



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants – CNR, FF

For the landlord OPR, MNR, MND, MNSD, MNDC, FF

Introduction

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

The landlord served the tenants by registered mail on September 10, 2010 with a copy of the Application and Notice of Hearing. The tenants served the landlord in person on August 11, 2010 with a copy of the application and a Notice of the Hearing. I find that 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

- Is the landlord entitled to a Monetary Order for:
 - a) Unpaid rent
 - b) damage to the rental unit
 - c) money owed or compensation for damage or loss
- Is the landlord entitled to an Order of possession?
- Are the tenants entitled to an Order to set aside the Notice to End Tenancy

Background and Evidence

This month to month tenancy started on November 01, 2007. At the start of the tenancy there were three tenants who rented the house at a monthly rent of \$1,650.00. This was then split into the upstairs unit and the downstairs unit. These two tenants rented the upper unit and paid a monthly rent of \$975.00 plus 55% of the utilities. The landlords' daughter acting, on behalf of the landlord, and the tenants dispute the amount of security deposit paid. The tenant's state they paid their share of the security deposit of \$487.50 and the landlord states \$500.00 was paid on October 22, 2007 and \$350.00 is outstanding.

The tenant's testify that the landlord has altered the middle pages of the tenancy agreement as they had initialled sections of the original agreement concerning their share of the rent and the amount of security deposit paid by them. The tenants claim the tenancy agreement submitted by the landlord no longer has these initialled sections and only the front and back pages are the original document. The tenants also state that they never received a copy of the tenancy agreement. The tenant's testify that the landlord did not do a move in condition inspection with them; they just walked through

together and agreed the tenants would do some painting and the floor and other surfaces were damaged.

The landlords' application

The landlord requests an Order of possession for unpaid rent. The landlords daughter testifies that the tenants have been repeatedly late paying their rent during their tenancy, she has provided a spread sheet of payments that she states the tenants made to her father which show either late payments or short payments during the course of the tenancy. She states she put together this spread sheet when she took over responsibility for the rental unit when her father traveled overseas this year. The landlords' daughter states that as of September 01, 2010 the tenants owe \$4,153.37 and \$332.53 in unpaid utilities. The landlord has provided copies of a 10 Day Notice served to the tenants on August 09, 2010 which states the tenants owe \$830 and this has been broken down into \$380.00 for unpaid security deposit for March, 2010 and \$450.00 for floor repairs. The second 10 Day Notice served on September 01, 2010 states the tenants owe rent of \$975.00. The landlord daughter accepts that the two units were rented separately. The landlord seeks an Order of Possession for unpaid rent and utilities based on the 10 day Notices served to the tenants.

The landlords' daughter testifies that the tenants have damaged the floor in the downstairs unit by pouring buckets of water through the floor in their unit. The landlord has provided three photographs of the downstairs units' hallway in evidence.

The landlord has also applied for a Monetary Order for money owed or compensation for damage or loss, however the landlords daughter states she was told to apply for this however she is not sure why.

The landlord seeks to keep the tenants security deposit against unpaid rent and to recover his filing fee for this proceeding.

The tenants dispute the landlords' daughters' testimony and the landlords' evidence. They testify that the downstairs unit was always rented separately and they paid their own rent to the landlord. The tenants agree that on occasion they could not pay all their rent on time and state the landlord was always understanding about this. The tenants state they do not owe any rent with the exception of rent for September, 2010. The tenants have provided photographs of the handwritten rent receipts which they claim are signed by the landlord and show that rent has been paid in full. The tenants claim they have also paid all their utilities in full and the last payment of \$273.00 was given to the landlords' son who also gave them a receipt. The tenants have provided a photograph of the rent receipt from March, 2010 when a new tenant moved in downstairs and they collected his rent to give to the landlord with theirs. This receipt shows that this tenant paid a security deposit of 375.00.

