



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, CNR

Introduction

This hearing dealt with cross applications. The tenants had applied to cancel a Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession and a Monetary Order for unpaid rent and damage to the rental unit. Both parties appeared at the hearing and were provided the opportunity to be heard.

I heard the landlord personally served the male tenant with two copies of the landlord's Application for Dispute Resolution and the landlord's evidence; however, the female tenant was present at the hearing and confirmed receiving copies of the above documentation. Although the female tenant was not served with the Application for Dispute Resolution in a manner that complies with section 89 of the Act, I deemed the female sufficiently served with the hearing documents under section 71(2) and both tenants are named in this decision and the Monetary Order that accompanies it.

As a preliminary issue I heard that the tenants vacated the rental unit June 18, 2010. Therefore, it is not necessary to determine whether the Notice to End Tenancy should be cancelled or upheld and an Order of Possession is no longer required by the landlord. Accordingly, the remainder of this decision pertains to the landlord's monetary claims only.

Issues(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and damages to the rental unit?

Background and Evidence

The parties provided undisputed evidence as follows. The one-year fixed term tenancy commenced May 1, 2010 and ended June 18, 2010 when the tenants vacated. The tenants were required to pay rent of \$1,050.00 including utilities on the 1st day of every month except the first month was set at \$950.00. The tenants paid a \$475.0 security deposit and a \$200.00 pet deposit. A move-in and move-out inspection was conducted by the landlord and the male tenant. The landlord prepared condition inspection reports.

The landlord is seeking to recover the following amounts from the tenants:

Unpaid rent – June 2010	\$ 1,050.00
Repairs to wall and cleaning	150.00
Damage to garage door	200.00
Management fees	450.00
Less: security deposit and pet deposit	<u>(675.00)</u>
Monetary Order requested	\$ 1,175.00

Unpaid rent

The landlord testified that he was getting complaints about the tenants from the neighbours and the tenants in the adjoining rental unit in May 2010. The landlord determined the best course of action was to end the tenancy and offered the tenants free rent for June 2010 if they vacate by June 15, 2010. The landlord provided the male tenant with at least two opportunities to sign a Mutual Agreement to End Tenancy but the tenant would not sign the agreement and failed to appear for a meeting with the landlord to sign the agreement. The tenants did not pay rent as of June 1, 2010. Without a signed Mutual Agreement to End Tenancy or payment of rent, the landlord personally served a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) upon

the male tenant on June 2, 2010. The Notice indicates \$1,050.00 in rent was outstanding as of June 1, 2010 and had an effective date of June 12, 2010.

In response to receiving the Notice the tenants made an Application for Dispute Resolution but did not indicate any details in the area provided on the application. During the hearing, the tenant acknowledged he was provided two opportunities to sign a mutual agreement to end the tenancy. The tenant explained that when he was provided the first opportunity to sign the mutual agreement he did not want to sign it before seeking information from the Residential Tenancy Branch. On the second occasion the tenant claimed he was tired and had been under stress dealing with his ill mother. When the landlord came to serve the Notice the tenant offered to sign the mutual agreement but the landlord refused.

The tenants explained that they only spent eight nights in the rental unit since they moved in slowly and due to issues with the neighbouring tenant. Upon enquiry, the tenants explained that they moved in slowly because they still had their former accommodation available to them. Upon enquiry, the tenant explained that they did not vacate on the effective date of the Notice or June 15, 2010 because the tenants had filed to dispute the Notice and they were not sure what they were going to do. However, when the landlord approached the tenants and advised them that he had someone ready to move in to the rental unit the tenants vacated quickly.

Damages to rental unit

With respect to damages to the rental unit, the landlord claimed that the tenant's vehicle hit the garage door. The landlord testified that the upstairs' tenants informed him that the male tenant's vehicle hit the garage door. The landlord described how half the driveway was provided for the tenants' use and the other half of the driveway was for the upstairs tenants to use. The indentation was on the tenants' side of the driveway and matched the location of the license plate on the tenant's vehicle. The landlord claimed \$200.00 on the basis this is the approximate cost of a used garage door, not including labour or delivery costs.

