Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This is an application for a monetary order for $25,000.00 and recovery of the $100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Have the applicants established a monetary claim against the respondent, and if so in what amount?

Preliminary matter

Prior to dealing with the issues claimed on the application, I first dealt with the respondent's allegation that the incorrect person had been named as respondent because the person named was not the owner of the property, and had not signed the tenancy agreement.

After reviewing the information provided by both the respondent’s agent and the applicant's legal counsel I have determined that the correct person has been named on the application for dispute resolution, as there is plenty of correspondence that shows that the respondent is acting as the landlord of this rentalunit and there.

The definition of landlord under the Residential Tenancy Act is not limited to just the owner of the rental unit, and it also includes the agents acting on the half of the landlord or a person putting themselves forward as the landlord with regards to a rental unit.

Therefore having determined that the person named as a respondent/landlord is not incorrect, I proceeded with the hearing.

Background and Evidence

The applicants legal counsel stated that:

- On July 30, 2013 the tenants entered into a tenancy agreement with the respondent through the property management company acting as agent for the landlord/respondent.
- The tenancy agreement was to begin on October 15, 2013 for a fixed term of 32 months, with a monthly rent of $5,500.00.
- Prior to the move-in date they were contacted by the landlord's agent and informed that the unit would not be ready by October 15, 2013 and requested a delayed move-in until November 1, 2013. Therefore on October 16, 2013 they signed an addendum to the tenancy agreement with the new start of tenancy date of November 1, 2013.
- Approximately 1 week before the November 1, 2013 move-in date they were contacted by the landlord's agent and informed that the rental unit was undergoing renovations and would not be completed in time of the November 1, 2013 possession date.
- Over the course of the next few weeks the landlord and his agent provided various inconsistent reasons for why he was unable to perform his obligations under the tenancy agreement these in reasons included:
    - water damage to the rental unit
    - landlord's desire to utilize the insurance proceeds from such water damage to completely renovate the rental unit
    - landlord's intention to occupy the rental unit himself
    - landlord's intention to move his father into the rental unit
    - and discovery of black mold in the rental unit
- No evidence of any damage or mold was ever provided to the tenants.
- They requested permission to allow their own expert to assess the damage and mold issue and they were denied permission to do so.
- The landlords then informed them that he was unwilling to provide the rental unit to them as it was his home and I should seek alternate accommodations.

- They eventually did find alternate accommodations however they had extra costs resulting from the inconvenience which included hotel charges, storage fees, and additional moving expenses.
- They had also already paid for an interior designer for the respondents rental unit, however that interior design work was wasted as they were unable to move into the rental unit.
- As a result of the landlords breach of the original agreement they suffered the following damages

October 2014 hotel charges, 17 days	$2356.88
November 2014 hotel charges, 16 days	$2218.24
Storage fees October 25 to November 15	$2171.00
Interior designer costs	$1920.00
Moving in surcharge at new apartment	$1390.00
Estimated moving out surcharge at new apartment	$1400.00
Increased rent of $2500.00 per month for 32 months	$80,000.00
Total	$91,456.12

- They are not however claiming the full monthly rent increase as they realize that the new rental unit was far more expensive than the original rental unit, and therefore they are only claiming approximately $425.00 per month to bring their claim within the $25,000.00 limit allowed under the Residential Tenancy Act.
- They have provided copies of comparable units that were available at the time and as you can see a rent differential of $425.00 is well within a reasonable range.
- Even the evidence provided by the landlord shows comparables within the range of a $400.00 to $500.00 per month increase.
- Therefore the total claim they are claiming is $25,000.00.

The respondent's agent testified that:

- First of all I would argue that the tenancy agreement is not binding as it was not fully executed. The respondent did not sign the agreement and did not give the rental agency authority to enter into an agreement on his behalf.
- The respondent was not involved in this agreement whatsoever.
- If the rental agreement is found to be binding, he does not believe that the applicant's claim for additional moving expenses should be allowed, because the tenancy agreement specifically states that any move-in or move out fees will be paid by the tenants.

