



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNSD, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenants for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

At the outset of the hearing the parties agreed that the tenants had vacated the rental unit. Accordingly I consider the application for an order of possession to have been withdrawn.

At the hearing the landlord noted that he had not claimed compensation for repairs, which he said would be required and asked for liberty to apply for such compensation in a future claim. The landlord has leave to make such a claim in the future.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Are the tenants entitled to a monetary order as requested?

Background and Evidence

The parties were previously in a dispute resolution hearing on January 28, 2009 to determine the validity of a notice to end tenancy for unpaid rent which had been served on the tenants. At that hearing, the notice was determined to be valid and the landlord was granted an order of possession effective January 30 and a monetary order for unpaid utilities and unpaid rent for January. The landlord claimed unpaid rent for December 2008 but that claim was dismissed. The tenants testified that they vacated the rental unit on February 1. The landlord claimed that while the tenants moved their furniture on February 1, they barricaded themselves into the rental unit and did not

vacate until February 23. The landlord testified that while he himself did not witness the tenants in the rental unit after February 1, he had been told by his daughter and his agent that the tenants were in the rental unit and were refusing to answer the door. The landlord testified that as of the date of the hearing, he had been unable to find new tenants despite having placed advertisements starting on January 25. The landlord provided a copy of the tenancy agreement by which the tenancy was set for a fixed term to expire on April 30, 2009. The landlord claims \$9,000.00 in loss of income for February – April inclusive and \$1,500.00 in unpaid rent from December.

The tenants testified that after February 1 they did not set foot inside the rental unit. The tenants further testified that on January 28 they provided their forwarding address to the landlord in the form of a UPS box number. The landlord acknowledged having received the box number but insisted that the box number was not a forwarding address for the purposes of the Act. The tenants testified that at the beginning of the tenancy the furnace was not working, so they called the landlord who advised them to hire a repairman. The tenants hired a repairman to whom they paid \$300.00 to repair the furnace and further testified that the landlord gave them a cheque to reimburse them which was returned by the bank for insufficient fund. The landlord then wrote a second cheque which they claim was also returned NSF. The landlord testified that he gave a first cheque that was negotiated before the date on the cheque, so it did not clear his account. The landlord insisted that the second cheque did clear his account on May 2, 2008 and that the tenants had therefore been paid in full.

The tenants testified that at the end of May, an electrical problem developed in the rental unit and that they contacted the landlord who advised them to contact a repairman. The tenants hired a repairman who was paid \$425.25 and seek to recover this amount from the landlord. The landlord testified that he did not authorize the repair and that the tenants did not contact him at all and further testified that after the tenants had vacated he discovered that the electrical system had been tampered with, leading him to believe that any electrical work which had been done during the tenancy would have been done to repair damage which had been done by the tenants.

The tenants further testified that in December they attempted to use the fireplace and the rental unit filled with smoke and that when they contacted the landlord, he advised

them to hire someone to inspect and clean the fireplace. The tenants hired a professional who charged them \$157.50 to clean the fireplace. The landlord denied having been contacted about the fireplace.

The tenants testified that prior to moving in, the landlord told them they could paint the rental unit and that he would reimburse him for the paint. The tenants said they had the landlord approve the colours they intended to use and sent the landlord the \$63.52 in receipts for the paint, but were not reimbursed. The landlord testified that he gave the tenants permission to paint a specific colour, but that they chose to use a different colour and were advised that at the end of the tenancy they must return the colours of the walls and the ceiling to white. The landlord denied having been given a receipt for paint.

The tenants further seek the cost of moving from the rental unit, claiming that the landlord breached the contract by not removing abandoned items and debris from the rental unit prior to the start of their tenancy.

Analysis

The parties were in a fixed term tenancy which was set to expire on April 30, 2009. When the tenants failed to pay rent, the landlord had a choice to either accept the breach and end the contract or insist on strict compliance with the terms of the contract. In this case, the landlord chose to end the tenancy by serving a notice to end the tenancy, thereby ending the contract. I find that because the landlord made that election, he cannot now rely on the terms of the tenancy agreement to obligate the tenants to make rental payments throughout the balance of the fixed term. However, because the tenants remained in the rental unit until at least February 1, I find that the landlord could not have re-rented the rental unit for the month of February and therefore the tenants must be held responsible for rent for the month of February. I award the landlord \$3,000.00 in loss of income for the month of February. The landlord's claim for loss of income for March and April is dismissed. The landlord's claim for unpaid rent for December is dismissed as that claim was already dealt with in the January 28 hearing and is not *res judicata*.

I find that the tenants have failed to prove that the landlord did not repay them for the

furnace repair. The NSF cheque would have been returned to the tenants and could have been submitted as evidence, but was not. I find that the tenants have not proven that claim and dismiss the claim. As for the electrical and fireplace repairs, I find that the tenants have not proven that the landlord agreed to reimburse them for these costs. While it is possible that the electrical repairs could be considered emergency repairs under section 33 of the Act, I find that the tenants have not proven that they followed the procedures outlined in the Act, namely to make two attempts to contact the landlord prior to conducting the repair. I find that the fireplace repair cannot be considered an emergency repair under the Act. The claims for reimbursement for these repairs are dismissed.

I find that the tenants have failed to prove that there was an agreement in place between themselves and the landlord for reimbursement of the cost of paint and that claim is dismissed also.

I find that the tenants have no basis on which to claim moving expenses. The tenants were evicted from the rental unit because they refused to pay rent in the month of January and did not allege a material breach of the tenancy until that time. The claim for moving expenses is dismissed.

Conclusion

The tenants' claim is dismissed in its entirety. The landlord is awarded \$3,000.00 for lost income for February and I order that the landlord retain the security and pet deposits in full satisfaction of that claim. The parties will each bear the cost of their own filing fees.

Dated April 09, 2009.
