DECISION

Dispute Codes OPE OPC OPV MND MNR MNSD MNDC FF ET O
CNC OLC FF

Introduction

This hearing convened on April 16, 2010, by conference call, and reconvened for one and one half hours for the present session, by conference call, on June 10, 2010. This decision should be read in conjunction with my interim decision April 16, 2010.

The Landlords, the Landlords' Witnesses, Tenants (2), (3), and (4), attended and provided affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. Tenant (1) did not appear at today's hearing, despite being issued a notice of reconvened hearing listing today's date and time of the hearing.

The Landlords provided proof of service of the amended application and copies of their evidence in the form of registered mail receipts and a print out from the Canada Post tracking website which supports their testimony the documents were sent via registered mail on May 21, 2010, as per my instructions from the April 16, 2010 hearing. Tenant (4) confirmed he had accepted that he had seen the Landlords' amended application and evidence and that he was attending today's hearing in response to the Landlords' application.

Service of the hearing documents and evidence, by the Tenants to the Landlords, was done in accordance with my April 16, 2010, decision; rather they were sent via regular mail. The Female Landlord confirmed receipt of the Tenants' evidence several weeks before today's hearing.

Issues(s) to be Decided

Are the Landlords entitled to an Order of Possession for unpaid rent, cause, and breach of an agreement, pursuant to section 55 of the *Residential Tenancy Act*?

Are the Landlords entitled to a Monetary Order a) for damage to the unit, site or property, and b) for unpaid rent or utilities, to keep all or part of the pet and security deposit, and c) for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Are the Landlords entitled to an Order to end the tenancy early pursuant to section 56 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to cancel a notice to end tenancy issued for cause pursuant to section 47 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to have the Landlord comply with the Act pursuant to section 62 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the tenancy agreement began on February 15, 2010, and was entered into with the understanding that there would be four (4) tenants occupying the rental unit. Rent was payable on the first of each month in the amount of $1,200.00 and the Tenants paid $600.00 for the February 2010 rent as they took occupancy mid month. A security deposit of $600.00 plus a pet deposit of $600.00 were paid by the Tenants on February 13, 2010. A move-in inspection report was completed on February 28, 2010, in the presence of the Male Landlord and Tenant (1).

The Tenants confirmed that they were withdrawing their application, in full, as their requests were no longer applicable as they had vacated the rental unit.

The Female Landlord confirmed they were withdrawing their requests for Orders of Possession, to end the tenancy early, and the "other" reasons, as they have regained possession of the rental unit. The Landlords were proceeding with their monetary claim.

Witness (1) testified he was present at the rental unit during the first meeting with Tenant (1), Tenant (4), Witness (2), and the Male Landlord which is when the parties entered into the tenancy agreement. Witness (1) stated this was the same day he was listing the house for sale with this co-listing agent, Witness (2), and argued that the Tenants were told very clearly the house was being listed for sale and the Tenants would be dealing with the real estate agents to arrange showings. Witness (1) claimed that the property was very difficult to show as the Tenants were not accommodating to their requests for showings and the Tenants were well aware there were to be no pets. Witness (1) argued he had a showing where the potential buyer said the property was "stinky" and that on one of his visits to the house, while standing outside he could see there were animals inside and upstairs. Witness (1) testified he was at the rental unit on April 5, 2010, and the Tenants still had possessions inside the rental unit.

Witness (2) testified and confirmed he was in attendance at the rental unit during the meeting when the Tenants entered into the tenancy agreement with the Male Landlord. Witness (2) argued Tenant (1) told them that she had previously lived in a rental unit that had been up for sale so she claimed she understood the process of accommodating showings and agreed to telephone notice for showings. Witness (2) stated that he was at the rental unit on March 23, 2010 and saw the cats in the garage however there was an animal door in the garage that allowed the cats to gain access into the house. It was during this visit that Witness (2) said he had heard a large dog in the detached garage. Witness (2) confirmed that he could not see into the garage to confirm it was a large dog but based on the dog's bark it sounded like a large dog. Witness (2) argued that he had received complaints from other realtors who showed the house that there was a dog inside the rental unit during a showing.

