



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to recover the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties said that the deposit for this tenancy has been conclusively dealt with and withdrew that portion of their application.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties signed a tenancy agreement on December 10, 2020 for a fixed-term tenancy scheduled to commence on February 7, 2021. Monthly rent was \$1,900.00 payable on the first of each month. A security deposit of \$950.00 was paid on December 11, 2020 and has been dealt with in accordance with the *Act*.

The tenants paid pro-rated rent for the month of February in the amount of \$1,492.00 on February 2, 2021. The parties completed a move-in condition inspection report on February 7, 2021. A copy of the report, signed by both parties, was submitted into documentary evidence. The report does not contain any comments from either party and notes no deficiencies in the rental unit. All areas of the rental unit are assessed as being of Fair condition.

The tenants say that while they signed the move-in condition inspection report they were not provided with a full opportunity to inspect the rental unit. The tenants say that only after they had signed the condition inspection report and the landlord left, were they able to inspect the rental unit. The tenants say that they discovered the rental unit was unclean, contained items from previous occupants and felt it unsafe to stay at the premises.

The tenants submit that the rental unit was in poor condition, believed it to be unsafe and unsuitable to be occupied and significantly different from how it was advertised. The tenants submitted into documentary evidence some photographs of the suite as well as the online advertisements.

After completion of the move-in condition inspection report, the tenants gave notice to the landlord by email correspondence dated February 7, 2021 that they believe the rental unit is uninhabitable and believe the landlord has breached a material term of the tenancy agreement allowing them to unilaterally end the tenancy.

The tenants seek a return of the pro-rated rent paid for February 2021 in the amount of \$1,492.00 and the costs of alternate accommodations they found in the amount of \$801.57.

The landlord testified that the rental unit was clean as indicated on the condition inspection report. The landlord disputes the basis for any monetary claim by the tenants.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 45 of the *Act* provides that a tenant may end a fixed term tenancy by giving notice effective on a date that is one month after the date the landlord receives the notice and is no earlier than the date specified in the tenancy agreement.

Subsection (3) further provides that:

If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice

The tenants submit that the rental unit was unsuitable for occupation, breaching a material term of the tenancy agreement. The tenants signed a move-in condition inspection report but say that it does not accurately reflect the condition of the suite.

Section 21 of the Residential Tenancy Regulations provides that:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The tenants have submitted some photographs of the suite and provided some testimony about the deficiencies they found. I do not find the cumulative weight of the tenants' evidence to be sufficient to outweigh the probative value of the completed condition inspection report. While the tenants explained that the move-in report was signed after a cursory walk-through, I find that if the rental unit was in such a state of disrepair and uninhabitable disarray as the tenant now submits, it would have been plainly obvious without the need for a thorough second inspection.

If the tenants were uncertain about the state of the rental unit it would be reasonable to simply not sign the report attesting that there were no issues or to perform a more thorough inspection while the landlord was present. The purpose of a condition inspection report is for both parties to be present to determine the state of repair and general condition of each room of the rental unit. It is not open for a party to sign and agree that the rental unit is of fair condition and thereafter, in the absence of the other party claim that there are deficiencies. I do not find it reasonable, equitable or in accordance with the *Act* or Regulations for a party to sign a report and thereafter perform their own inspection without the other party refuting their own earlier signed statement.

I find that, pursuant to section 21 of the Regulations, the condition inspection report signed by the parties on February 7, 2021 to be accurate evidence of the state of repair and condition of the rental unit. I find that the submissions of the tenants is not sufficient to be reasonably considered a preponderance of contrary evidence.

In any event, I find the evidence of the tenants to merely show some minor blemishes which would not reasonably be described as deficiencies so material as to give rise to an end of the tenancy.

I find that the tenants have failed to demonstrate on a balance of probabilities that there has been any breach on the part of the landlords that would give rise to a monetary award. Consequently, I dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety 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: July 5, 2021

Residential Tenancy Branch