



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, a monetary order for a return of their security deposit, and for recovery of the filing fee.

The original hearing began on January 2, 2013; however telephone transmission difficulties prevented the conclusion of the hearing. The hearing was then adjourned to the present date.

The parties again appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. It is noted that the attending landlord was the agent for the property manager, who represented the owner.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

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

Issue(s) to be Decided

Are the tenants entitled to receive a monetary order, which includes their security deposit, and to recover the filing fee?

Background and Evidence

The tenants said that the original tenancy began in December 2009, ended on May 5, 2012, when they vacated the rental unit, monthly rent started at \$1650.00 and that they paid an original security deposit of \$800.00.

I also heard testimony from the landlord that the tenants originally had occupancy of the upper suite in the residential property, beginning in 2009, for a monthly rent of \$1650.00; however after being given a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") in May 2011, with an effective move-out date of July 2011, as the owner was selling the home, the tenants said they could not find a new home and asked if they could stay longer, and to take possession of the entire house.

According to the landlord, the owner agreed that the tenants could stay until March 31, 2012 and on November 1, 2011, a new tenancy agreement was signed for the entire house, at a monthly rent of \$1800.00.

The tenants' monetary claim is in the amount of \$4924.00, for a rent increase of \$150.00 per month through March 2012, in the amount of \$600.00, an April rent increase of \$200.00, the security deposit of \$800.00, doubled to \$1600.00, \$1800.00 for compensation of having received a 2 Month Notice to End Tenancy for Landlord's Use of the Property, a refund of May 2012, rent in the amount of \$1000.00, and a reimbursement of carpet cleaning in the amount of \$124.00.

In support of their application, the tenants submitted that they were forced to sign the new tenancy agreement, for the entire home, in November 2011 as they could not find suitable alternate accommodations for their children. The tenants stated that they never used the basement suite.

After again not finding suitable accommodations by March 31, 2012, on April 9, 2012, the landlord's agent and the tenants signed a Mutual Agreement to End a Tenancy, whereby the tenants agreed to vacate the rental unit by June 30, 2012. The terms of the Mutual Agreement, submitted by the tenants, also stated that the tenants were to pay rent of \$1500.00 in April 2012, and \$1000.00 for May and June 2012, each month.

The tenants were to vacate the upper portion of the residential property and move into the basement for the remaining two months, at the reduced rent of \$1000.00.

The tenants said that the new owner took possession of the home on May 5, 2012, and said that he required possession of the entire home. As a result, according to the tenants, they vacated early, by May 9, 2012, for that reason and due to the noise, dust and pollutants caused by the new owner's renovation of the upper unit, after having paid rent of \$1000.00 in May 2012. As they were forced to vacate in May, they were entitled to receive a refund of \$1000.00, according to the tenants. The tenants submitted a letter from someone purporting to be the new owner.

The tenants submitted they were entitled to compensation equal to a month's rent for having received a 2 Month Notice to End Tenancy for Landlord's Use of the Property from the landlord as the owner was selling her home. As such they are requesting \$1800.00 in monetary compensation.

As to their request for \$600.00, the tenants stated their rent was increased from \$1650.00, which they had been paying, to \$1800.00 for the entire home, which they did not use.

As to their request for \$1600.00 for double their security deposit of \$800.00, the tenants submitted that when they moved into the basement suite on April 15, 2012, the landlord should have refunded the entire security deposit of \$825.00, and allow the tenants to then pay \$500.00 as a new security deposit. Additionally the tenant submitted that the landlord's agent did not post the cheque for "\$375.00" until April 27, 2012, and that they did not receive the cheque in the mail until May 16, 2012.

As to their request for \$124.00, the tenants said that the landlord's agent told them they had to clean the carpet in the rental unit, which they did; however the new owner ripped up the carpet.

I note that the parties have had two previous dispute resolution hearings, one on June 11, 2012, wherein the tenants did not attend. In a Decision of the same date, on the landlord's application, the Dispute Resolution Officer ("DRO") referenced the Mutual Agreement to End the Tenancy, and granted the landlord an order of possession for the rental unit effective for June 30, 2012, in the event the tenants fail to vacate the rental unit.