Witness (2) advised that he had called Tenant (1) on April 3, 2010, to inform her of a showing for April 4, 2010, and that one half hour prior to the scheduled showing time Tenant (1) called Witness (2) to cancel the showing because the Tenants needed more time to prepare. Witness (2) stated that he called the Female Landlord to request her advice on how to proceed with getting his out of town client in to see the rental unit and that she told him to issue a written notice and to deliver to the rental unit. Witness (2) testified that he issued the written notice and when he attended the rental unit on April 4, 2010 to serve the notice he found the front door "perched" open and there were clamps on the door holding it together while the glue dried. Witness (2) argued the door had been damaged, that this was the Tenants' attempt to repair the door, and when he entered he saw the unit was about 85 to 90% vacated, there was water in the sink, and a few items were left in the unit such as a desk and some weights. Witness (2) stated that when he didn't see anyone at the unit he taped the notice to the door and took a picture of the door with the clamps on it. Witness (2) stated that when he attended the unit on April 5, 2010, he could not gain entry by way of the keypad because the Tenants had locked the inside door.

The Female Landlord confirmed a 1 Month Notice to End Tenancy for Cause was issued to the Tenants on February 27, 2010 and then after the March 1st, 2010, rent cheque had a stop payment placed on it a 10 Day Notice to End Tenancy for unpaid rent was served personally to the Tenants on March 10, 2010 by the Male Landlord and Witness (2). The Female Landlord confirmed the Tenants did not communicate with either Landlord or either Agent about which date they were going to vacate the rental unit and the last communication they had was that the Tenants would be occupying the rental unit until after the dispute resolution hearing. The Female Landlord argued that once they found out the Tenants had moved they were not able to reach any of them to schedule a move-out inspection as they telephone number had been changed and they

were not responding to the Landlords' e-mails. The move-out inspection was completed by Witness (2), the Landlords' Agent, on April 6, 2010.

The Landlords are seeking a monetary claim which consists of $94.27 to repair the front door, $157.60 to rekey the locks and change the combination on the keyless entry, $254.10 for carpet cleaning, cost to clean the rental unit, $112.82 in mailing costs ($45.99 + $41.79 +$25.04), $1,200.00 for March 2010 rent, $1,200.00 for April 2010 rent, and $100.00 to recover the cost of the filing fee.

The Landlords referred to their documentary evidence of photos of the damaged door with clamps on it which was taken by Witness (2) on April 4, 2010, and receipts which show the door was repaired on April 7, 2010.

The Female Landlord argued that the Tenants failed to return the keys for the unit and so they had the locks changed and the keyless entry re-coded. Tenant (4) argued they had returned the keys because they actually left them inside the rental unit and had also left the garage door remotes inside the garage.

The claim for cleaning the carpets was first supported by a written estimate dated in March 2010 for the amount of $254.10. The Female Landlord provided testimony that the carpets were cleaned on April 10, 2010 and the cost was the same as the estimate at $254.10. Tenant (2) argued they should not have to pay for carpet cleaning when they were only in the unit for a couple of months and because he used his own personal carpet cleaner to clean the rental unit carpets. Tenant (2) confirmed he did not provide evidence to prove he used his own steam cleaner in the rental unit.

The Male Landlord confirmed that he had to clean the kitchen, the sinks, and the toilets, move the remaining possessions such as the desk and weights into the garage for storage, and he had to vacuum the non-carpeted flooring. This cleaning was done when the carpet cleaner was working in the rental unit and took the Male Landlord approximately three to four hours to complete. The Landlords did not submit an invoice for this cleaning however felt they should be compensated for their time. The Tenants did not provide a response to the Landlord's claim for reimbursement for cleaning.

The Female Landlord is seeking $112.82 ($45.99 + 41.79 + 25.04) as reimbursement for the costs she incurred to send the evidence and application packages to the Tenants and referred to her documentary evidence of copies of the Canada Post receipts in support of her claim.

