Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNR, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act.* The landlord applied for a monetary order for loss of income, and the filing fee. The landlord also applied to retain the security deposit. The tenants applied for a monetary order for the return of the security deposit, return of rent and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income and the filing fee? Are the tenants entitled to the return of the security deposit, rent and the filing fee?

Background and Evidence

On October 10, 2015, the tenants paid a security deposit of $650.00 and entered into a fixed term tenancy agreement with an effective start date of November 01, 2015 and an end date of April 30, 2016. The tenants testified in their written submission and during the hearing that on October 31, 2015, they refused to fully move in due to the dirty condition of the home and the presence of mould in the home.

On November 04, 2015, the tenants gave the landlord notice to end the tenancy effective that day. The tenants removed their belongings and left. The landlord stated that he advertised the availability of the unit immediately but was unsuccessful in finding a tenant for the remainder of November. The landlord filed copies of his advertisements.

On November 08, 2015, the tenants complained to the City Hall about the presence of mold in the rental unit. On November 23, 2015, an inspector from the City Hall contacted the landlord and inspected the unit on November 24, 2015.

Initially the inspector provided a letter stating that some improvements and additions had been made to the house without proper permits. The landlord stated that he had permits that were issued in the early eighties and he provided them to the City Hall. On December 18, 2015, the inspector sent the landlord a note stating that during his inspection on November 24, 2015, he found no signs of mold and the carpets though dated were clean.

The landlord testified that despite his efforts to find new tenants he was unsuccessful and sometime in February 2016, decided not to rent the unit out. The landlord also testified that the neighbouring home was being demolished and there were hazardous materials on site. This deterred prospective tenants and along with seasonal trends the landlord was unable to rent out the unit at all.

The landlord is claiming loss of income for the months of December 2015, January 2016 and February 2016 for a total of $3,900.00. The landlord is also claiming $50.00 for the cost of filing this application.

The tenants stated that the house was unfit to be occupied due to mold and the dirty carpets. The tenants stated that there was excrement in the carpet which was covered with furniture at the time of viewing the rental unit. The tenants made attempts to come to an agreement with the landlord prior to filing their application, but were unsuccessful.

The tenants are claiming the return of rent for November, the return of the security deposit plus the filing fee for a total of $2,000.00.

Analysis

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The parties entered into a tenancy agreement on October 10, 2015 at which time the tenants paid the security deposit and therefore the rights and obligations of both parties took effect that date even though the tenants never fully moved in.

Section 45(2) of the *Residential Tenancy Act* states 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 on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, the tenants stated that the unit was not fit to be occupied and filed photographs to support their testimony. The tenants moved out immediately without giving the landlord proper notice or an opportunity to clean and remove the mold.

Based on the testimony and documentary evidence of the landlord, I find that by moving out on November 04, 2015, the tenants moved out prior to the end date of the fixed term (April 30, 2016) and therefore were not in compliance with the terms of the fixed term tenancy agreement, which resulted in a loss of income to the landlord.

In addition the tenants gave notice on November 04, 2015 which is after the day rent is due. Since rent is due on the first of each month, by giving notice on November 04, 2015, the earliest the tenants could end the tenancy was December 31, 2015

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non –compliance with the *Act,* the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

The landlord has proven that he mitigated his losses by advertising the vacancy and actively looking for a new tenant. However, despite the landlord's efforts to mitigate his losses, the unit remained vacant for the months of November 2015 to February 2016 at which time the landlord decided not to rent out the unit. This leads me to believe that there may be other factors that contributed to the landlord's inability to find a tenant.

Ordinarily a tenant is responsible for the loss of income suffered by the landlord due to the tenant's non-compliance with the tenancy agreement. In this case however, since the rental unit was vacant for four months after the tenants moved out, I find that that other factors may be in play.

The landlord testified that the presence of a hazardous site next door was a contributory factor to the prolonged vacancy. Accordingly I find that the tenants are not responsible for the loss of income suffered by the landlord for the balance of the period of the fixed term, after December 31, 2015.

Based on my determination, I find that other factors not related to the tenants' breach were in play that prevented the landlord from finding a tenant and therefore I dismiss the landlord's claim for loss of income, beyond the earliest time the tenants could end the tenancy with a notice to end tenancy served on the landlord, on November 04, 2015.

The landlord is entitled to rent for November and therefore the tenants' application for the return of rent for November is dismissed. I further find that the landlord is entitled to the loss of income that he suffered for the month of December 2015.

Since the landlord has proven his claim he is entitled to the filing fee of $50.00. Overall the landlord has established a claim for loss of income for December 2015 ($1,300.00) plus the filing fee ($50.00) for a total of $1,350.00.

I order that the landlord retain the security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of $700.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants have not proven their claim and must therefore bear the cost of filing their own application.

Conclusion

I grant the landlord a monetary order for $700.00.

The tenants' application is dismissed in its entirety.

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: June 07, 2016

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Residential Tenancy Branch