



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Orca Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on September 19, 2014 for:

1. A Monetary Order for compensation – Section 67;
2. An Order for the return of double the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on September 19, 2014 for:

1. A Monetary Order for unpaid rent – Section 67;
2. An Order to retain the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on August 15, 2014 for a fixed term to August 31, 2015. Rent of \$3,500.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$1,750.00 as a security deposit and \$1,750.00 as a pet

deposit. Prior to the move-in date the Tenant had seen the unit only through photo representation from the Landlord.

The Tenant states that on the day they moved into the unit, August 15, 2014, and with the Landlord present and aware, they smelled gas. The Tenant states that the Landlord told them that the move-in inspection would take place after a couple of days. The Tenant states that the unit was in disrepair, including stained carpets and several open electrical sockets. The Tenant states that the windows and rear patio door would not lock. The Tenant states that the yard had 6 foot long hanging branches, an unprotected 12 foot drop off the yard and construction debris at the back of the unit next to the tree house making it dangerous for their three young children. The Tenant states that the furnace had not been serviced since November 2012. The Tenant states that no move-in inspection was ever completed.

The Tenant states that the Landlord was called on the morning of August 16, 2014 and asked to attend the unit but that the Landlord only agreed to attend on August 18, 2014 at 11:00 a.m. The Tenant states that the Landlord was sent a list of problems on August 17, 2014. The Tenant states that as the Landlord failed to respond to the gas concerns the fire and gas authorities attended, evacuating the house and isolating the leak. The Tenant provided a copy of a caution from the gas company setting out defects found and actions required. The Tenant states that the fire department also found that the smoke detectors were old, un-working and could not be tested. The Tenant states that the Landlord was immediately informed. The Tenant provided copies of email correspondence between the Parties, a portion of which includes references from the Tenant to various safety standards.

The Tenant states that given the health and safety problems, the disrepair of the unit and the lack of response from the Landlord who failed to attend as promised on the morning of August 18, 2014 the Tenant gave notice that afternoon and moved out of the unit on August 25, 2014. The Landlord states that the Tenants moved out on August 26, 2014. The Tenant states that this is the day the move-out inspection was

completed. The Tenant states that at no time did the Landlord telephone the Tenant before they moved out of the unit.

The Tenant states that they had not budgeted for an unexpected move, were cash strapped, given the initial expenditures for the tenancy, and so rented a U-Haul and carried out the move themselves. The Tenant provided a receipt for gas and parking. The Tenant states that the cost of a move would not have been required if the Landlord had provided them with a safe and suitable unit. The Tenant claims \$1,000.00 for the cost of the move. The Tenant provided receipts for gas and parking.

The Parties agree that the Tenant's forwarding address was provided on both August 18, 2014 and on August 26, 2014. The Tenant claims return of double the security and pet deposit.

The Landlord states that the move-in inspection was not conducted at move in as the Tenants had just completed a long journey, were tired and agreed to the Landlord's offer to carry it out after the week-end. The Landlord states that the Tenant never told the Landlord that any of the problems were an emergency. The Landlord states that a meeting was requested of the Tenant to discuss the problems but that since the Tenant did not respond the Landlord stopped calling the Tenant. The Landlord states that repairs would have been done if the Tenant had given the Landlord a chance. The Landlord states that he did attend the house a couple of times but nobody was present. The Landlord states that although the carpets were cleaned before the Tenants moved out, no other repairs were made, including an inspection of the gas leak source or the replacement of the smoke detectors before the Tenants moved out of the unit. The Landlord agrees that there was debris from the neighbouring construction site in the unit's yard. The Landlord agrees that there should not have been these problems with the unit from the start.

The Landlord states that the tenancy agreement included a provision for liquidated damages and claims \$1,700.00. It is noted that although a provision for liquidated damages is included in the tenancy agreement, no amount is indicated.

The Landlord states that the unit was advertised immediately at the same rental rate and that a new tenant was obtained for October 1, 2014. The Landlord claims lost rental income caused by the Tenant's breach of the fixed term tenancy.

Analysis

Section 32 of the Act provides that a landlord must provide residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. This section further provides that this obligation applies whether or not a tenant knew of a breach by the landlord of that obligation at the time of entering into the tenancy agreement.

Accepting the Tenant's undisputed and well supported evidence of the exposed electrical sockets, lack of smoke detectors, a gas leak, unsecured windows and door, construction debris, and the unprotected steep boundary drop present when the Tenant was provided with the unit, I find on a balance of probabilities that the Landlord failed to provide a unit suitable for occupation. Given the undisputed evidence that the Landlord did nothing to correct this situation during the tenancy, I find that the Landlord also failed to maintain the unit as required under the Act.

Section 45 of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

This section further provides that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. There can be no doubt that the provision of safe gas heating systems and appliances and smoke detectors is a material term of the tenancy agreement. I note that the tenancy agreement specifically sets out under section 4 “condition of premises” that “The tenant will not under any circumstances remove or disable any or all of the (smoke and carbon monoxide) detectors for any length of time, if they do the tenant has placed the safety of the building and other occupants in serious harm and the Landlord has the right to terminate this tenancy accordingly”. This indicates the Landlord’s appreciation of the serious nature of such defects and must also be applied to the Landlord’s obligation to provide a unit without such serious defects. I also consider that as the Act requires a unit to be suitable, this becomes an implied term of any tenancy agreement. As such I find that the Landlord failed to comply with a material term of the tenancy by providing a unit with an active gas leak, non-functioning smoke detectors and a host of other significant and dangerous problems.

Although the Landlord argues that they were not informed of an emergency, I note with concern the undisputed evidence of the Landlord’s awareness of the smell of gas from day one. Although the Landlord argues that they were given insufficient time to remedy the problems, I note that the Tenant’s evidence that the Landlord did not attempt to call them and there is no evidence that the Landlord served any notice to attend the unit to make repairs in the 10 days the Tenants continued to reside in the unit. I find this lack of definitive action to be perplexing particularly in relation to the required inspection of the gas leak or the replacement of the smoke detectors. The dangers left in the yard in the face of the unit being rent to a family with small children strikes me as negligent

misrepresentation. As the Tenant gave the Landlord written notice of the numerous failures and as the Landlord did nothing to address any of the serious defects, I find that the Tenant was entitled to end the tenancy.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. As the Tenant has been found entitled to have ended the tenancy on August 31, 2014 I find that the Landlord has failed to substantiate that the Tenant caused any lost rental income and I dismiss this claim.

As no amount is indicated for liquidated damages in the tenancy agreement, I find that the Landlord has not substantiated an entitlement to \$1,700.00 and I dismiss this claim.

Given that the Landlord caused the Tenants to have to move out of the unit and considering the receipts provided, I find that the Tenants have substantiated an entitlement to gas costs of **\$80.99** and parking costs of **\$7.00**. No receipt was provided for the cost of the U-Haul and I dismiss this claim. Accepting that the Tenants carried out the move themselves I find that the Tenants are also entitled to a nominal amount of **\$200.00** for their time and labor.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Regardless of whether the tenancy ended on August 25 or 26, 2014, the Landlord made its application within 15 days of either date and as such is not required to pay double the security deposit. As the Landlord has not been successful with its claims the Landlord's application is in effect dismissed. I find that the Landlord has no right to retain any portion of the security deposit and I order the Landlord to return the combined security and pet deposit plus zero interest in the amount of **\$3,500.00**.

As the Tenants' application had merit and success, although limited, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,887.99**.

Conclusion

The Landlord's application is dismissed. I grant the Tenant an order under Section 67 of the Act for **\$3,887.99**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 23, 2015

Residential Tenancy Branch

