



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFL

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenants confirm that their claim for compensation sets out particulars that includes a claim for return of the security deposit. The Landlords confirm their understanding that this claim was made.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Relevant Background and Evidence

The following are agreed or undisputed facts: On March 6, 2021 the Parties viewed the unit, a house originally constructed in the 1940's, and on March 17, 2021 they signed a tenancy agreement for a tenancy start date of April 1, 2021 on a fixed term to end March 31, 2022. The Tenants did not move into the unit. Rent of \$3,275.0 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,637.50 as a security deposit and the Tenants paid the rent for April 2021. On April 27, 2021 the Tenants provided their forwarding address in writing by registered mail to

the Landlord. The Landlord received the address and on May 17, 2021 returned the full security deposit by registered mail to the Tenants. On May 21, 2021 the Tenants received the deposit.

The Tenants argue that as the Landlord did not return the security deposit to them within 15 days of the receipt of their forwarding address, they are entitled to return of double the security deposit. The Tenants claim \$3,275.00.

The Tenants state that upon receipt of the keys on March 31, 2021 the unit was found to be unsuitable for occupation and out of compliance with health safety and housing standards as the living room windows, having been painted over, would not open. The Tenants state that as a result they were unable to move into the unit. The Tenants claim \$3,275.00 for the return of the rent paid for April 2021, \$59.54 for postal costs to have their mail forwarded to the unit and \$612.70 for Tenant PP's loss of a banked day that Tenant PP had taken to move into the unit. The Tenants provide the receipt for the postal costs.

The Tenant states that in discussing the windows the Landlord told them that if this was a deal breaker then the Parties should go their separate ways. The Tenant argues that this is the Landlord's acknowledgement that no rent was payable for April 2021. The Tenant states that the Landlord said the Landlord would seek retention of the security deposit and the first month's rent.

The Tenant states that the windows were out of compliance with building codes dated 2018 or 2019 and refers to portions of building codes submitted as evidence. The Tenant confirms that they do not really understand the codes. The Tenant argue that the inability to open the living room window is a fire hazard. The Tenant states that each room is required to have an exit to the outside and that this is set out in housing and building codes. The Tenant refers to Code A.9.9.8.4(1) as the code for fire escape requirements under Independent and Remote exits. The Tenant states that because

the kitchen and living room are adjacent if a fire were to break out in the kitchen the smoke would block their only exit from the main door. The main door is located in a vestibule adjacent to the living room. The only other option would be to break the windows and risk harm.

The Tenant also argues that the inability to open the living room windows is a health hazard due to improper ventilation. The Tenant refers to Code A9.5.1.2 and Code 9.32.2.2, provided as evidence, and states that where there are combination rooms, such as the adjoined kitchen and living room, the opening between them must be large enough to allow fresh air. The Tenant states that the one door between the kitchen and living room is not sufficient to provide fresh air ventilation. The Tenant also refers to a code setting out required square meter areas per room and refers to a minimum unobstructed area requiring the Landlord to provide natural ventilation. The Tenant states that they do not understand what the code sections mean.

The Tenant argues that the Landlord breached a material term of the tenancy by not providing living room windows that open. The Tenant states that they verbally asked the Landlord to repair the windows at move-in and that the Landlord refused. The Tenant states that they sent an email to the Landlord setting out the breach. The Tenant confirms that the Landlord was not given any time to remedy the breach in that email.

The Landlord argues that the Tenants' testimony is nonsense and that the Tenants are using jargon that they themselves do not understand. The Landlord states that the Tenants have provided only snippets of codes and that the Landlord does not understand the Tenants' evidence and testimony. The Landlord states that the unit was in compliance at the time it was built in the 1940's. The Landlord states that they contacted the building department for the city and spoke with the head building inspector who informed them that closed windows in the living room were not an issue and that egress window requirements only apply to bedrooms. The Landlord states that

there are multiple exits from the unit including one from the master bedroom, one from the laundry room that is connected to the kitchen, and one from the living room through the main door of the unit.

The Landlord states that the kitchen contain multiple windows that open and that there has never been any complaint from the previous tenants about fresh air or ventilation. The Landlord argues that the Tenants have only provided pure speculation in relation to ventilation and that the Tenants more likely experienced “buyer’s remorse” as the reason for ending the tenancy. The Landlord states that the Tenants conducted a thorough inspection of the unit at viewing, to the extent that the Tenant went to each corner of the room. The Landlord states that they had time to inspect the windows and doors at the viewing and that there was no change in the unit on March 31, 2021. The Landlord states that the Tenants’ evidence package contains claims in relation to all sorts of other issues such as cleaning and minor repairs that on March 31, 2021, the Landlord had agreed to complete. The Landlord states that the Tenants also made an issue of the Landlord being an hour late on one occasion. The Landlord argues that these submissions in the evidence package raises an issue with the Tenants’ characters and finds it troubling that the Tenants would end a fixed term tenancy on the basis of the living room windows not opening. The Landlord argues that the Tenant’s references to building codes are not legitimate and are only jargon. The Landlord argues that the Codes for 2018 or 2019 do not apply to the unit that was built in 1940.

Analysis

Section 45(3) of the Act 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. Policy Guideline #8 provides that to end a tenancy agreement for breach of a material term the party alleging a breach 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.

While having living room windows that open may have been considered a material term by the Tenants, based on the Tenants' evidence that the Landlord was not given any time to fix any breach of this term, I find that the Tenants have not substantiated that Tenants were entitled to end the tenancy for this reason.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a)complies with the 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 occupation by a tenant.

While I accept that the Tenants are not comfortable with a living room that does not have windows that open, I am not persuaded that that Tenants have shown that this discomfort amounts to the unit being uninhabitable therefore allowing them to end the tenancy. Even if the unit was in violation of current or recent building codes, there is no evidence that the breach of those codes brings the unit into an uninhabitable state. I also note the Tenants' evidence that they did not understand the codes. The Tenants provide no supporting evidence of health or fire hazards caused by unopenable windows in the living room, such as a fire inspection report or a medical opinion and I note the undisputed evidence of several other windows near the living room that open and several options for exiting the unit in case of fire. For these reasons I find on a balance of probabilities that the Tenants have not met their burden of proof to substantiate that the Landlord by act or negligence breached the Act or the tenancy agreement. For these reasons I dismiss the Tenants' claims for compensation in the form of mail forwarding costs, a return of rent and a loss of income.

Section 90(a) of the Act provides that a document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]*, unless earlier received, is deemed to be received, if given or served by mail, on the fifth day after it is mailed. As the Landlord gave no evidence of the date of their receipt of the forwarding address and based on the Tenants' undisputed evidence that the forwarding address was sent by registered mail on April 27, 2021, I find on a balance of probabilities that the Landlord was deemed to have received the forwarding address on May 2, 2021.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord received the forwarding address no later than May 2, 2021, I find that the Tenants were entitled to be repaid the security deposit by May 17, 2021. As the Landlord sent the security deposit on May 17, 2021 by registered mail and given the undisputed evidence that the Tenants received return of that deposit on May 21, 2021, I find that the Landlord failed to meet the 15-day time limit for the return of the security deposit. The Tenants are therefore entitled to return of double the security deposit plus zero interest of **\$3,275.00**. Deducting the **\$1,637.50** already returned leaves **\$1,637.50** owing to the Tenants. As the Tenants' claims have met with some success, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,737.50**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$1,737.50**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 15, 2021

Residential Tenancy Branch