



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, CNR, CNC, MT, MNR, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolutions. The landlord had applied for an order of possession and a monetary order. The tenants had submitted two applications to cancel notices to end tenancy.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

During the hearing the tenants noted that they planned to vacate the rental unit by October 1, 2010 and after discussion the parties agreed the tenants will vacate the property no later than 5:00 p.m. on September 30, 2010. The parties accept that an order of possession will be granted to the landlords in support of this agreement.

While not a part of the decision the parties also agreed that they would complete a move out inspection at 5:00 p.m. on September 30, 2010. The parties are reminded that they still are required to fulfil their respective obligations relating to the end a tenancy under Sections 35, 36, 37, 38, and 39 of the *Residential Tenancy Act (Act)*.

During the hearing I had indicated to the tenants that I would not consider their claim for reimbursement of hydro charges relating to a verbal agreement the tenants contend they had with the landlord, however, upon further deliberation I have decided that I can consider this matter as it relates to mitigating any potential debt to the landlord in the landlord's application.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to a monetary order to recover the filing fee from the landlord for the cost of their Application for Dispute Resolution pursuant to sections 67 and 72 of the *Act*.

Background and Evidence

The tenancy began on October 1, 2009 as a 6 month fix term tenancy that converted to a month to month tenancy on April 1, 2010 for a monthly rent of \$1,500.0 due on the 1st of the month. The tenants provided the landlord, at the start of the fixed term, with a post dated (April 1, 2010) cheque in the amount of \$1,500.00 representing a security deposit of \$750.00 and a pet damage deposit of \$750.00.

The parties acknowledge they entered into an agreement that the landlord would not cash the cheque until the end of the tenancy and only to cover any damages. The landlord testified that as a result of an event in the house where a dog had been present she discussed with the tenant the possibility of damage to the rental unit.

The landlord testified that the tenant indicated that any damage could be taken out of the security deposit. The landlord stated that she cashed the cheque in mid July 2010. The tenant testified that they did not anticipate the landlord would be cashing the cheque and once they did they decided that that would cover the rent for August, and therefore did not pay rent.

The parties also confirmed in the hearing that the tenants have provided the landlord with a cheque for \$1,000.00 for rent for the month of September. The landlords have confirmed that they have not yet cashed that cheque. The tenants contend that they have paid only \$1,000.00 as they had a verbal agreement with the male landlord for compensation for hydro usage while the landlord uses a small suite in the house two days per week.

The landlord contends that the previous rental arrangement with previous tenants was for rent of \$1,700.00 per month but when they negotiated the agreement with these tenants they reduced the rent to \$1,500.00 in recognition of the hydro usage. The tenants state the reduced rent was in consideration of having the rental unit for sale during the tenancy and the need for showings.

Analysis

While the parties agree that they had a verbal arrangement for the landlord to not cash the security deposit cheque, I find that the tenants paid to the landlords a security deposit of \$750.00 and a pet damage deposit of \$750.00 in accordance with Sections 17, 18 and 19 of the *Act*.

The arrangement to not cash the cheque is an agreement outside of the *Act* and therefore outside of the jurisdiction of this decision, however, I note that in order for the security deposit to be "received" by the landlord it, by law, must have been cashed prior to the cheque becoming stale dated. For this reason, I find the tenants were not entitled to use the fact that the landlord had cashed the security deposit rent to avoid the payment of rent.

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Having said this, the burden of proof to show that the agreement existed is placed on the party making the claim that such an agreement existed, in this case the tenants. I find the tenants have failed to establish that such an agreement existed and therefore dismiss the claim as a form of mitigating any amount of rent owed to the landlords.

Conclusion

As the landlord has a cheque from the tenants for \$1,000.00 for rent for September 2010, I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,050.00** comprised of \$2,000.00 rent owed for August and September 2010 and the \$50.00 fee paid by the landlord for this application.

In accordance with Section 72, I order the landlord may deduct the security deposit and interest held in the amount of \$1,500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$550.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the tenants noted during the hearing that they are moving out of the rental unit and there was no longer a need to dispute the notices to end tenancy, I dismiss their claim to recover the filing costs for their application.

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: September 21, 2010.

Dispute Resolution Officer