On September 25, 2012, a hearing was conducted on the landlord's application for monetary compensation for loss of rent for June 2012. The tenants did not appear at that hearing and the DRO in that Decision of the same date granted the landlord a monetary award in the amount of \$1050.00, comprised of loss of revenue of \$1000.00 for June 2012, and the filing fee of \$50.00. The DRO also determined that the landlord should retain the security deposit of \$500.00 in partial satisfaction of the monetary award and granted the landlord a monetary order in the amount of \$550.00.

I also note that the tenant requested to discuss the "fraud" that was committed by the landlord's agent in that hearing. When questioned, the tenant stated she did not attend that hearing as she was unaware there was a hearing. Also when questioned further, the tenants confirmed not having filed an application for review based upon their allegations that a representative from the Residential Tenancy Branch ("RTB") informed her that she could address the matters of the September 25, 2012, hearing and the allegations of fraud through their present application for dispute resolution. The tenant went on further to state that she believed the present application was to be a review of the landlord's previous application for dispute resolution.

The tenants' witness said that she was with the tenant MV nearly every day and that the basement unit became uninhabitable once the new owner took possession.

The tenant's additional relevant evidence included the two Decisions of the RTB, a written submission outlining their position and request for a monetary order, an incomplete (page 6 of 6 pages) copy of a new tenancy agreement, showing signatures of the parties signed on May 8, 2012, an incomplete (page 1 of 3) copy of a Residential Tenancy Agreement made on October 22, 2011, for a tenancy beginning on November 1, 2011, for a fixed term through March 31, 2012, for a monthly rent of \$1800.00, and showing a security deposit of \$800.00 received by the landlord May 2009, and the Mutual Agreement. The landlord orally stated that the security deposit increased to \$825.00, although there was conflicting evidence as to the exact amount of the security deposit.

In response as to the compensation equivalent to one month's rent, the landlord said that as the tenants were to vacate by July 31, 2011, the month of July 2011 was to be their "free" month; however, the tenants negotiated new terms for continuing the tenancy, ultimately until June 30, 2012, thereby failing to vacate the rental unit pursuant to the Notice. The landlord denied owing compensation as the parties mutually agreed to ending the tenancy the next year.

As to the increase of monthly rent from \$1650.00 to \$1800.00, beginning in November 2011, the rent increased as the tenants took possession of the entire home, including the basement suite, whereas they previously only occupied the upper suite, according to the landlord.

As to the rent for April as claimed by the tenants, the landlord said that the tenants agreed to rent of \$1500.00 for April as they moved to the basement suite during the month, thereby allowing for a reduction from \$2000.00 to \$1500.00.

As to the issue of the security deposit, the landlord said that when the tenants moved to the basement suite for a rent of \$1000.00, she refunded \$325.00 to the tenants' security deposit to account for the reduced rent, leaving a security deposit of \$500.00 held by the landlord.

As to the issue of a refund for May 2012 rent, the landlord stated that pursuant to the Mutual Agreement to End the Tenancy, the tenants were to vacate the basement suite by June 30, 2012, and that she was unaware that the tenants may have vacated in May, 2012, as they never called her about the construction disturbance, or what the new owner asked of them, or to inform her that they moved.

The landlord also said that she received a text message from tenant MV on May 2, 2012, asking if the tenants could stay longer than June 30, 2012.

As a way of further explanation, the completion date of the sale of the home was June 28, 2012; however the purchaser was granted possession of the home on May 4, 2012.

As to the issue of the carpet cleaning, the landlord said she was following the request of the owner and was unaware of the owner's plan to rip up the carpet.

The landlord's relevant evidence included a copy of the Contract of Sale and Purchase.