- He also does not believe that the respondent should have to pay an interior designer charge, as interior designing was not required; it was just a choice of the tenants.
- The reason the landlord backed out of the tenancy agreement was because it was not habitable, as the adjoining suites 2901, and 2902, plus the hallway was still undergoing substantial construction, which made it unsafe for anyone to use suite 2903. (See photos of the hallway)
- Further, during the construction, significant mold was discovered in units 2901 and 2902 (see photos provided) and on October 31, 2013 they received a letter (copy of letter attached) from the person overseeing the construction stating that the black mold had spread to Suite 2903 as well and would this necessitate significant construction, and could also be a health and safety concern.
- It is also their belief that the rental unit that the tenants eventually moved to is far more luxurious and cannot be considered in any way comparable to the dispute property. The dispute properties assessed value is $1,521,000 whereas the tenant's new rental property has an assessed value of $4,275,000.
- He as also provided letter from a licensed property manager dated April 4, 2014, that states that there were comparable units with a rental rate in close proximity to the $5,500.00 per month amount that was to be paid for this rental unit.
- With that letter the property manager provided comparable units there were available as of April 4, 2014 in the price range $5,400.00 per month to $6,000.00 per month with square footages of 1356 ft.^{2} to 1850 ft.^{2}
- He therefore believes that the applicant's could have found a rental property with rent in close proximity to the amount agreed on for the dispute property.

In response to the landlord’s agent’s testimony the lawyer for the tenants stated:

- Not only did the property management company state they were acting on behalf of the respondent, the respondent insisted on meeting with them before agreeing to let the property management company to execute the tenancy agreement. Therefore to claim that the respondent was unaware of this agreement is totally false.
- They met with the respondent twice with regards to this agreement, and spoke with the respondent once on the phone.
- Construction to this rental unit started in 2012 and the landlord was negligent in renting the unit when he was not sure if the unit would be ready for renting by the move-in date.
- The letter stating that molded had been found in the rental property was not issued or even mentioned until after the landlord had stated that he would not be proceeding with the tenancy due to ongoing construction.

- The excess moving costs are not the same as the move-in and move out fee, they are excess costs charged by the moving company due to a more difficulty to move into this new rental unit.
- They do not dispute that the new rental unit was far more luxurious than the dispute property, however they are not claiming the full $2500.00 per month increase in rent, they are only claiming $425.00 per month which is well within the range of the comparables provided by themselves and by the landlord's agent.

Analysis

It is my finding that the respondent was aware of the tenancy agreement and had approved of the tenancy agreement signed by his rental management company.

There is correspondence from the landlord that clearly shows that he was aware of the agreement and makes no mention of the rental management company entering into an agreement without his consent.

I therefore find that the tenancy agreement is a legitimate agreement.

Further it is my finding that the respondent did breach the tenancy agreement, and the breach of that agreement was not the result of issues that could not have been foreseen. In a letter written by the respondent the respondent even states "Unfortunately, I greatly underestimated the time required to complete this customized work, and the entire floor is effectively a busy construction zone, and this work will be ongoing for many more months before final inspection an occupancy permit can be achieved"

I fail to see why the respondent would not have established whether or not the construction would be completed by the date he intended to rent the unit prior to entering an agreement.

It is my decision therefore that the respondent is liable for damages that resulted from the breach of that agreement.

As far as damages are concerned it is my finding that I allow the full amount of $25,000.00 claimed by the respondents.

I find that the increase in rent requested, of approximately $425.00 per month, is a reasonable increase and well within the range of the comparable units available at the

time. The fact that the applicants rented I far more luxurious unit has no bearing as the applicants are not claiming the full $2500.00 difference.

It's also my finding that the respondent is liable for the hotel charges that resulted from the breach of the tenancy agreement, and I find that the amounts claimed for hotel costs to be quite reasonable. These are costs that the applicants would not have had, and responded not breach the tenancy agreement.

It is also my finding that the respondent is liable for the storage costs that resulted from the breach of the tenancy agreement.

I also allow the claim for the interior designer because the applicants had already paid to have interior designing done in the dispute property before the landlord breach the tenancy agreement, and although interior designing was a choice of the tenants, it is money they would not have spent had they known the tenancy agreement was going to be breached.

I also allow the additional moving expenses, as these are expenses that the tenants would not have had, had they been allowed to move into the dispute rental unit. These costs are extra cost that the moving company is charging us them to move them into a different rental unit.

Having allowed the full claim I also allow the request for recovery of the filing fee.

Conclusion

I have allowed the applicants full claim and have issued a monetary order for the respondent to pay $25,100.00 to the applicant's.

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: September 18, 2014

Residential Tenancy Branch