



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MNR, MNSD, FF

Tenants' application: CNC, MNDC, MNSD, OLC, FF

Introduction

This was a hearing with respect to applications by the landlord and the tenant. The hearing was conducted by conference call. The named landlord and tenant called in and participated in the hearing. The tenants claimed for various items of relief in addition to a monetary award, but since the tenancy has ended there is no basis for any of the tenants' claims apart from a monetary award and the tenant's claims, save for the claim for a monetary award and security deposit claim are dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities and if so, in what amount?

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is the upper suite in a house in Surrey. The tenancy began January 15, 2015 for a fixed term ending December 31, 2015 and thereafter on a month to month basis. The monthly rent was \$1,700.00, payable on the first of each month. The tenants paid a security deposit of \$850.00 at the start of the tenancy. The landlord's representative stated that the tenants were responsible for 60% of the utilities which were shared between the upper and lower suites in the house. The tenancy agreement, however, contained different provisions. The agreement provided that electricity (40%) was included in the rent.

The landlord testified that the tenants paid rent for January and February, but moved out on March 6th without paying March rent and without providing any written notice. The landlord claimed unpaid rent for March in the amount of \$1,700.00 and the sum of \$929.44, said to be the tenant's share of utilities. The landlord submitted a copy of a note written to the tenant and a poor quality photocopy of a photograph of a Hydro bill.

The tenants did not submit any documents in support of their application. The tenant said at the hearing that it was impossible for the tenants to live in the rental unit because the occupants of the downstairs unit constantly smoked illegal drugs and the fumes came through the air vents into the rental unit. The tenant said she complained numerous times to the landlord, but no action was taken. She said the smell was so severe that she had to send her children to stay with a babysitter.

The tenant said she called the police and they attended at the rental unit. She said the police came and told her the environment was so toxic that she should move. The tenant testified that she was pregnant at the time. She said that she was hospitalized for three weeks and gave birth prematurely; she blamed her illness and the premature birth upon the toxic marijuana smoke from the downstairs occupants and upon her stress and anxiety caused the landlord's refusal to deal with the problem.

The landlord's testimony was diametrically opposed to the tenant's evidence. He said that the landlord and the owner responded to the tenant's complaints and came to the rental unit on a number of occasions. He said that he was unable to identify any problem with smoke or fumes inside the rental unit on any visit. He investigated both rental units and spoke to the occupants of the lower unit who denied smoking or using any substance in the rental unit. The landlord said he was present when the police attended the unit and he said that they did not identify any problem or express any concerns about drug use or activity by the occupants of the lower suite. He said that the tenants moved out without giving any notice and the landlord was unable to re-rent the unit for any part of March.

Analysis

The tenant claimed that she was forced to move out of the rental unit because the landlord refused to deal with or evict the occupants of the lower unit due to their drug use at the rental property. The tenant blamed her illness and the premature birth of her child upon the situation. The tenant did not submit any documents or evidence in support of her claim. The tenant did not submit evidence of any written request to the landlord to address the problem. She did not make an application for dispute resolution

until after the tenancy had ended. The tenant's testimony is flatly contradicted by the landlord. He acknowledged that the tenant made verbal complaints and said that he responded to them promptly and appropriately, but when he investigated, he could discern no odour or signs to support the tenant's complaints. The tenant has not presented evidence to support her testimony, such as copies of written complaints to the landlord; she did not apply to the Residential Tenancy Branch for a remedy during the tenancy and she did not submit any medical evidence to support her position that her health problems were caused by the fumes from the lower unit. The tenant has alleged that the landlord committed what amounts to a material breach of the tenancy agreement; if that was the case, as set out in section 45 (3) of the *Residential Tenancy Act*, the tenant was obliged to give the landlord written notice to rectify the breach within a reasonable time before she acted to end the tenancy and move out. The tenant did not submit evidence to show that the landlord was notified in writing of a serious breach of the tenancy agreement before the tenants moved out. In the absence of sufficient evidence to establish on a balance of probabilities that there was a problem with fumes and drug use from the lower suite and the tenants were forced to move as a result of the landlord's inaction after written notice to fix the problem, the tenant's claim is dismissed without leave to reapply.

With respect to the landlord's claim I find that the landlord is entitled to an award for unpaid rent for the month of March in the amount of \$1,700.00 as claimed. I do not allow the landlord's claim for utilities. The landlord submitted a barely legible photograph of a utility bill. The provision in the tenancy agreement with respect to payment of utilities does not support the verbal testimony that the tenants were responsible for 60% of the utilities for the rental property as claimed. Because the utility provision in the tenancy agreement is ambiguous and unclear, I find that the landlord has failed to establish that the tenants are responsible for payment of electrical utilities in any amount and the landlord's claim for utilities is dismissed without leave to reapply.

I have allowed the landlord's claim in the amount of \$1,700.00. The landlord is entitled to recover the \$100.00 filing fee for his application for a total award of \$1,800.00. I order that the landlord retain the security deposit of \$850.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$950.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's application has been allowed in the amount stated. The tenants' application has been dismissed.

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 14, 2016

Residential Tenancy Branch