The tenants denied hitting the garage door and claimed that other vehicles parked in their parking space. The male tenant claimed his license plate is held on by two rusty bolts and that the rust would have shown on the garage door if it had been hit by his vehicle. The tenant further claimed that he is a professional driver. The landlord rebutted by stating the neighbours had complained about the male driver's aggressive driving style.

The landlord also requested \$150.00 for cleaning the unit, painting and repairing scratches to the wall. The tenants claimed the unit was left clean except they did not clean the carpets as the vacuum had broken down. Further, scuffs to the walls and weather stripping are normal wear and tear due to moving. The tenant acknowledged smoking in the bedroom but explained he did so because of a party the upstairs tenants were having.

Management fee

The landlord explained that he spent an inordinate amount of time dealing with these tenants with respect to complaints, unpaid rent, negotiating an end to the tenancy and preparing for this dispute resolution proceeding, including the payment of the filing fee.

Provided as evidence for the hearing were copies of the tenancy agreement, the 10 Day notice, condition inspection reports, the invoice for cleaning and repairing the rental unit and photographs.

Analysis

Under section 26 of the Act, unless a tenant has the legal right to withhold rent, a tenant must pay rent when due under the terms of the tenancy agreement, even if the landlord violates the Act, regulations or tenancy agreement. It is not in dispute that the tenants did not pay rent for June 2010. At issue is whether the tenants had the right to withhold

rent. The tenants claim they had that right by way of the landlord's offer to end the tenancy.

Under section 44 of the Act, a tenancy may end where a landlord and tenant agree in writing to end the tenancy. In this case, the parties did not have a written agreement to end the tenancy despite the landlord offering the tenant at least two opportunities to sign a mutual agreement to end tenancy. I find the landlord was within his rights to make an offer to end the tenancy mutually and that the offer expired after the tenant failed to sign the agreement after the second opportunity to do so. I do not find the landlord was obligated to enter a mutual agreement to end tenancy after the offer expired. Without a written mutual agreement to end tenancy I find the parties remained bound by the terms of the tenancy agreement. As the tenancy agreement required the tenants to pay rent of \$1,050.00 on June 1, 2010 I find the landlord entitled to recover this amount from the tenants.

Under the Act, a tenant is responsible for repairing damage caused by the tenant or persons permitted on the property by the tenant. Upon review of the condition inspection reports and the photographs I find the landlord has shown damage occurred to the garage door during the tenancy. I note the landlord described the dented garage door, among other damages, on the condition inspect report and that the tenant only disputed the other damages on the report. The tenant made no comment with respect to the garage door on the condition inspection report. Thus, I find balance of probabilities that the tenants, or a person permitted on the property by the tenants, caused damage to the garage door. I find the landlord's claim of \$200.00 is a reasonable estimate of the loss incurred by the landlord. Therefore, I award the landlord the amount of \$200.00 for the damage to the garage door.

Upon hearing from the parties and upon review of the photographs, condition inspection reports and the invoice from a third party hired to clean and repair the rental unit, I find the landlord has established the tenants did not leave the rental unit reasonably clean,

the bedroom had been smoked in and the wall was scratched. The landlord is awarded \$150.00 for cleaning and repairs.

I deny the landlord's claims for management fees as dealing with tenants, including preparation for dispute resolution, are duties ordinarily required of landlords. However, as the landlord was partially successful with this application, I award the landlord a portion of the filing fee paid for this application in accordance with section 72 of the Act.

The landlord is awarded \$40.00 for the filing fee and is authorized to retain the tenants' security deposit and pet deposit in partial satisfaction of the rent owed. The landlord is provided a Monetary Order calculated as follows:

Unpaid rent – June 2010	\$ 1,050.00
Damage to garage door	200.00
Cleaning and repairs	150.00
Filing fee	40.00
Less: security deposit and pet deposit	<u>(675.00)</u>
Monetary Order for landlord	\$ 765.00

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord was partially successful in this application. The landlord is authorized to retain the tenants' security deposit and pet deposit and has been provided a Monetary Order for the balance of \$765.00 to serve upon the tenants.

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: August 04, 2010.

Dispute Resolution Officer