



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, RP, LRE, RR, OPR, MNR, MNSD, MNDC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords have applied for an order of possession and for a monetary order for unpaid rent and damages. The tenants have applied to cancel a notice to end the tenancy; an order to have the landlords comply with the act; and for a monetary order for repairs.

The hearing was held via teleconference. The landlords and both tenants attended the hearing.

At the onset of the hearing parties confirmed the tenants had moved out and returned keys and there was no longer a need for the order of possession, as such both applications were amended to exclude the issues of the notice to end the tenancy.

During the hearing it was noted that the landlords had taken photographs of the move in condition of the rental unit but had not provided copies to the tenants. I ordered the landlords to provide copies of the photographs to the tenants and myself, no later than Wednesday, February 10 at 4:30 p.m. Fourteen photographs were submitted on February 10, 2010.

To allow the tenants an opportunity to respond to the landlord's submission of photographs I ordered the tenants to provide any written submissions by Monday, February 15 at 4:30 p.m. The tenants submitted a response on February 12, 2010.

In addition to the photographs, the landlords submitted additional testimony responding, in part, to some of the issues raised in the hearing. As my invitation for submissions from the landlords related solely to the provision of the photographs, I have not considered any of the material other than the photographs and the landlords' assertion that the photographs were taken on the move in date.

The tenants also submitted additional testimony and evidence not related to the photographs. Again, I have not given these other submissions any consideration, I have only considered the tenants' submission regarding the photographs submitted by the landlords.

Issues(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and damages; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

As well, it must be decided if the tenants are entitled to a monetary order for damages under the *Act*; for all or part of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution; and for an order to suspend or set conditions on the landlords' right to enter the rental unit, pursuant to Sections 29, 32, 38, 46, 67, and 72 of the *Act*.

Background and Evidence

The landlords provided the following documents into evidence:

- Email correspondence between the parties dating from December 8, 2009 to January 22, 2010, including one dated December 11, 2009 giving the landlord notice of the tenants intention to move out in mid January 2010;
- A rent receipt issued by the landlord's landlord for rent from January 16 to January 31, dated January 16, 2010;
- Receipts for mailing evidence and parking at Residential Tenancy Branch;
- A transcript of text messages between the male tenant and the landlord's agent on December 31, 2009 where the landlord is advising the tenants if he isn't paid rent by the next day he will enter the rental unit;
- A copy of a tenancy agreement signed by the parties on November 7, 2009 for a month to month tenancy starting on November 12, 2009 for a monthly rent of \$1,400.00. There is no due date for rent in the tenancy agreement but it was confirmed in the hearing rent was due on the 1st of the month; and
- A copy of a Condition Inspection Report signed by both parties but nothing is recorded on the document regarding the condition at either move in or move out, except a reference to photographs being taken on November 7, 2009.

The landlords are claiming the following loss or damage:

Description	Amount
January 2010 Rent	\$1,400.00
Landlord's Temporary Living	\$500.00
Parking fee outside Residential Tenancy Branch	\$2.50
Document serving mailing fee	\$17.96
Total	\$1,920.46

The tenants submitted into evidence the following documents:

- Receipts from the landlord's agent for rent for November 12 – November 30, 2009 and for \$200.00 towards the security deposit, and for December 2009 rent;
- Copies of the relevant strata bylaws for the residential property;
- Receipts for move in deposit and elevator fees from the strata;
- Email correspondence between the parties dating from November 10, 2009 to January 22, 2010, including one dated December 11, 2009 giving the landlord notice of the tenants intention to move out in mid January 2010;
- Receipt for cleaning the rental unit on November 12, 2009 in the amount of \$296.65;
- Receipt for moving dated November 12, 2009 in the amount of \$400.00;
- Receipts for change of address notifications with Canada Post;
- Contact information for strata staff and council;
- Two police officer business cards with file numbers;
- A letter from the female tenant's doctor regarding her pregnancy;
- A copy of a tenancy agreement signed by the parties on November 7, 2009 for a month to month tenancy starting on November 12, 2009 for a monthly rent of \$1,400.00. There is no due date for rent in the tenancy agreement but it was confirmed in the hearing rent was due on the 1st of the month; and
- A copy of a Condition Inspection Report signed by both parties but nothing is recorded on the document regarding the condition at either move in or move out, except a reference to photographs being taken on November 7, 2009.

