



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), for a monetary order for compensation for monetary loss or other money owed, for an order for the retain the security deposit and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. The parties confirmed under affirmation that they were not recording the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issue

The tenants in their application have listed their child as a tenant. The child is not a tenant under the terms of the tenancy agreement. I have removed the child SF from the style of cause as they should not have been named.

I find the tenants application for the return of the security deposit is premature. The tenants made their application for the return of their security deposit on the last day of their tenancy and they indicated in their application that they have not served the landlord with their forwarding address. I find the tenants were not entitled to make the application for the return of the security deposit as they have not complied with section 38 of the Act.

At the hearing the tenants gave their forwarding address, which I have noted on the covering page of this Decision, I find the landlord now has the tenants forwarding address and has 15 days after January 7, 2022 to either to make an application for dispute resolution claiming against the security deposit or return the security deposit to the tenants in a manner permitted under the Act. The parties were informed of this at the hearing.

Should the landlord fail to return the security deposit or claim against the security deposit within the statutory time limit. I grant the tenants leave to reapply.

Issue to be Decided

Are the tenants entitled to a monetary order for monetary loss or other money owed?

Background and Evidence

The parties entered into a five (5) month fixed term tenancy which began on August 30, 2021 and was to expire on January 30, 2022. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants paid a security deposit of \$900.00. The tenancy ended on August 31, 2021.

The tenants submit in their application the following

“I texted the landlord (in Persian) letting them know the situation of the unit and the point we are moving out I texted at 7 am , didn't receive any response, then texted again at 3:37 no response. then I called on 5 :30 and she said she would call me back. didn't get any response and I called again and finally was able to get hold of the landlord at 7:30. but it didn't resolved”

“ have been moved with my family from Winnipeg to BC because of job relocation. I rented based pm the video that the owner sent to me. when I arrived the unit was dirty and not in clean condition. toilet fan was working on and off. When flushing the toilet, even without using it overflows and upper level sewer appears. when the upper level is using the toilets it makes a high level noise that woke up my little one during her sleep. I tried to solve the resolution but didn't work.”

[Reproduced as written.]

The tenants testified that they were given possession of the property on August 29, 2021; however, they could not stay there because of the dirtiness of the rental unit.

The tenants testified that they had hired their own cleaner to come in on August 30, 2021. The tenants stated there was a broken tap, the oven was not cleaned, there was tape on the refrigerator, that there was waste in the toilet from the upper rental unit as the sewer would backup and there was a hair with blood on the floor. The tenants stated that the landlord misrepresented the rental unit when they agreed to rent based on a video. Filed in evidence is a copy of the video, and photographs of the rental unit.

The landlord's agent testified that the tenants did not stay in the rental unit on August 29, 2021 because they had no furniture.

The landlord's agent testified they did not misrepresent the rental unit and it was given in good condition to the tenants. The agent stated that the only thing that was missed was the cleaning of the oven.

The landlord's agent testified that there has never been issues with sewer going into the lower unit toilet. The agent stated the photograph show some type of sparkling items in the toilet. The landlord's agent stated that this is a basement unit and it not uncommon to hear noise when the plumbing upstairs is being uses.

The landlord's agent testified that when they first were talking to the tenants their original plan was to take care of another home; however, they were unsure when those people would be leaving, and they were informed by the tenants that they had intended to buy their own home. The agent stated that is why they agreed to a five month fixed term tenancy; rather, than a one year. The agent stated they believe there were other reasons why the tenants did not want to honour their fixed term agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenants are seeking the return of rent they paid to the landlord. The tenants received possession of the premise on August 29, 2021, moved into the premises on August 30, 2021 and vacated the next day, August 31, 2021.

I have reviewed the documentary evidence. I do not find the rental unit was misrepresented or that it was in an unreasonable state of cleanliness or in need any significant repairs. The video the tenants were provided by the landlord is an overview of the entire premises which was vacant at the time and shows the rental unit in good condition. The tenants' photographs have been enlarged significantly to see the minor deficiencies within the premises.

It is not unreasonable or uncommon that there could be minor deficiencies in cleaning, such as shown in the photographs. Further, the tenants had hired a cleaner to attend the premises on August 30, 2021 to bring the rental unit to their standards and rectify any minor deficiencies with cleaning. I find it would be unreasonable to end the tenancy on August 31, 2021 when this issue was or should have been rectified by their own cleaner.

Further, while there may have been a broken handle on the faucet of the bathroom, that could have been repaired within a reasonable time frame and is not grounds to end a tenancy. This is not a health or safety issue.

I do not accept the tenant's testimony that the upper unit sewer was backing up into the rental unit or that the toilet was overflowing. The photograph provided by the tenants does not support this and there appears to be some other type of foreign objects that are shiny, this may be the filter on the camera; while there are two tiny brown object this could simply be from someone not flushing the toilet properly. This is not consistent or what you would expect to see if the sewer was in fact backing up into their unit and overflowing.

Further, I do not accept the tenant's submission that simply because they can hear the upper unit's toilet flush creating a noise, would not be caused to end the tenancy. This

is simply the character of the premises as this is a basement unit. This is not a health or safety issue.

I find the tenants have present no evidence that would leave me to believe that the rental unit does not comply with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit.

I find the tenants did not comply with section 45 (2)(b) of the Act which state the tenant may not end the tenancy earlier than the date specified in the tenancy agreement.

Based on the above, I find the tenants have failed to prove the landlord has violated the Act. I find the tenants breached the Act when they ended the tenancy earlier than the Act allowed. I find the landlord is entitled to keep the rent that was paid for the first month of the tenancy. I find the tenants are not entitled to the return of rent. Therefore, I dismiss the tenants' application without leave to reapply.

Conclusion

The tenants' application for the return of rent is dismissed. The tenants' application for return of the security deposit is dismissed with 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: January 19, 2022

Residential Tenancy Branch