



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPR, CNR, MNR, MNDC, MNSD, RR, FF

Introduction

This hearing dealt with cross applications. The landlords applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and damage or loss under the Act, regulations or tenancy agreement. The tenants requested that a Notice to End Tenancy for unpaid rent be cancelled, a rent reduction and a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and return of the security deposit. Both parties appeared at the hearing and confirmed service of hearing documents upon them. Both parties were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

On a procedural note, the landlord's claim for loss of rent for the month of December 2010 was dismissed with leave as at the date of the hearing the landlord had not incurred a loss for the month of December 2010. I informed the parties I would only consider the landlord's claim for unpaid rent for the month of November 2010 with this decision. Several days after the teleconference call ended, landlord provided additional written submissions and evidence. In accordance with the Rules of Procedure I have not accepted or considered the additional submission and evidence in making this decision.

Issue(s) to be Decided

1. Should the Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Are the landlords entitled to an Order of Possession?
3. Are the landlords entitled to a Monetary Order for unpaid rent?
4. Are the tenants entitled to reduce rent payable?
5. Are the tenants entitled to a Monetary Order for damage or loss under the Act, regulations or tenancy agreement?
6. Should the security deposit be returned to the tenants?

Background and Evidence

I was provided undisputed evidence from the parties as follows. The three-month fixed term tenancy commenced in June 2010 and the tenants paid a security deposit of \$1,550.00. At the end of the fixed term the tenancy was to convert to a month-to-month basis. The monthly rent was set at \$2,550.00 due on the 1st day of every month. The

rental unit is furnished. The tenants only paid \$1,000.00 for the month of November 2010.

As at the date of this hearing the tenants confirmed they have vacated the rental unit. The parties agreed during the hearing to meet at the rental unit at 1:00 p.m. on the date of the hearing to inspect the rental unit together. As I was satisfied the landlord would be provided vacant occupation of the rental unit on the date of this hearing I determined it was not necessary to consider whether the Notice to End Tenancy should be upheld or cancelled. I was also satisfied that an Order of Possession was no longer required as the tenants were giving up possession of the rental unit on this date.

Landlords' application

In making this application, the landlords are seeking to recover unpaid rent from the tenants. The tenants did not dispute that they withheld the amount of the security deposit from the rent otherwise payable for the month of November 2010.

The tenants were of the position the landlord overcharged them the security deposit by \$275.00. The landlord was of the position she was entitled to claim an additional deposit because the rental unit was furnished.

In addition, the tenants submitted that the landlord lost the right to claim against the security deposit for the balance of \$1,275.00 by failing to complete and provide them with a copy of a move-in inspection report within the time limits required by the Act. The landlord acknowledged that a move-in inspection was not done before the tenants moved in and was done at a later date. The parties were in dispute as to when the inspection took place and what was recorded on the move-in inspection report provided to the tenants.

Tenants' application

The tenants are seeking compensation against the landlords for the total amount \$1,540 which is the sum of the following:

- Loss of use of master bedroom shower from June through October 2010 at \$100.00 per month.
 - The tenants submitted that the temperature fluctuated greatly and the tenants ceased using the shower in the master bedroom bathroom after a couple of weeks after the tenancy commenced. The tenants had to use the other bathroom for showering. The tenants complained of this issue to the property manager. The broken thermal valve was eventually replaced at the end of October 2010.

- The landlord claims the tenants continued to use the master bedroom shower as there was soap and mildew evidence in the shower. The tenants explained they had soap in the shower from the first few weeks of the tenancy.
 - The property manager acknowledged receiving the tenant's email complaining of the fluctuating shower temperature and passed the information along to the landlord. Upon enquiry, the property manager acknowledged that waiting until October 2010 to repair the shower was an unreasonable length of time.
- Loss of use of the oven for July and August 2010 at \$200.00 per month and limited use of oven for June, September and October 2010 at the rate of \$50.00 per month.
 - Shortly after the tenancy commenced the oven door stopped closing all of the way and progressively got worse over time. The tenants complained to the property manager about the oven door. The oven door permitted hot air to escape into the rental unit when the oven was in use. The additional heat made use of the oven unbearable in the summer months. During the other months the tenants were able to tolerate using the oven by propping a stool against the oven door. The oven door was eventually repaired at the end of October 2010.
 - The landlord pointed out that at the beginning of the tenancy the oven door was not broken. The landlord had the door repaired when she learned of the problem.
- Loss of use of window coverings in master bedroom at \$50.00 per month for June through November 2010.
 - The tenants submitted that the window coverings would not close all of the way allowing sunlight to penetrate into the room early in the morning. The tenants put plastic over the window to stop light from coming into the room. The tenants complained to the property manager about this issue. The blinds were not repaired.
 - The landlord provided a video taken before the beginning of the tenancy which shows the blinds pulled to one side and left open. A person acting on behalf of the landlord attended the rental unit to inspect the blinds. The landlord claims the tenants told that person not to bother repairing the blinds as the tenants were vacating the unit.
 - The landlord claimed the resident manager viewed the blinds and reported to the landlord that the blinds were fine. The landlord alleged that the tenants put plastic in the windows because they had a baby.