The Landlords are seeking $2,400.00 in unpaid rent for March 2010 and April 2010 as both post dated cheques had a stop payment placed on them. Tenant (2) confirmed she placed stop payments on the rent cheques because she was concerned after receiving the Landlord's e-mail on February 28, 2010 threatening to evict them if they did not remove their pets. The Female Landlord testified that they have since hired a property manager to attempt to re-rent the unit at the same monthly rent and argued that their insurance company does not want to insure the property if it is vacant so they are now considering having people occupy the rental unit as a "house sitter" for only the cost of the utilities.

The Female Landlord argued that she was required to pay an additional $50.00 when she amended her application to the higher monetary amount brining her total filing fee paid to $100.00. The Landlords are seeking to recover the full $100.00 filing fee.

Tenant (3) testified and confirmed that the four Tenants as listed on the first page of this decision were all Tenants and were all listed on the tenancy agreement. Tenant (3) argued that they did not have access to the full house as the Landlords had boxes of their possessions throughout the house and they basically occupied two bedrooms in the lower level of the home. Tenant (3) stated that he personally cleaned the rental unit for four hours, the keys were left inside the rental unit, and confirmed they moved out of the rental unit either April 3rd or April 2nd, 2010. I asked Tenant (3) why they did not pay their rent for March and April 2010, and he stated that he thought they did not have to pay their rent because they filed an application for dispute resolution but that he could not provide additional information because he did not know the particulars. Tenant (3) claims the Female Landlord wanted to make a deal with them to get them to move out and that she told them that she was a lawyer and could use that against them so was trying to make a deal to have them move out on a certain date. Tenant (3) testified the Landlords agreed to their pets from the onset and that they would not leave their previous residence if they felt they could not have their pets with them. The Tenant stated that when the Female Landlord began to make all of these deals they decided to stop everything until the hearing.

Tenant (2) testified there was never anyone in the rental unit on March 16, 2010 to provide an estimate for the carpet cleaning. Tenant (2) confirmed the rent cheques were drawn on her account and confirmed she had placed a stop payment on both the March 2010 and April 2010 rent cheques because the Landlords had threatened evictions. Tenant (2) stated that all of the Tenants moved out around the same time on April 2nd and April 3, 2010.

Tenant (4) testified and confirmed that during the tenancy he was Tenant (1)'s boyfriend and they occupied the rental unit for the same time and both moving out around April 3rd or April 4th, 2010. Tenant (4) confirmed he currently resides at the same location as Tenant (2) and Tenant (3) and that he attended today's hearing in his own defence against the Landlords' application. Tenant (4) testified that he has received or seen copies of the amended application and copies of the Landlords' evidence. Tenant (4) argued that his girlfriend at the time, Tenant (1), was advised that they were allowed to stay in the rental unit until the hearing date and they were entitled to occupy the unit until a decision was made at the hearing which is why he left some of his possessions, such as the weights and his old desk in the rental unit. Tenant (4) argued that after they vacated the rental unit he went back sometime after April 5, 2010 and found the key code and the locks had been changed. He then spoke to a neighbour of the rental unit who confirmed that the Landlords had been at the rental unit having the carpets steamed cleaned and all the locks changed.

At the end of the hearing all participants confirmed they had the opportunity to provide their testimony today and agreed there was no need to reconvene at a later date. I explained that I would be issuing my decision after careful consideration of the testimony and all of the photographic and documentary evidence previously submitted.

Analysis

Tenants' Application

The Tenants have withdrawn their application in full, therefore no further action is required and their file has been closed.

Landlord's Application

The Landlords have withdrawn their requests for Orders of Possession, for other reasons and their request to end the tenancy early; therefore the following analysis will consist of the pertinent information in regards to the Landlords' monetary claim.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the front door was damaged during the tenancy, attempted to be repaired by the Tenants by being glued and held together with clamps, as supported by the photographs taken by Witness (2) on April 6, 2010. The evidence further supports the door had to undergo additional repairs causing the Landlord to suffer a loss of $94.27. Section 32 (4) of the Act provides that a tenant is responsible for the repair of damage to the rental unit caused by either the tenant or someone permitted on the residential property by the tenant. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I approve their claim for $94.27.

