

DECISION

Dispute Codes

For the tenant – CNR, MNDC

For the landlord – OPR, MND, MNDC, FF, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenants seek to cancel the 10 Day Notice to End Tenancy for unpaid rent and seek a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord seeks an Order of Possession for unpaid rent, a Monetary Order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act* regulations or tenancy agreement. The landlord also seeks to recover his filing fee and other issues.

The landlord served the tenants by registered mail on June 14, 2010 with a copy of the Application and Notice of Hearing. The tenants served the landlord by registered mail on June 03, 2010 with a copy of the application and a Notice of the Hearing. I find both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to cancel the 10 day Notice to end tenancy?

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy started in May or June 2009 when the current landlord purchased the house from the estate of his father. The parties are related and the tenant was already living in the property when it was purchased by the landlord. No written tenancy agreement was put in place and a verbal agreement was reached for the male tenant to rent the property from the time it was purchased. The landlord claims that the rent for the entire property is \$1,000.00 per month and the tenants state the property is rented per tenant. The tenants state that the male tenant started to pay \$500.00 per month and when his partner moved in he paid \$400.00 per month, the female tenant paid \$100.00 per month and the male tenants' mother who joined the tenancy later paid \$500.00 per month. Rent is due on the first of each month. Since that time the tenants mother has moved out of the property in May 2010.

The landlords agent states that at an earlier hearing held this year it was determined that rent for the house was \$1,000.00 per month and the tenants were ordered to pay this amount to the landlord by the first of each month. The landlords' agent states the tenants did not pay \$1,000.00 rent for June, 2010 and a 10 Day Notice to End Tenancy was served to the tenants by posting it on the tenant's door on June 02, 2010. The landlords' agent also states that on June 01, 2010 the tenants paid \$500.00 towards their outstanding rent. The landlords' agent states that the tenants paid \$400.00 towards their rent for July and now owe a total amount of \$1,100.00 in outstanding rent.

The tenants state that the landlord is incorrect and the tenants were each responsible for their own rent. The male tenant testifies that his verbal agreement with the landlord at the start of his tenancy was for \$500.00 rent per month and this was agreed and paid before his mother or his partner moved into the property. The tenant states when his mother did move in the landlord charged her \$500.00 rent also. The male tenant testifies that his mother has since moved from the home and has gone into a care facility and the landlord was aware that she would no longer be paying her rent of \$500.00. Due to this the tenant claims when the Notice was served to them on June 01, 2010 rent of \$500.00 was outstanding not \$1,000.00 as declared on the 10 Day Notice. The tenants state that the \$500.00 that was due on that day was paid as soon as they received the Notice. The tenants claim the notice is dated for June 02, 2010 but was posted to their door on June 01, 2010.

The tenants seek the sum of \$400.00 for the loss of the use of the basement and carport as these areas contain the landlords' personal belongings. The tenants state that the landlords' son and daughter enter the property and go through the landlords belongings in the basement without their permission to enter.

The landlords' agent disputes this. She states that the items in the basement were part of the landlords fathers estate and were purchased by the landlord when he purchased the house and have always been in the house. The landlords' agent states the tenants have changed the locks on the door and have not given the landlord a key so he can enter to remove these items.

The landlords' agent states that the tenants have caused damage to the rental property. She claims the tenants have burnt the linoleum floor with an exploding battery. She claims they have damaged the kitchen sink faucets and seek an undisclosed sum to rectify this damage.

The tenants dispute the landlords' claims. The tenants state that the burn mark on the linoleum was caused by a battery, however this was done before the landlord purchased the house and happened while the tenants' grandfather was still alive. The

tenants deny causing any other damage and state the house will be left in a good condition when their tenancy ends.

The landlord seeks the sum of \$73.50 from the tenants for the cost of having a locksmith come to the property. This bill is for the locksmiths' time as he could not change the locks. The landlords also seek an additional \$350.00 to replace all the locks that the tenants have changed.

