.

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 28, 2021

Residential Tenancy Branch