



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OPC, MNSD, MNDC, FF

Introduction

This hearing was scheduled for September 3, 2010 to deal with cross applications filed by the parties. The landlord's file had not been provided to me for the September 3, 2010 hearing and the hearing was adjourned to October 14, 2010 in order to hear both applications together. Both parties appeared at the reconvened hearing and the tenant confirmed she was representing herself and the co-tenant named in applications.

At the commencement of the hearing I heard that the tenants have vacated the rental unit and there is no need to deal with the tenants' request to cancel the Notice to End Tenancy or the landlord's request for an Order of Possession. Rather, this hearing only dealt with the claims for compensation made by each party against the other party and the landlord's request to retain security deposit.

Both parties were provided the opportunity to be heard and to respond to submissions of the other party and to ask questions. Both parties confirmed service of documents upon them.

Issues(s) to be Decided

1. Have the tenants established an entitlement to compensation from the landlord?
2. Has the landlord established an entitlement to compensation from the tenants?
3. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

I heard undisputed testimony as follows. The residential property consists of two rental units, the basement unit and the upper unit. The tenants resided in the basement unit from February 2009 until November 1, 2009. The rent for the basement unit was \$800.00 plus \$100.00 for utilities for a total payment of \$900.00. There was no written tenancy agreement for the basement unit. On November 1, 2009 the tenants moved to the upper unit for rent of \$1,200.00 plus \$150.00 in utilities for a total payment of \$1,350.00 per month. The tenants paid a \$400.00 security deposit for the basement unit which was increased to \$600.00 when the tenants moved to the upper unit. On July 6, 2010 the property manager delivered a letter and 1 Month Notice to End Tenancy for Cause to the tenant's mailbox. The Notice was undated and has an effective date of July 31, 2010. The tenants disputed the Notice but vacated the upper unit August 15, 2010.

The tenants made a total monetary claim of \$5,420.00 for damage or loss under the Act, regulations or tenancy agreement. The tenant presented written and verbal submissions in support of this claim and the landlord provided written and verbal responses to the tenants' claims. I have summarized the submissions as follows:

<u>Tenants' reason for claim</u>	<u>Amount of claim</u>	<u>Landlord's response</u>
Insufficient garbage removal. One garbage can shared by both rental units. Other tenants used majority of available space in can. Landlord did not purchase additional tickets for garbage removal. Tenants hauled two loads of garbage to dump: one time when	\$100.00	Tenants had agreed to pick up additional tickets and landlord would reimburse them for this expenditure. Property manager loaded two trailers with garbage and took to dump including these tenants'

<p>moved into basement and one time when moved upstairs.</p> <p>Tenants paid property manager \$75.00 to haul truck parts away.</p>		<p>truck parts which had additional cost.</p>
<p>Cleaning of basement unit, 16 hours.</p> <p>Rent for February 2009 was paid by former tenant so landlord did not compensate them for cleaning.</p>	\$240.00	<p>Tenants moved in 10 days before end of February 2009 at no cost.</p> <p>Free rent compensates tenants for cleaning efforts.</p>
<p>Cleaning of upper unit, 12 hours (see photographs)</p> <p>Did not receive compensation from landlord for cleaning.</p>	\$180.00	<p>Landlord deducted \$75.00 from former tenant's security deposit and gave \$75.00 to male tenant as compensation for cleaning.</p> <p>No receipts issued for cash rent payments or cleaning.</p>
<p>Loss of quiet enjoyment from noisy, rowdy downstairs neighbours.</p> <p>Frequent verbal complaints to landlord but insufficient response from landlord.</p> <p>Downstairs neighbours left in June 2010 after failing to pay rent.</p>	<p>\$600.00 per month for 6 months =</p> <p>\$3,600.00</p>	<p>Did take steps to evict but takes time to evict.</p> <p>Spoke with downstairs neighbours who pointed to these tenants as causing noise.</p> <p>Property manager hired to deal with conflict between two tenants. Both sets of tenants blaming the other.</p>
Filing fee	\$ 100.00	

