



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution, filed by the parties.

The Landlord is requesting a monetary order to keep all or part of the security deposit, and for compensation under the Act or tenancy agreement.

The Tenants are requesting the return of their security deposit and for compensation under the Act or tenancy agreement.

Both parties request the return of the filing fee for their Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

Issues(s) to be Decided

Is the Landlord entitled to the monetary relief sought?

Are the Tenants entitled to the monetary relief sought?

Background and Evidence

The Tenants first viewed the rental unit on October 28, 2009, while work was being done on it, such as painting and cleaning, following the end of the last tenancy.

The Tenants testified they liked the suite and its location. They went to the Agent for the Landlord and completed applications to rent the unit on October 28, 2009, and were accepted as Tenants on that date.

On October 28, 2009, the parties also signed the tenancy agreement, which was for a fixed term of one year, to run from December 1, 2009, until November 30, 2010. The

rent was set at \$1,200.00 per month, and the Tenants paid a security deposit of \$600.00.

The Tenants wanted to move into the rental unit earlier, on November 15, 2009, and agreed to pay rent for those two weeks. Shortly after this the Tenants wanted to move into the rental unit on November 14, 2009.

On Monday November 9, 2009, the Tenants paid for the two weeks in November. It was agreed that the Tenants would meet with an Agent for the Landlord on Friday November 13, to perform the incoming condition inspection report. The Tenants were given the keys and attended on the Friday. Work was still being performed when the Tenants went to the unit. The Agent for the Landlord explained there were still items to be completed and in the process of being finished. For example, the carpets had been steam cleaned twice, but were still damp. The Tenants signed the incoming condition inspection report. The Tenants testified that they understood more work was to be done on the unit, although there is no indication of this on the condition inspection report.

The Tenants had new furniture they wanted to move into the rental unit with, however, on the day they were to move in they were not satisfied with the condition of the carpets and wanted them replaced, and they also wanted the entire unit repainted. The Tenants testified that at this time the Agent for the Landlord told them he was not repainting the entire unit and could do nothing for them about the carpets.

On Monday November 16, 2009, the Tenants went to the office of the Landlord's Agents. They did not want to take the rental unit and wanted to be released from the tenancy agreement. The Agent set up a meeting at the rental unit between the Tenants and an Agent for the Landlord to address their concerns with the unit. According to the Agent, the Tenants did not attend this meeting.

The Agent confirmed that the Landlord would not be replacing the carpets, although more painting was to be done. The Tenants wanted to be released from the fixed term agreement and their rent payments back. They did not want to have the unit being painted with their new furniture in place.

On November 16, 2009, the parties signed a mutual agreement to end the tenancy effective that day. The Agent for the Landlord returned the rent payment to the Tenants, however, the testimony of both parties is that they did not discuss the return of the security deposit at this time or any other compensation.

The Landlord is claiming \$500.00, pursuant to the liquidated damages clause in the tenancy agreement. The Landlord did mitigate losses, although the Landlord was unable to rent the unit until January 15, 2010.

The Tenants are claiming \$1,100.00, for the return of the security deposit plus compensation for storing their possessions, and lost wages for dealing with the situation, and for compensation for the allegedly unusable rental unit.

Analysis

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

I dismiss the claim of the Tenants. I find that the Tenants breached the Act and tenancy agreement by refusing to accept the rental unit. They viewed the unit, signed a tenancy agreement and performed an incoming condition inspection report. While the Landlord did allow them to end the tenancy, the preferred course of action here would have been for the Tenants to move into the unit and have the painting and other items addressed by the Landlord. This is in fact what the Tenants acknowledged during the hearing; that if they knew the Landlord would try and keep the security deposit they would have moved in and then filed an Application for Dispute Resolution to compel the Landlord to do the requested repairs. Despite this preferred course of action, I still do not find the rental unit was unsuitable for occupation. The defects in the rental unit were minor, given the age and character of the unit, and should not have prevented the Tenants from moving in.

I allow the claim of the Landlord. The liquidated damages clause is enforceable against the Tenants, and I find in this situation it is not a penalty, but an accurate pre-estimate of the costs of the Landlord incurred to re-rent the unit.

Therefore, I find that the Landlord has established a total monetary claim of **\$550.00**, comprised of \$500.00 for liquidated damages and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain **\$550.00** from the deposit of **\$600.00** in full satisfaction of the claim, and I order the Landlord to return to the Tenants the balance due of \$50.00.

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: April 09, 2010.

Dispute Resolution Officer