

Dispute Resolution Services

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

Decision

Dispute Codes: CNR, MNDC, ERP, RP, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order and an order that the landlord perform repairs and a cross-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. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Do the tenants owe the landlord rent thereby providing grounds to end the tenancy?

Do the tenants owe the landlord late payment fees and NSF fees?

Should the landlord be ordered to perform repairs as requested?

Background and Evidence

The parties agreed that in or about February 2008 the tenants moved from one rental unit in the building to the unit they currently occupy. The tenants testified that repairs are required in the rental unit. When asked to identify the repairs needed, the tenants identified the following:

- New paint
- New carpets
- Install doors on three closets
- Repair 1 closet door in the bedroom
- Repair one burner on the stove
- Repair shower knob

The landlord agreed to install the closet doors and inspect the stove burner and shower knob and perform any repairs required. The landlord does not intend to re-paint or re-

carpet the rental unit.

On or about March 2 the landlord served the tenants with a 10-day notice to end tenancy for unpaid rent. The landlord alleged that \$380.38 was owing, which is comprised of \$200.00 in late payment and NSF fees and a \$180.38 deficiency in the security deposit which the landlord claims is still owing. The landlord seeks an order of possession based on this notice and the tenants seek an order setting the notice aside.

The landlord produced rent rolls which show that the tenant's rent was deposited late on 7 occasions and on one occasion a cheque was returned for insufficient funds. The tenants acknowledged that rent was paid late in October and December and acknowledged responsibility for the NSF fee. The tenants testified that in the remaining months, their rent was always paid on time. The landlord said that the agent who accepted the tenants' rent during this time period was unavailable to give testimony as to when she received the cheques. The landlord seeks a monetary order for the late fees and NSF fee as well as for \$180.38 which they claim is still owing on the security deposit.

On their application, the tenants claimed a monetary order for \$12,000.00 for loss of quiet enjoyment but at the hearing stated that they had intended to claim \$1,200.00. The tenants testified that they have lost quiet enjoyment because repairs were not completed and because they were repeatedly served with 10-day notices to end tenancy even though their rent had been paid on time. The tenants also complained that the landlord had sought to enter the rental unit without having given prior written notice as required under the Act. The landlord testified that when they received the tenants' complaints they attempted to act quickly to effect repairs but that even when they had provided proper notice the tenants refused to allow them to enter. The tenants responded by saying that the landlord could have entered the unit with their key even if they told the landlord that they couldn't enter.

Analysis

The landlord served the tenants with a notice for unpaid rent. I find that an unpaid security deposit and unpaid late fees are not equivalent to rent and cannot be used to support a notice to end tenancy for unpaid rent. The notice is set aside. As a result the

tenancy will continue.

If there is money still owing on the security deposit, and I make no finding on that issue, it is not the responsibility of this office to collect that money. The landlord is free to issue a one-month notice to end tenancy pursuant to section 47(1)(a) for the unpaid deposit. The landlord's claim for a monetary order for the unpaid portion of the security deposit is dismissed.

In the absence of testimony from the manager who collected the tenants' rent in 2008 as to when the rent was actually received, I find that the landlord has not proven that rent was paid late on 7 occasions. I find that rent was paid late in October and December, the two months acknowledged by the tenants, and find that the tenants are responsible to pay \$25.00 in late payment fees for each of those months. I award the landlord \$50.00 in late payment fees. As the tenants have acknowledged responsibility for the NSF fee I award the landlord \$25.00 for an NSF fee. The remaining \$125.00 in late fees claimed by the landlord is dismissed. I grant the landlord an order under section 67 for the sum of \$75.00. This order must be served on the tenants and may be filed in the Small Claims Court and enforced as an order of that Court. If the tenants fail to pay this amount to the landlord, the landlord is free to issue a one-month notice to end tenancy pursuant to section 47(1)(l) of the Act, which provides that the landlord may end the tenancy if the tenant has not complied with an order within 30 days of having received the order.

I find it unnecessary to make an order with respect to repairs as the landlord has agreed to perform all repairs except for painting and carpeting. The tenants' claim for an order that the landlord re-paint and re-carpet the rental unit is dismissed. There is no evidence that older paint and carpets in any way interfere with the tenants' ability to use the rental unit and the tenants chose to rent a unit without fresh paint or new carpets and presumably their rental rate reflects the age and condition of the rental unit. The tenants cannot rent an older, unrenovated unit and use the Act to compel the landlord to renovate the unit.

As for the tenants' claim for loss of quiet enjoyment, I find that the tenants have not proven that they have lost quiet enjoyment to a degree that would attract compensation.

The claim is dismissed.

As each of the parties has enjoyed partial success, they will each bear the cost of their own filing fees.

Conclusion

The landlord is awarded a monetary order for \$75.00.

The landlord has agreed to conduct repairs as listed above.

Each of the parties will bear the cost of their own filing fees.

Dated April 29, 2009.
