



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF, O

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, retention of the security deposit, recovery of the filing fee and other issues. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

The landlord requested his application be amended to reduce the monetary claim for unpaid rent to one month of rent. The amendment was accepted and I proceeded to hear the landlord's request to recover unpaid rent for the month of March 2010.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Has the landlord established an entitled to recover the cost of new locks?
3. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The parties provided undisputed evidence as follows. The tenants viewed the rental unit while the unit was occupied by the former tenant and on February 16, 2010 the parties signed a tenancy agreement for a month-to-month tenancy set to commence March 1, 2010. The tenants paid a \$475.00 security deposit. The tenant TB was provided the keys to the rental unit February 28, 2010 and TB arrived at the rental unit

that day. On February 28, 2010 the tenant informed the landlord via telephone that the rental unit was not left clean and of issues that required. The tenant had returned to his mother's home and did not move his belongings into the rental unit. The landlord attended the property later that day with his family members and cleaned the unit. The landlord took photographs of the unit after it was cleaned. The tenants provided a letter to the landlord dated March 12, 2010 terminating the tenancy and requesting return of the security deposit. The landlord made this application on March 25, 2010.

The landlord testified that TB told him that tenant DM had found different accommodation and TB could not afford the unit on his own. The landlord also testified that TB's mother had the key to the rental unit and indicated that she would not return the key without return of the security deposit. The landlord did not accept this offer and changed the locks March 15, 2010.

The tenants testified that DM had left town for work before TB was provided the keys and had stored his belongings at a friend's house with the intention to move in to the rental unit when he returned from work. TB had the intention to move into the rental unit on February 28, 2010 but upon discovering the unit unclean and unrepaired decided the unit was not occupation. TB also testified the upstairs tenant stomped on the floor. The tenants denied that they did not move in due to DM finding different accommodation and cited the condition of the rental unit as the main reason for not moving in.

TB's mother testified her son returned home upset that the rental unit was in an unacceptable condition and that he had to move his possessions into her home on February 28, 2010. TB had to leave town for work shortly thereafter.

In addition to being unclean, the tenant TB described the rental unit as unacceptable due to smashed electrical outlets, blinds ripped out, bugs under the carpet, and abandoned food and furniture of the previous occupants. The landlord responded by stating the tenant was exaggerating and that six screws were missing from heating

vents, 2 electrical covers were missing, and a minor amount of food and furniture was left by the previous tenants. The landlord described how there is a wooden trap door in the concrete floor to permit access to plumbing. Upon lifting the trap door the landlord found one bug in the dirt. The landlord described a small pail was under the sink but that the landlord had informed the tenant it would be repaired if it was a problem.

Provided as evidence for the hearing is a copy of the written tenancy agreement, the tenants' letter of March 12, 2010, a locksmith invoice for \$15.41 and photographs of the rental unit taken after the unit was cleaned.

Analysis

The parties provided considerable evidence with respect to the condition of the rental unit on February 28, 2010. The issues before me are whether the landlord is entitled to recover unpaid rent for March 2010 and the cost of new locks. Under section 26 of the Act, unless a tenant has the legal right to withhold rent, a tenant must pay rent when due in accordance with the terms of the tenancy agreement even if the landlord violates the Act, regulations or tenancy agreement. Further, the tenants had not made an application against the landlord for compensation related to the condition of the rental unit. Therefore, I found the testimony concerning the condition of the rental unit on February 28, 2010 to be largely irrelevant.

In this case I was presented with a written tenancy agreement signed by the parties February 16, 2010 requiring the tenants to pay rent of \$950.00 starting on the 1st day of the March 2010. It is undisputed that the tenants did not pay the rent due March 1, 2010. Therefore, I have considered whether the tenant's had the right to withhold rent due on March 1, 2010.

The Act provides that a tenant may withhold rent in specific circumstances or where the tenant has been given the authority to withhold rent by a Dispute Resolution Officer (DRO). Alternatively, a tenant may obtain a landlord's consent to withhold rent.

In this case the tenants did not have the authority to withhold rent from a DRO and did not have the consent of the landlord to withhold rent. I also find the provisions of the Act do not provide a basis for the tenants to withhold rent payable March 1, 2010 based upon the circumstances presented to me.

Since the tenants had a month-to-month tenancy the tenants were required to give the landlord at least one full month of notice to end the tenancy. The tenants gave written notice dated March 12, 2010. This notice is not sufficient to release the tenants of the obligation to pay rent for March 2010.

As I was provided evidence showing the condition of the rental unit after it was cleaned on February 28, 2010 and the tenancy agreement stipulated that the tenants were to be provided occupancy March 1, 2010 I find the landlord acted reasonably and sufficiently mitigated his loss of rent.

In light of the above, I find the landlord entitled to rent for March 2010 and I award the landlord \$950.00 for unpaid rent.

The Act requires that at the end of a tenancy the tenants must return keys to the landlord. At issue is when the tenancy ended. A tenancy ends on the effective date given in a notice that complies with the Act or upon the tenant vacating or abandoning the rental unit. The notice dated March 12, 2010 does not have an effective date; however, based upon the fact the tenants did not move into the rental unit and gave notice to the landlord March 12, 2010 I find the tenants abandoned the unit effective March 12, 2010 but the keys were not returned at that time.

I find based upon the balance of probabilities that the tenant's mother was holding onto the keys in an attempt to retrieve the security deposit from the landlord. Otherwise, it is reasonable to expect that the keys would have been returned with the March 12, 2010 notice. It is important to realize that the requirement to return keys and the entitlement to a security deposit are independent issues. Therefore, I grant the landlord's request to recover the cost of new keys and award the landlord \$15.41 as submitted.

Since the landlord was successful with this application I award the filing fee to the landlord. The landlord is hereby authorized to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – March 2010	\$ 950.00
New locks	15.41
Filing fee	50.00
Less: security deposit	<u>(475.00)</u>
Monetary Order for landlord	\$ 540.41

The tenants ordered to pay the landlord \$540.41 forthwith. The landlord is provided a Monetary Order to serve upon the tenants and file in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord was successful in this application and has been provided a Monetary Order in the amount of \$540.41 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 03, 2010.

Dispute Resolution Officer