The tenants state that they did change the locks on some of the internal doors as the landlord had a habit of coming into the tenants bedrooms whenever he felt like it. The tenants felt this was an invasion of their privacy. The tenants claim they still have the original locks and these will be put back at the end of their tenancy.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. My decision is based on the evidence presented to me at this hearing. With regard to the landlords claim that the tenants have not paid rent on June 01, 2010; I am not satisfied that the landlord has provided me with sufficient evidence to prove that the tenants were responsible for the entire rent for this property. While I agree that while the tenants' mother was living in the property the rent was \$1,000.00. I find I prefer the evidence of the tenants that at the start of his tenancy the rent was \$500.00. When it is a verbal agreement in place there is no definite conclusion in this matter and the landlord would need to provide me with corroborating evidence to support his claim that his agreement with the tenant was for \$1,000.00. As the landlord has not provided any corroborating evidence to support his claim I find the tenant's application to cancel the 10 Day Notice to End Tenancy is upheld and the landlords' application for an Order of Possession is dismissed.

With regard to the tenants claim for compensation for the loss of the basement and carport; the landlords' agent argues that the landlord has been unable to remove these

items as the tenants have changed the locks. The landlords' agent also argues that some items also belong to the tenants' mother and her daughter, who has power of attorney and would like to remove her belongings from the property also. It is therefore my decision that the landlord must provide the tenant with a list of items he wishes to remove and present this list to the tenants with a 24 hour written notice to enter the property. The tenant must allow the landlord and his mothers' daughter to remove their belongings from the basement and carport. The tenants claim for compensation is dismissed with leave to reapply.

With regard to the landlords claim for damages to the rental unit; in this matter the burden of proof falls to the landlord to prove that the damage to the linoleum and taps was caused by the tenants during the course of their tenancy. The tenant argues that the damage to the linoleum was caused before his tenancy and the landlord has not provided any evidence to support his claim for damages such as a move in condition inspection report to show the condition of the unit at the start of the tenancy. Consequently this section of the landlords claim is dismissed.

With regards to the landlords claim for the cost of the locksmith; I find the landlord was unable to gain entry to the property after giving the tenants 24 hours written notice and the police had to affect entry on the landlords' behalf. As the landlord incurred a call out fee of **\$73.50** from the locksmith I find the landlord is entitled to recover this amount from the tenants.

With regard to the landlords claim of \$350.00 to change the locks on the external and internal doors I find the tenants still have the landlords' locks and state they will be replaced at the end of their tenancy. If the tenants do not replace these locks or provide the landlord with keys to these locks at the end of the tenancy the landlord is entitled to make a claim at that time.

Section 31(3) of the Act states that a tenant must not change a lock or other means that gives access to a rental property unless the landlord agrees in writing to, or the director

has ordered the change. Consequently, **I Order the tenants** to provide the landlord with a key to the external doors of the property and **I Order the landlord** to ensure he provides the tenants with 24 hours written Notice before entering the property unless it is an emergency situation as defined under section 33 of the *Act*.

As the landlord has been largely unsuccessful with his claim I find he is only entitled to recover half his filing fee from the tenants to the sum of \$25.00. A Monetary Order will accompany the landlords' decision for the amount of **\$98.50**.

The Landlord is at liberty to issue a new 10 Day Notice to End Tenancy for the outstanding amount of rent for July, 2010 of \$100.00 if it remains unpaid at this time.

Conclusion

The tenant's application to cancel the 10 Day Notice to End Tenancy is allowed. The 10 Day Notice dated June 02, 2010 is therefore cancelled and the tenancy will continue at this time.

The remainder of the tenant's application for a Monetary Order is dismissed with leave to reapply if the landlord does not remove his belongings from the basement and carport after the tenant has provided access to these areas.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$98.50**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords claim is dismissed without leave to reapply.

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: July 23, 2010.

Dispute Resolution Officer