Analysis

Based on the relevant oral and written 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 claiming party, the tenants in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

For the benefit of the applicants, I inform them that their present application is not for the purpose of reviewing the landlord's previous applications or for hearing about their allegations of fraud. The remedy for a party when receiving a Decision from the RTB is to file an application for review within certain time frames as set out. Each Decision is accompanied by a sheet informing a party of how they may obtain information for filing such application for review. This Decision is based solely on the merits of the tenants' application.

Doubling of the security deposit-The issue of the tenants' security deposit has previously been decided upon by the Decision issued on September 25, 2012, wherein the Arbitrator found that the landlord held a security deposit of \$500.00 and the landlord was allowed to retain the security deposit in partial satisfaction of their monetary award of \$1050.00.

I cannot re-decide this issue as I am bound by this earlier Decision, under the legal principle of *res judicata*, and I hereby dismiss their monetary claim for \$1600.00.

Rent increase of \$150.00 from November 2011 through March 2012-Although the tenants claimed \$600.00, the actual amount for the five months of \$150.00 each is calculated to be \$750.00. As to whether or not the tenants have established an entitlement to a refund, I find the tenants submitted insufficient evidence that the landlord violated the Act. I find the parties negotiated a new amount of rent for a larger rental unit, as the tenants previously had occupancy of only the upper suite. I cannot find anything other than an arm's length negotiation as the landlord presented that the

owner desired to receive \$2000.00 per month instead of the ultimately agreed upon \$1800.00.

I find the tenants presented no basis to be awarded a refund of rent paid from November 2011 through March 2012, and as such, I dismiss their monetary claim for \$600.00.

April rent increase of \$200.00-I also find the tenants presented no basis to be awarded a refund of \$200.00 for April, as the Mutual Agreement to End the Tenancy as signed by the parties stated that rent was to be \$1500.00. I have no evidence that they paid an additional \$200.00 and I therefore find the tenants submitted insufficient evidence to meet any step of the burden of proof and I dismiss their monetary claim for \$200.00.

Compensation equivalent to one month's rent-Although section 51 of the Act allows compensation equivalent to one month's rent to a tenant receiving a 2 Month Notice, section 49 requires the tenant receiving the Notice to vacate the rental unit on or before the effective date absent an application for dispute resolution in dispute of the Notice.

In the present case, the tenants neither vacated the rental unit nor filed an application for dispute resolution in dispute of the Notice; instead they negotiated a new tenancy agreement with the landlord and owner and stayed until at least May 5, 2012.

I therefore cannot conclude that the tenants are entitled to compensation as they did not vacate the rental unit pursuant to the terms of the Notice, requiring vacant possession of the rental unit by July 31, 2011. I therefore dismiss their monetary claim of \$1800.00.

Refund of May 2012 rent-In reviewing the tenants' evidence of the letter from the new owner, I cannot conclude that the new owner required the tenants to vacate earlier than the date listed on the Mutual Agreement to End the Tenancy, or June 30, 2012. The new owner's letter said that the tenant MV asked if he would consider letting the tenants "stay in the basement location, however I indicated to require vacant possession of the entire property." This statement did not list a date the new owner required vacant possession and it is just as likely or not that tenant MV asked about staying longer than June 30, 2012, given the several extensions and the text message received by the landlord's agent about staying longer.

Even given the above, I also find that under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Therefore the tenants were required to pay rent for May 2012, pursuant to the terms of their agreement.

Due to the above, I dismiss the tenants' monetary claim of \$1000.00.

Refund of carpet cleaning-I find the tenants' reasoning that they should be reimbursed for carpet cleaning as the owner ripped up the carpet fails to present a basis for a monetary claim. I likewise find the tenants presented no evidence that the landlord violated the tenancy agreement as the tenants are obligated to leave a rental unit in a state of reasonable health, cleanliness and sanitary standards at the end of a tenancy.

Additionally the tenants failed to submit a receipt or other proof of payment, step 3 of their burden of proof and I therefore dismiss their monetary claim for \$124.00

As I have dismissed the entirety of the tenants' monetary claim, I likewise dismiss their request to recover the filing fee.

Conclusion

Due to the above, I dismiss the tenants' application, 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: February 04, 2013

Residential Tenancy Branch