The tenants claim that when this tenant moved into the downstairs unit in March, 2010 the landlord agreed to a rent reduction of \$75.00 for the upstairs tenants. The tenant states this was a formal agreement between them and the landlords' daughter was not involved with this agreement. From March 2010, the rent receipts show the landlord accepted rent paid in full of \$900.00.

The tenants claim that on September 01, 2010 the landlords' daughter came to collect the rent in the afternoon. The tenants claim she spoke to one of them and the other tenant was at work until 5.30 that day. The tenants testify that the landlords' daughter was told they would pay the rent on her return from work. The tenant claims the landlords' daughter handed her the 10 Day Notice that stated rent was \$975.00. The

tenant claims that she told the landlords' daughter that their rent was \$900.00 and was told to pay the \$975.00 or be evicted.

The tenant's testify that they tried to pay the rent on September 01, 2010 but the landlords' daughter refused to take it and they called her and the landlord but they would not take their calls. The tenants state they are confused by the landlords daughters Notices as one said they owed \$830, one says they owe \$975 and now she says they owe \$4,153.37 plus utilities of \$332.53.

The tenants dispute the landlords claim that they have damaged the floor in the downstairs unit by pouring buckets of water through their floor. The tenant's testify that they have had an ongoing problem with something dripping in their unit. They notified the landlord who replaced their toilet but they state they can still hear water dripping and have notified the landlord again who denies there is a problem.

The tenant's application

The tenants seek to cancel the Notice to end tenancy. As they state above they do not owe rent and the Notices they have been given are confusing and untrue. The tenants also seek to recover their filing fee for this hearing.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The landlord argues that the tenants owe \$4,153.37 in unpaid rent, however, the tenant's evidence presented disputes this claim as the rent receipts show that rent has been paid with the exception of September, 2010. When landlords evidence is contradicted by the tenants the burden of proof falls to the landlord to

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provide additional corroborating evidence to support his claim. I find the landlords evidence and verbal testimony of his daughter does not meet the burden of proof in this matter with the exception of unpaid rent for September, 2010.

I have reviewed the 10 Day Notice given to the tenant in August, 2010. This Notice is unclear about how much rent is owed and instead appears to be claiming an amount for a security deposit and repairs to a floor. As the information is unclear as to how much rent the landlords are stating is owed on this notice it is my decision that the Notice dated August 10, 2010 is invalid as the tenants were not given opportunity to pay an amount of outstanding rent or utilities and the Notice is therefore cancelled.

With regards to the Notice given to the tenants on September 01, 2010; as rent is due on the first day of each month I find the landlord issued this notice prematurely to the tenants. When a 10 Day Notice is issued it must be issued on the day after rent is due and not on the day rent is due. Consequently, I find the Notice issued on September 01, 2010 is cancelled and the tenancy may continue at this time.

I would caution the landlord to provide the tenants with duplicate rent receipts from the next rent due date to ensure proper records are kept in future.

I would also caution the tenants to ensure September's rent is paid in full and suggest they formalize the agreement with the landlord about paying the reduced rent of \$900.00 as this has been accepted by the landlord since March, 2010.

With regards to the landlords claim for damages to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has meet the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damage to the downstairs rental unit does not meet the components of the above test. The landlord has submitted three photographs showing a hallway in a rental; unit but this is not sufficient evidence to show that the damage exists or that it happened because of the actions or neglect of the tenants living upstairs. I also find the landlord has not included a monetary amount for these alleged damages. Consequently, this section of the landlords claim is dismissed.

I further find as the landlord has been unsuccessful with his claim for unpaid rent, unpaid utilities and damages that he is not entitled to keep the tenants security deposit.

The tenants argue that the landlord has falsified the tenancy agreement; however they have provided no evidence to support this claim.



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Conclusion

The tenant's application is allowed. The one Month Notices to End Tenancy for Cause dated August 10 and September 01, 2010 are cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notices, they are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

The landlords' application is dismissed in its entirety without leave to reapply.

In the event the tenants do not pay rent for September, 2010 the landlord is entitled to serve the tenants with another 10 Day Notice to End Tenancy.

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 30, 2010.

Dispute Resolution Officer