TOTAL CLAIM BY TENANTS	\$ 5,420.00	
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The landlord requested compensation from the tenants for loss of rent of \$900.00 for the basement unit for the month of July 2010. The landlord attributes this loss to the tenants' occupant bringing a vicious dog on the property. The dog allegedly bit the property manager. The dog was the reason one set of prospective tenants gave for not renting the basement unit. I heard two or three other prospective tenants viewed the basement unit in early July and that those prospective tenants did not give a reason for not taking the basement unit. The landlord stopped advertising the basement unit July 15, 2010 due to the dog being on the property.

The tenant responded by suggesting that the condition of the basement unit was likely the reason prospective tenants were not interested in the basement unit as the former tenants were very dirty. The tenants requested to see the bite injury but were never shown.

The landlord claimed damages of \$200.00 to have grease stains cleaned from the driveway. The grease stains were caused by the male tenant's project vehicle. The tenant acknowledged that grease leaked from the truck and that the tenants tried their best to clean it up but that the driveway remained stained.

The landlord claimed rent of \$500.00 for extra parking used by the tenants. The landlord acknowledged that the tenancy agreement did not provide for parking charges and that the landlord did suffer a loss with respect to the additional parking; therefore, I dismissed this claim during the hearing.

The landlord claimed for time taken off work and costs to provide evidence for this hearing. As the Act does not provide for recovery of costs associated to conducting business as a landlord, including participation in dispute resolution proceedings, these claims were dismissed during the hearing.

Provided as evidence for the hearing by the tenants were photographs of the upper unit, letters attesting to the former tenants having cats in the rental unit and the broken fridge. Provided as evidence by the landlord were copies of the July 6, 2010 letter from the property manager and the 1 Month Notice to End Tenancy and other correspondence from the property manager to the tenants and the tenants in the basement unit; receipts with respect to previous repairs to the residential property; a quote for the driveway cleaning, and letters of recommendation for the landlord.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon considering all of the evidence and testimony before me, I make the following findings with respect to the matters before me.

Tenants' application

Broken fridge – Both parties agreed that the original fridge stopped working and the landlord replaced the fridge and the replacement fridge did not keep foods very cold. At issue is the length of time it took for the landlord to have the replacement fridge

repaired. The tenant claimed that numerous calls were made to the landlord. The landlord claimed the tenants took a month to complain about the replacement fridge but did acknowledge the repair took longer than it should have.

I accept the tenants likely suffered a loss of food when the fridge stopped working; however, the tenants did not substantiate the quantum of their loss of food. Nor did the tenants provide documentary evidence to substantiate the extra cost of having to eat out in restaurants frequently. I find the tenants' claim for compensation of \$400.00 per month, or one-half of their monthly rent, to be excessive given the evidence provided.

I find the tenants were entitled to some compensation for loss of use and enjoyment of the rental unit due to the condition of the kitchen. However, having heard the tenants took it upon themselves to withhold one-half of a month's rent I find that action is indicative of the value the tenants' placed on the loss at the time of the loss. Therefore, I find the tenants have already been sufficiently compensated for the loss of use and

enjoyment with respect to the use of the kitchen and I dismiss this portion of the tenants' claims.

Trash and garbage – I found the tenant's testimony with respect to this claim to be convoluted. In making this application, the tenants indicated this claim relates to the lack of sufficient space in the garbage can for their own use. During the hearing the tenant stated that they went to the dump twice to remove garbage belonging to other tenants after those tenants moved out of units on the property. I find I am not swayed by the tenants' claims for compensation for garbage runs especially considering no receipts were provided. Therefore, I dismiss this portion of the tenants' claim.

