

DECISION

Dispute Codes OPR, MNR, MND, MNSD, MNDC, OLC, ERP, RP, PSF, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties had filed for relief in regard to a Notice to End Tenancy and an order of possession, however, the Tenants had vacated the rental unit at the time of the hearing and therefore, possession of the rental unit was not an issue.

The Tenants also applied for a monetary order for compensation under the Act or tenancy agreement, and for orders for the Landlord to comply with the Act, make emergency repairs, make other repairs, to provide services or facilities, to dispute the Landlord's denial of the Tenants running a daycare in the unit and to recover the cost of the filing fee for the Application.

The Landlord applied for monetary orders for damage to the unit, for unpaid rent, for money owed under the Act or tenancy agreement, to keep all or part of the security deposit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Are the Tenants entitled to the relief sought?

Is the Landlord entitled to the relief sought?

Background and Evidence

This tenancy began in January of 2010. The monthly rent for the rental unit was set at \$1,475.00, and was a two year fixed term tenancy ending on December 31, 2011. The Tenants paid a security deposit of \$737.50 on December 22, 2009.

Shortly after moving in the Tenants complained to the Landlord about silverfish insects in the rental unit. On or about January 19, 2010, there was a flood in the basement of the rental unit.

The Tenants have applied to receive \$300.00 in compensation from the Landlord due to alleged damages to clothes and food from flooding in the rental unit and because of silverfish insects in the rental unit. The Tenants allege they have 30 garbage bags of clothes that were damaged in the flood, and that also have colour transfer between the items of clothing as they were stored wet. The Tenants also request orders for the Landlord to make repairs to the rental unit which were caused by the flood. However, as stated above, the Tenants have vacated the rental unit.

The Tenants further claim they do not owe the Landlord for February 2010 rent, since they have a receipt showing the Landlord's signature that it was paid. The Tenants vacated the rental unit on or about March 2, 2010, and did not participate in an outgoing condition inspection report.

The Landlord claims the Tenants approached her with a receipt they drafted for the February rent, however, she claims the Tenants did not pay the rent as indicated on the receipt. The Tenants had requested a discount of the rent in compensation for the 30 bags of clothes they claim were damaged. According to her testimony, the Landlord wanted to add something to the receipt and the Tenants were not happy with her addition. The Landlord testified that the male Tenant then took the receipt and his cash payment for the February rent, and left without paying any amount for February. In support of this the Landlord has supplied letters from two witnesses to these events.

The Landlord explained that as soon as she heard about the silverfish bugs in the rental unit she made arrangements to have a pest treatment company come in. The Tenants also wanted to use the oil heat in the rental unit rather than the electric supplied. The Tenants wanted the vents for the furnace cleaned and a company came in to do this. According to the Landlord and the repair person, during the vent inspection the Tenants followed the repairman around and requested extra services be done, some of which the repair man refused to do as they were beyond the scope of his work, such as chimney cleaning.

The Landlord also claims the Tenants were responsible for the flood as they did not clean the leaves off a water drain at the property, and this caused the water to back up into the basement.

The Landlord's evidence is that the flood was very minor. The water only seeped into the floor covering for about three feet from the wall. The Landlord claims the Tenants delayed the restoration company from coming into the rental unit, then demanded notice from the company as to when they would enter the rental unit to do the emergency

repairs. The Landlord is also claiming the Tenants could have prevented the flood if they had cleaned the outside drain.

The Landlord is further claiming that when the Tenants vacated the rental unit they did not clean or do required repairs to the rental unit. The Landlord claims the Tenants did a poor job of painting the unit and it had to be re-painted.

The Landlord is claiming \$346.50 for cleaning the vents, \$900.00 for cleaning, repainting and materials, \$2,500.00 for flood damage and restoration, \$87.50 for bank fees for an NSF cheque, \$123.06 for advertising the rental unit after the Tenants vacated, \$2,950.00 for two months of rent for February and March of 2010, and to recover the filing fee.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants have insufficient evidence to show they had 30 bags of clothes damaged by the flood, and therefore, have failed to prove their claim for compensation from the Landlord. Furthermore, even if the Tenants had clothes damaged in the flood, they should not have stored these wet clothes in garbage bags, as they have a duty to mitigate their losses under the Act. I also find the Tenants had insufficient evidence to show they had the Landlord's permission to run a daycare at the rental unit. Therefore, the Tenants' claim is dismissed.

As to the Landlord's claims, I find that the Tenants have breached the fixed term tenancy agreement, and therefore the Landlord is entitled to rent for the month of March 2010, for her losses. I also accept the evidence of the Landlord that the Tenants failed to pay rent for February 2010. Therefore, I find the Tenants owe the Landlord **\$2,950.00** for two months of rent. I also find the Tenants must compensate the Landlord for advertising the rental unit in the amount of **\$123.06**.

I do not find the Tenants should pay for all of the vent cleaning, although the invoice does note that "extras" cost the Landlord an additional \$40.00. From the evidence I find that the Tenants cost the Landlord an additional **\$40.00**, and I award this amount to the Landlord.

Based on the evidence I also find the Tenants failed to clean the rental unit or complete the painting they began, and this has caused a loss to the Landlord of **\$900.00**, and I award that amount to the Landlord.

The Landlord has provided evidence that the NSF cheque cost her **\$42.50**, and I award this amount to the Landlord.

Lastly, I find the Landlord had insufficient evidence to prove the Tenants caused the flood damage and I dismiss this portion of the claim.

I find that the Landlord has established a total monetary claim of **\$4,105.56** comprised of the above described amounts and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$737.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,368.06**. This order 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: April 06, 2010.

Dispute Resolution Officer