



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND, FF

Introduction

This application was brought by the landlords seeking a Monetary Order for damage to the rental unit, loss of rent due to late notice, and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This application requires a decision on whether the landlords have proven on the balance of probabilities whether the damage was caused by the tenants, and if so, the amount of compensation to which the landlords are entitled. I must also decide if the landlords had acquiesced to late notice.

Background and Evidence

This tenancy began June 1, 2007 and ended on April 30, 2008. Rent is was \$800 per month and the landlords held a security deposit of \$400.

These parties participated in a dispute resolution hearing on July 14, 2008 on the tenants' application under file no. 719802, the result of which was an Order by a Dispute Resolution Officer that the landlords return the security deposit in double. The doubled security deposit of \$400 plus \$5.78 in interest plus the \$50 filing fee awarded to the tenants resulted in a Monetary Order for \$855.78.

In the present application, the landlords seek to recover the damages said to be the cause of their retaining the security deposit. As noted at the hearing, the matter of the security deposit has been dealt with and I do not have authority to review the decision of the previous dispute resolution officer.

There are two issues to be addressed: first is the matter of loss of rent due to late notice, and the second is damage to a shower door.

As to the late notice, the tenant gave evidence that he and his wife had given notice following an angry exchange between his wife and the male landlord over a gate the tenants had placed on a walkway. He stated that they had placed the gate there in order to prevent the landlords' dogs from defecating at the entrance to the suite. The female landlord stated that the confrontation could have been avoided if the tenants had brought the matter to her attention and given her the opportunity to address it. In any event, it was the evidence of the tenant that during the conversation the male landlord had told his wife that if the tenants were unhappy with the way things were, he would pay to have them moved out immediately.

He also stated that when the female landlord was given the written notice to end the tenancy on April 2, 2008 for April 30, 2008, she was asked and verbally indicated that the late notice would not be a problem. He further stated, at the request of the landlord, he agreed that a new tenant could take possession a day or two before the end of the month as they had already moved out.

The female landlord stated she had not said the late notice was acceptable and that the new tenant had not materialized. She also stated that the confrontation in question had occurred early in March, which delay was explained by the male tenant by the fact that his wife had not informed him of the confrontation until much later.

He also stated that he believe the acrimony between his wife and the male landlord made it logically and highly desirable for both parties that the tenancy end sooner rather than later.

As to the shower door, the tenant concedes that it was broken by his wife and that he had fully intended, and had in fact ordered and paid for the installation of a replacement. However, the replacement was never delivered due to a dispute with the landlord over the second shower door which fell out after the tenancy ended. It is the contention of the landlord that the supporting frame had been compromised when the first door broke and that the whole unit would have to be replaced.

The landlord gave evidence that the shower door was eight years old and replacement cost estimates were in the order of \$600 to \$800 including labour.

Analysis

I find the evidence of the tenant on the question of the landlords' acceptance of the late notice to be the more persuasive. While notice should have been given March 31, 2008, the April 2nd notice still left most of the month for the landlords to find new tenants and, in view of the feelings of the parties toward one another, it would make sense for both to prefer the earlier end of the tenancy. I note that it was not until after the tenants had been awarded double security deposit that the landlords made claim for the late notice. This portion of the claim is dismissed.

As to the shower door, the tenants quite readily acknowledge that they broke the first door and were prepared to replace it. I find on the balance of probabilities that the first incident may well have compromised the frame and contributed to the second door breaking.

Taking into account the eight years of wear on the door, I find that the tenants are responsible for \$400 of the cost of replacing the shower doors.

I further find that the landlord is entitled to recover the \$50 filing fee for this proceeding. Therefore, the landlords' copy of this decision is accompanied by a Monetary Order for \$450.

Given that the tenants currently hold a Monetary Order against the landlords for \$855.78 and I now issue a Monetary to the landlords against the tenants for \$450, in the event the parties wish to bring the matter to conclusion, the difference is calculated as follows:

Monetary Order in favour of the tenants	\$855.78
Monetary Order in favour of the landlords	- 450.00
TOTAL owed to tenants	\$405.78

Conclusion

Thus, the landlords' copy of this decision is accompanied by a Monetary Order for \$450 for service on the tenants. Again, the parties may satisfy both claims by the tenants' retiring their Monetary Order for \$855.78 and the landlord making payment to the tenants of \$405.78.

September 12, 2008