The tenant's claim for loss or damage is as follows:

Description	Amount
Cleaning fee (at move in)	\$296.65
Moving Costs	\$400.00
Strata Move In Fee	\$50.00
Canada Post – change of address (2)	\$82.95
Loss of Income – 3 days @ \$655.00 per day	\$1,965.00
January 2010 rent	\$1,400.00
Total	\$4194.60

The landlord's agent testified the tenants provided the email notice that they would be moving out by mid January, 2010 on December 11, 2009 and that when they did not pay rent on January 1, 2010 he issued a notice to end the tenancy.

The tenants testified that the landlord provided the notice three times. On the third time it was around 8:00 p.m. and the landlord and three other large men were knocking incessantly for 23 minutes on the rental unit door. The tenants indicated there is a video of the time period but they were not allowed to request it from the strata council as the units in the complex are not to be rented out, according to strata bylaws.

The landlord's agent stated that the strata document submitted by the tenants was fraudulent and that he had permission to rent the unit, but refused to explain, when asked by me to provide proof of his authorization by the strata to rent the unit to a non-family member.

The tenants testified that once the tenancy agreement had been signed the landlord told them they must tell anyone in the complex that the female tenant was the landlord's daughter, as they were not allowed to rent the unit other than to family. The tenants state this contributed to their reasons for ending the tenancy early.

The landlord's agent explained that because the tenants had not moved out by January 16, 2010 the landlord had to rent property for herself from another landlord. The agent indicated that landlord needed to have her own accommodation due to a family breakup.

The tenants testified the landlord was to have cleaned the rental unit prior to the tenants' occupancy but failed to do so. The tenants hired a professional cleaner to ready the rental unit prior to move in.

The landlord submitted the photographs discussed in the hearing with a statement contending the photographs, although not date stamped, were taken prior to the tenants move in. The tenants, in their written submission based on their review of the photographs contend that not all the photographs were taken at the same time (i.e. prior to move in).

Analysis

Section 45 of the Act states a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the tenants' notice to end the tenancy in an email dated December 11, 2009 the effective end date of the tenancy would have been January 31, 2010. As such I find the tenants owe the full amount of rent for the month of January 2010.

In addition, the landlord would have no expectation to have occupancy prior to January 31, 2010; I therefore dismiss the part of the landlord's application for \$500.00 to rent a place to live for the landlord. The parking charges and registered mail charges claimed by the landlord are a cost of doing business; I dismiss this portion of the landlord's application.

In order for the tenants to be entitled to compensation for cleaning the rental unit prior to move in they had to have been able to prove the condition of the rental unit. As the Condition Inspection Report (at move in) was signed by the tenant at move in despite

nothing being completed on the report other than to state photographs would be taken and failure to agree to the content or date of the pictures submitted, I find the tenant's have been unable to establish the condition of the rental unit when they moved in and therefore, I dismiss this portion of the tenants' application.

As the tenants sought to end the tenancy on their own by giving the landlord notice, I find the tenants made both the choices to accept and start the tenancy and the choice to end the tenancy.

I find the landlord is not responsible for the costs incurred by the tenants to move their belongings, change their address with Canada Post, or any lost income resulting from the tenant's choices to take time off work to move in or out or to attend this hearing. I dismiss this portion of the tenant's application.

As the tenant's have not been successful in any part of their application I dismiss their request for recovery of the filing fee.

Conclusion

I find that the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,450.00** comprised of \$1,400.00 rent owed and the \$50.00 fee paid by the landlords for this application.

I order the landlords may deduct the security deposit in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$750.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: February 15, 2010.

Dispute Resolution Officer