The Landlords are seeking $157.60 to have the locks rekeyed and change the code for the push button entry on the garage. There is opposing testimony as the Landlords claim the Tenants did not return the keys while the Tenants argue the keys were left inside the rental unit and the garage remotes were left inside the garage. Section 25 of the Act provides that the landlord must pay all costs associated with rekeying or changing locks at the end of a tenancy to ensure the previous tenants do not gain further access to the rental unit. Based on the aforementioned I find the Landlords have failed to prove the keys were not returned by the Tenants and therefore have failed to proof the test for damage or loss. I hereby dismiss the Landlords' claim of $157.60

The *Residential Tenancy Policy Guidelines* state that a tenant is responsible for steam cleaning or shampooing the carpets after a tenancy of at least one year in length however if there are stains or odors left on the carpets the tenant will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of the tenancy. That being said I must consider the evidence that there were animals in the rental unit, as provided for in the tenancy agreement and for which the Landlords collected a pet deposit at the onset of the tenancy, plus the testimony whereby both real estate agents stated there were pet odors in the house, plus Tenant (4)'s testimony that the neighbor confirmed a carpet cleaning company was at the rental unit after the tenancy ended, and the Female Landlord's testimony that $254.10 was paid to have the

carpets cleaned on April 10, 2010. Based on the aforementioned I find the Landlords have proven the test for damage or loss and I approve their claim of $254.10.
In reviewing the evidence pertaining to the Landlords' claim for costs of cleaning the rental unit I note the move-out inspection report makes no mention of anything requiring cleaning and in the presence of opposing testimony between the Landlords and Tenants I find the claim to be unproven and therefore I dismiss the Landlords' request to be reimbursed for cleaning costs.

The Landlords are seeking $112.82 as reimbursement for mailing costs incurred to serve their application and evidence. In relation to mailing fees, I find that the Landlords have chosen to incur costs that cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act, and not a personal choice on the method of service. Section 89 of the Act provides alternate methods of service; therefore, I find that the Landlords may not claim mailing fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act.* I hereby dismiss the Landlords' claim of $112.82.

The evidence confirms the Tenants occupied the rental unit for the entire month of March 2010 and for the first four days of April 2010 without paying rent, in contravention of Section 26 of the Act which states a tenant must pay rent when it is due under the tenancy agreement. In this case I find the tenancy was set to end after the Tenants were served with a 10 Day Notice to End Tenancy for unpaid rent on March 10, 2010, and therefore the Tenants are considered to have over held the rental unit. The *Residential Tenancy Policy Guidelines* stipulate that if a tenant remains in possession of the premises (over holds), after the tenancy is considered ended, the tenant will be liable to pay occupation rent on a per diem basis until the Landlord recovers possession of the rental unit. Based on the aforementioned I find the Landlords have proven the test for damage or loss as listed above, and I approve their claim in the amount of $1,358.24 which is comprised of $1,200.00 for March 2010, and $158.24 for four days in April 2010 (4 x $39.56 per day).

The evidence supports the Landlords have attempted to re-rent the unit and have even considered having house sitters occupy the unit for the cost of utilities. This evidence supports the Landlords have attempted to mitigate their losses and have proven the test for damage or loss. I hereby approve the Landlords' claim for the remaining amount due for April 2010 rent in the amount of $1,041.76.

The Landlords have been partially successful with their application therefore I award them recover of the $100.00 filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposit, and that the Landlords are entitled to recover the filing fee from the Tenants as follows:

Front door repair	$94.27
Carpet cleaning	254.10
Unpaid Rent for March 2009 and four days in April 2010	1,358.24
Loss of Rent for the balance of April 2010	1,041.76
Filing fee	100.00
Subtotal (Monetary Order in favor of the landlord)	**$2,848.37**
Less Security Deposit of $600.00 plus Pet Deposit of $600.00 plus interest of $0.00	-1,200.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$1,648.37**

The evidence supports the Landlords continue to store some of the Tenants' property in the garage at the rental unit, in accordance with section 25 of the *Residential Tenancy Regulation*. The onus lies with the Tenants to contact the Landlords to make arrangements for the return of their property prior to June 25, 2010.

Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **$1,648.37**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 11, 2010.

Dispute Resolution Officer