



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

I note that both parties submitted evidence late in this matter, which I have reviewed. I have also reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However only the evidence timely submitted and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Preliminary Matter #1

The Tenants have vacated the rental unit and the Landlords are not seeking an order of possession.

Preliminary Matter #2

The Landlords are seeking a written statement of apology from the Tenants and financial compensation for use, rent and insurance of a vehicle. These matters are beyond the scope of the Act and will not be addressed or considered in this decision.

Preliminary Matter #3

I find that the 10 day Notice to End Tenancy issued by the Landlords listed an incorrect amount of unpaid rent as the Tenants paid half of the August rent in July, but by admission of all parties, the amount of unpaid rent for the month of August is \$600.00.

Preliminary Matter #4

As the tenancy has ended, I will not address the issues raised of trespassing and lack of the Tenants' quiet enjoyment.

Issues(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlords to an order for monetary relief?

Background and Evidence

This tenancy began on September 1, 2009, on a month to month basis. The rent was \$1,200.00 per month, payable on the first day of each month and a security deposit in the amount of \$600.00 was paid.

The Landlords hand delivered a 10 day Notice to End Tenancy for unpaid rent on August 16, 2010, for an effective move out date of August 26, 2010. The Tenants vacated the rental unit on August 27, 2010, owing \$600.00 for the month.

The Landlords testified that the Tenants took a 1999 13" television set without permission and want the replacement cost of \$171.19. A receipt for the purchase price of \$159.99 for the television set was provided. The Landlords further testified that the television was old and dirty, but it was theirs and they used it for testing.

The Landlords further testified that upon vacating, the Tenants took miscellaneous items of the Landlords from the rental unit, with an estimated value of \$100.00.

The Landlords testified that the Tenants had unauthorized work done on the washer/dryer unit and that the Landlords had the unit serviced at the end of the tenancy, at a repair cost of \$116.90. Further the Landlords testified the Tenants damaged the paint of the concrete surface of the carport, at an estimated repair cost of \$180.00.

The Landlords testified that Tenants damaged a table in the rental unit, with an approximate repair cost of \$151.06.

The Landlords testified that there was not a move in condition inspection performed with the Tenants at the start of the Tenancy as the rental unit was brand new. The Landlords testified that they did not inspect the condition of the rental unit with the Tenants at the conclusion of the Tenancy, but rather had a real estate agent perform the inspection. It is not clear if the Landlords gave the Tenants a copy of the report.

The Tenants testified that the Landlords gave the television to their daughter as a gift and that they did not take it; however, they have offered to return the television.

The Tenants denied taking any other miscellaneous items and did not know to which items the Landlords referred.

The Tenants further testified that there were just small dents in the table made by their special needs son, which is why the Tenants had requested on a number of times the Landlords take the table away from the rental unit. The Tenants testified the table was bought for \$179.00.

The Tenants testified that they frequently spoke to the Landlords about the leaking washer/dryer unit, but since it was never repaired, the Tenants were forced to clean and blow out the hoses on a bi-weekly basis.

The Tenants denied damaging the paint under the carport and that any marks were normal wear and tear. The evidence supplied by the Tenants indicated the Landlord told him the paint used was not proper for concrete.

The Tenants testified that they were not given opportunities to inspect the rental unit with the Landlords at the end of the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenants have not paid the outstanding rent and the Landlords have established a monetary claim of \$600.00 for the month of August 2010.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

Section 35 of the Act requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for damages when the tenant was not provided the opportunities for inspection at the end of the tenancy.

Section 72(2) of the Act provides:

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The Landlords testified that there was no move in condition inspection and there is no evidence before me that the Landlords offered the tenants opportunities to complete the condition inspections. Therefore I find that the right of the Landlords to claim against the deposit for damages is extinguished.

Pursuant, however, to section 72(2) of the Act, I have set-off the amount of \$600.00 owed to the Landlords from the deposit held in trust by the landlords and I find that the Landlords may retain the security deposit of \$600.00 in satisfaction of the unpaid rent.

The obligation of the Landlords is to provide opportunities for a move in condition inspection; therefore I find the Landlords have not established a monetary claim for the alleged damage to the table or carport concrete and award no monetary order.

Section 32 of the Act requires a Landlord to provide a rental unit that complies with health, safety and housing standards. A Landlord must attend promptly to complaints from Tenants and make quick efforts to address the problem. I find that the Landlords did not repair the washer/dryer unit in the rental unit in a timely manner, and are not

entitled to reimbursement from the Tenants for the repair, which should have been performed during the tenancy.

I do not accept the evidence of the Landlord that the 11 year old television is worth the purchase price and they have provided no evidence of current market value. However, the Tenants have offered to return the television and therefore I direct the parties to exchange the television at a mutually agreeable time and place.

I find that the Landlords have established a total monetary claim of **\$650.00** comprised of \$600.00 for unpaid rent and the \$50.00 filing fee paid by the Landlords for this application and I direct they retain the security deposit in partial satisfaction of the claim. I grant the Landlords an order under section 67 for the balance due of **\$50.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlords established a monetary claim and may keep the security deposit in partial satisfaction of the claim and are granted a monetary order for the balance due of \$50.00.

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 23, 2010.

Dispute Resolution Officer