

DECISION

Dispute Codes

Landlord: OPR, OPC, OPB, MND, MNR, MNDC, FF, ET, O
Tenant: DRI, CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlords and the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities, for an Order of Possession for Cause, for an Order of Possession for a breach of an agreement between the parties, for an order ending the tenancy early and obtaining an Order of Possession, for a monetary order for unpaid rent or utilities, for a monetary order for damage to the unit, site or property, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the filing fee from the landlords for the cost of this application, and the tenant disputes an additional rent increase.

The parties all appeared, gave verbal testimony and were given the opportunity to cross examine each other on their evidence. A witness for the tenant also gave affirmed testimony and was subject to cross examination by the landlords.

At the outset of the hearing the parties stated that the tenant moved out of the residence on June 30, 2010, and therefore, the applications by the landlords for an Order of Possession are all dismissed as withdrawn. As a result, the applications by the tenant disputing the additional rent increase and for an order cancelling the notice to end tenancy for unpaid rent are also dismissed.

Issues(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to a monetary order for damage to the unit, site or property?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on December 1, 2007 and ended on June 30, 2010. Rent in the amount of \$650.00 was payable on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350.00.

The landlords testified that the rental unit had only one bedroom and when the tenancy began, there was only the tenant residing in the unit. However, shortly after, the tenant's teenaged son moved in with him, and eventually the tenant's wife and teenaged daughter also moved in. They further testified that the tenant's wife and daughter moved out, then back in again and that they had a tumultuous relationship. The landlords live in the upper unit in the building, and described a very violent tenant. They also stated that they heard very loud screaming between the tenant's family members, and on one occasion the landlords took the tenant's wife to a safe house.

The landlords also testified that they allowed the tenant to pay \$350.00 on the 1st day of the month and the other \$300.00 for rent on the 15th of each month. On April 1, 2010, the tenant did not have any money to pay the rent and told the landlords that he would move out, and the landlords accepted that verbal notice but did not know when the tenant would be moving. On April 9, 2010, the landlords served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the tenant by handing it to the tenant's wife. On April 15, 2010, the landlord spoke with the tenant and the parties arrived at an agreement to end the tenancy. At that time the tenant owed \$430.00 for rent and it was to be paid by April 21. Further it was agreed that the tenant would pay May's rent on

the 6th of May, and June's rent on the 6th of June, 2010, due to the dates that the tenant's paydays fell. On May 6, 2010, the tenant paid \$350.00 only.

The landlords also testified that after the discussion, the landlord created a written agreement so that the tenant would have money mid-month; the tenant had found another apartment and the agreement included a provision that he was to move out as soon as possible, or June 30, 2010 at the latest, without penalty. The landlords had accepted the tenant's verbal notice and the landlords would not have charged him for any months that the tenant did not reside in the unit. The landlord delivered two copies of the agreement to the tenant's wife after he had signed them. He expected that the tenant would sign one and return it to the landlord, but he did not sign or deliver a copy.

The tenant testified that the male landlord attended his unit on April 1, 2010 to collect the rent, but the tenant advised him that he would be paid on the 5th day of the month. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. On April 15, 2010 an agreement was made which included one month of free rent for the yard maintenance and snow shovelling that the tenant had done. He stated that the agreement was changed to that effect, and that he owes no rent. He also stated that changes were made to the written agreement when the tenant was on his way to file for dispute resolution. The tenant's witness, his wife, also testified that she heard the parties discussing the agreement at the picnic table, but she was in the house at the time.

The male landlord testified that none of that ever happened. He stated that the landlords told the tenant that he didn't have to shovel snow, but the tenant wasn't working at the time and wanted something to do, and that he also shovelled the neighbour's drive as well.

Both parties have provided to me the written agreement dated April 15, 2010 however the one provided by the landlords has no hand-written notations and no signature of the tenant. The one provided by the tenant has hand-written notations what are not initialled by either landlord or the tenant, but the document is signed by both the male landlord and the tenant.

The landlords further testified that the tenant moved out of the rental unit on June 30, 2010 and after vacating, the landlords spent \$479.00 painting and cleaning. They stated they removed 11 bags of trash, chunks of drywall were missing and the whole unit required re-painting. They also paid a student \$140.00 to help clean. They stated that they could not do a condition inspection report with the tenant after he had moved out his belongings because the police told them not to meet with the tenant face to face, after the tenant had told the landlord to “watch his back.”

Analysis

Firstly, dealing with the written agreement dated April 15, 2010, I find that the changes made to the tenant’s copy are not proof that the landlord agreed to its contents because there is no evidence, such as initials, that the landlord agreed to the written changes. Further, the one provided by the landlord is not conclusive proof of any agreement because it is not signed by the tenant.

The tenant’s evidence that the landlord agreed to waive rent for the snow shovelling and other chores that the tenant completed has not been proven. I have no evidence that the landlord agreed to that, and my authority is limited to the *Residential Tenancy Act*; I have no authority to enforce an agreement for any work performed by the tenant unless it is specifically in relation to the payment of rent and in writing.

Both parties have provided me with a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on May 20, 2010 with an expected vacancy date of May 31, 2010, and that notice states that the tenant failed to pay rent in the amount of \$300.00 that was due on May 1, 2010.

I also have the undisputed evidence of the parties that the tenant vacated the unit on June 30, 2010 and there is no dispute that no rent was paid for the month of June, nor was the full rent collected for the month of May, 2010 and \$300.00 remains outstanding.

With respect to the landlords’ application for damage to the unit, site or property, the onus is on the claiming party to prove that:

1. The damage or loss exists;
2. That the damage or loss exists due to a breach of the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of the claim;
4. What efforts the claiming party made to mitigate such damages.

The landlords have not provided me with a move-in or move-out condition inspection report. The landlords have not provided any photographs of the unit before or after the tenant vacated the unit. Further, the landlords' Application for Dispute Resolution was filed prior to the tenant vacating the unit. Regardless of any advice given by the police, the *Act* requires that the landlord provide 2 opportunities to the tenant to complete the move-out condition inspection report, and if the landlord fails to comply with that section, the landlord's right to claim against the security deposit is extinguished. The landlords have not applied to retain the security deposit however I also find that the landlords have not proven their claim for damages, being \$140.00 for hiring a student help clean, nor \$479.00 for painting. I have no evidence before me that the painting may or may not have been required before the tenant moved in, nor do I have a receipt or proof that a student was paid to clean the unit.

Conclusion

For the reasons set out above, the landlords' claim for damage to the unit, site or property is hereby dismissed without leave to reapply.

The tenant's application for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I find that the landlords have established a claim for \$950.00 in unpaid rent. The landlords are also entitled to recovery of the \$50.00 filing fee. I order that the landlords retain the deposit and interest of \$355.71 as a set-off from the unpaid rent and I grant the landlords an order under section 67 for the balance due of \$644.29. This order may be filed in the Small Claims 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: July 28, 2010.

Dispute Resolution Officer