Cleaning basement unit -- I accept that the basement unit required cleaning at the commencement of the tenancy. I also accept that the tenants were permitted early occupancy in the basement unit and were not required to pay rent for those days. Even

if the landlord collected rent from the former tenant for that unit for the month of February 2009 it does not preclude the landlord from requiring rent from the incoming tenants. Therefore, I find the tenants have been compensated for cleaning of the basement unit by way of free rent and I find the tenants not entitled to any further compensation. This portion of the tenants' claim is dismissed.

Cleaning upper unit – A landlord has the obligation to provide a rental unit suitable for occupancy. It was not in dispute that the unit required cleaning. The landlord submitted the tenants were compensated \$75.00 for cleaning which the tenant denied. I find the landlord did not provide sufficient evidence to prove, based on the balance of probabilities, that the landlord gave \$75.00 to the tenants or deducted \$75.00 from the rent. Upon review of the photographs submitted by the tenants I accept that the upper unit required 12 hours of cleaning as claimed by the tenants. Therefore, I grant the tenants' request for compensation of \$180.00.

Loss of quiet enjoyment – The tenants are requesting recovery of one half of their monthly rent for a period of six months due to disturbances from the downstairs neighbours and the landlord's insufficient response to their complaints. To succeed in establishing an entitlement to this compensation the tenants must demonstrate they took every reasonable step to minimize their damage or loss. I find this is a significant claim and in the absence of an itemized or detailed list of dates and disturbing events, audio recordings, letters to the landlord requesting the landlord intervene, or the like, I find the tenants failed to meet their burden of proof and failed to show they took every reasonable step to minimize their loss. Therefore, I dismiss this portion of the tenants' claim.

Landlord's application

Loss of rent for basement unit – Upon review of the letter written by the property manager on July 6 and the property manager's testimony, I am satisfied that the tenants' occupant had an aggressive dog at the property. I am further satisfied that the dog contributed to the prospective tenants of July 5, 2010 decision not to pursue rental

of the basement unit. Whether those tenants would have otherwise agreed to rent the unit is undeterminable. However, I also heard that two to three other prospective tenants were shown the rental unit and did not give reasons for not renting the unit. While the landlord claims to have ceased advertising efforts July 15, 2010 the landlord did not provide copies of the advertisement placed before that date. Therefore, I find it merely speculation that the failure to rent the basement unit for July 2010 was solely attributable to the dog on the premises. Accordingly, this portion of the landlord's claim is dismissed.

Driveway cleaning – Having heard the tenant acknowledge that there were grease stains left behind on the driveway from the tenant's vehicle I find the tenants responsible for cleaning the grease stains. I find the landlord provided sufficient evidence of the damage or loss incurred or will incur to remove the grease stains. I grant the landlord's claim for \$200.00 for driveway cleaning.

Security deposit – Under the Act a landlord must offer the tenants the opportunity to participate in a move-in and move-out inspection and prepare a report and give a copy of the report to the tenants. Where a landlord fails to complete these requirements the landlord loses the right to claim against the security deposit. As the landlord failed to perform move-in and move-out inspection reports the landlord has lost the right to claim against the security deposit. Therefore, the security deposit must be repaid to the tenants.

Monetary Order

As both parties were marginally successful in their respective applications I order that each party must bear the cost of their own application.

Pursuant to section 72 of the Act I net the awards granted to each party and provide the tenants with a Monetary Order for the net amount calculated as follows:

Cleaning upper unit	\$ 180.00
Security deposit	600.00
Less: driveway cleaning	<u>(200.00)</u>
Monetary Order for tenants	\$ 580.00

The landlord is ordered to pay \$580.00 to the tenants forthwith in satisfaction of both applications. The tenants are provided a Monetary Order to serve upon the landlord and enforce in Provincial Court (Small Claims) if necessary.

Conclusion

Both parties were partially successful in their applications. The awards made to both parties have been offset and the tenants are provided a Monetary Order for the net amount of \$580.00 to serve upon the landlord.

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: October 15, 2010.

Dispute Resolution Officer