



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlords be granted a Monetary Order?

Background and Evidence

The parties confirmed that they entered into a fixed term tenancy that began on June 1, 2009 and switched to a month to month tenancy after one year. Rent was payable on the first of each month in the amount of \$1,350.00 and on May 30, 2009 the Tenants paid \$675.00 as a security deposit and \$675.00 as a pet deposit. A move in condition inspection report was completed May 30, 2009 and a move out condition inspection report was completed March 26, 2012.

The Landlords advised they were seeking \$1,350.00 as compensation because the Tenants ended their tenancy without the required thirty day notice. They stated that the male Tenant called them on March 11, 2012 to advise his wife and children had left so he needed to end the tenancy as of the end of March 2012.

Upon further clarification the Landlords stated that they had filed their initial application for dispute on June 15, 2012 to seek money for damages, however they were not successful with their claim as they had delayed in making the application. They noted that at the time of filing their first claim they decided not to pursue the Tenant for leaving early because of his circumstances. They said they changed their minds after seeing the decision from the previous application and because the Tenant had lied during the first hearing.

The Tenant confirmed that he provided the Landlord with late notice however they had mutually agreed he would move out 1 week early to provide the Landlord more time to fix up the place for the new tenant.

The Landlords asserted they were not able to re-rent the unit until May 14, 2012 because it took them so long to repair the unit.

In closing the Tenant pointed out that late notice was not an issue until the Landlord lost his first claim and was denied a review.

Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the evidence supports the Tenants did not provide thirty days written notice to end the tenancy, as required under section 45 of the Act. That being said the onus now lies with the Landlords to prove that this breach resulted in them suffering a loss.

The Landlords submitted that they were not able to re-rent the unit until May 14, 2012, however they did not provide evidence to support this statement, nor did they provide

testimony or evidence to prove how or when they began to advertise the unit. Furthermore, the Landlords only applied for compensation equal to 1 months rent and did not seek to recover 1 ½ month's rent that they are alleging they lost.

The testimony supports that the Landlords made a conscious decision not to pursue the Tenants for compensation for ending the tenancy without proper notice until the Landlords lost their first claim and appeal. Therefore, I find this claim to be retaliatory in nature and an abuse of process.

Based on the aforementioned, I find the Landlords provided insufficient evidence to prove they did what was reasonable to minimize their loss; rather, they initially made a conscious choice not to proceed with this claim. Accordingly, this claim is hereby dismissed.

The Landlords have not been successful with their application; therefore they must bear the burden of the cost to file this application.

Conclusion

I HEREBY DISMISS the Landlords' claim, 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: October 15, 2012.

Residential Tenancy Branch