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- The tenants refuted the landlord's statements and claimed the landlord's agent advised them that the blinds were unfixable. The tenants are not aware of the resident manager viewing the blinds.
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- Loss of use of properly closing windows at \$10.00 per month for June through November 2010.
 - The tenants submitted that the handles on the windows were broken, making it difficult to properly close the windows. The tenants complained of this issue to the property manager. A person sent to inspect the windows by the landlord advised the tenants that the handles could not be fixed or replaced as the windows needed replacement. The resident manager for the building repaired the window handles the week before the hearing.
 - The landlord claimed that a representative for the building inspected the window handles and only two were in need of repair. The other windows still opened.
 - The landlord would have repaired handles sooner if the landlord was aware of the problem.
- Loss of use of visitor parking pass at \$10.00 per month for the months of June through August 2010.
 - The tenants were not provided a visitor parking pass at the commencement of their tenancy. As a result their guests had to park on the street and street parking is scarce in the neighbourhood.
 - The tenants requested the visitor parking pass from the property manager on June 19, 2010. The tenants also enquired with the strata who would charge a \$20.00 deposit. The property manager would not reimburse the tenants for the deposit. In August 2010 the landlord made arrangements to provide the tenants with a visitor parking pass.
 - The landlord submitted that she had not been provided a visitor parking pass by the strata and did not know she was obligated to provide one to the tenants as visitor parking is not provided in the tenancy agreement.
- Cleaning of \$100.00 as promised by the property manager.
 - The tenants submit that at the commencement of the tenancy the rental unit was in need of cleaning. The tenants paid their cleaners and were promised reimbursement of \$100.00 by the property manager.
 - The property manager claimed that he was not provided a receipt for the cleaning.
 - The landlord submitted that the rental unit was clean at the beginning of the tenancy as evidenced by the video the landlord had made before the tenancy commenced.

Provided and considered as relevant evidence for this hearing were the submissions of each party; a copy of the tenancy agreement; numerous email exchanges between the tenants and property manager and the landlord and the property manager; photographs taken by the tenants; and, the landlord's video recording taken before the tenancy commenced.

Analysis

Landlords' application

Section 19 of the Act limits the amount the landlord may require or accept for a security deposit or a pet deposit. The security deposit must be no greater than $\frac{1}{2}$ of the monthly rent payable under the tenancy agreement. If a landlord accepts a security deposit greater than the amount permitted the tenant may deduct the overpayment from rent.

In this case, the monthly rent was \$2,550.00 for a furnished unit. Thus, the security deposit was limited to \$1,275.00. The landlord required and accepted \$1,550.00 as a security deposit. Therefore, the tenants were entitled to deduct the \$275.00 overpayment from rent payable.

The tenants' argument that they were entitled to withhold the remainder of the security deposit from rent otherwise payable for November 2010 because the landlords failed to comply with move-in inspection requirements is not supported by the Act. Section 24(2) extinguishes the landlord's right to claim against the security deposit for damage to residential property if inspection report requirements are not met. However, the landlord retains the right to claim against the security deposit for other amounts owed to the landlord. Accordingly, the tenants were not entitled to withhold the security deposit of \$1,275.00 from rent owed for November 2010 without the landlord's written consent, the authority of a Dispute Resolution Officer, or other applicable provision of the Act.

In light of the above, the tenants were obligated to pay \$2,275.00 (\$2,550.00 – \$275.00) in rent for the month of November 2010. Since the tenants only paid \$1,000.00 in rent for November 2010 the landlord is entitled to recover \$1,275.00 in unpaid rent from the tenants for the month of November 2010.

I authorize the landlords to retain the tenant's security deposit of \$1,275.00 in satisfaction of the rent owed by the tenants for the month of November 2010.

Tenants' application

Section 32 of the Act provides for the landlord's and tenant's obligation to repair and maintain a rental unit. A landlord must provide and maintain a residential property so that it complies with the health, safety and housing standards required by law; and, having regard to the age, character and location of the unit, makes it suitable for occupation by the tenant.

Failure of a landlord to repair and maintain a property may limit or restrict the tenant's use and enjoyment of the rental unit. Where a tenant has suffered from a loss of use and enjoyment of the property the tenant may be entitled to a rent abatement or reimbursement of rent paid; however, temporary inconvenience or discomfort does not warrant compensation. It is upon the tenant to show that the landlord was notified of a repair issue or otherwise knew of the outstanding repair and the landlord failed to take sufficient action within a reasonable amount of time.

Upon review of the tenancy agreement, I note that the landlord is identified as the property manager's company. Thus, communication to the property manager is communication with the landlord. While the landlord argued that she had items repaired as she became aware of the issues, delays in communication between the property manager and the landlord, or the property manager's failure to address issues promptly or sufficiently, is between the landlord and the property manager. The landlord is not exempt from the obligation to repair and maintain the property due to issues related to management of the rental unit.

Upon consideration of all of the evidence before me, I make the following findings with respect to the tenants' monetary claims.

Loss of use of master bedroom shower

The tenant informed the property manager of the drastic change in water temperature in the shower via email on June 7, 2010 and again on June 21, 2010. The property manager acknowledges the water temperature requires fixing in an email sent by the property manager on June 21, 2010 but indicates that may take some time to resolve. The broken thermal valve was repaired by a plumber at the end of October 2010. I find the length of time to repair the shower was unreasonably long. I find a more reasonable length of time to repair the shower upon notification of the issue would have been at the end of June 2010. I grant the tenants' request for a rent reduction of \$100.00 per month for the months of July through October 2010. **The tenants are awarded \$400.00.**

Loss of use of the oven

The tenants informed the property manager that the oven door would not close properly via an email dated July 7, 2010 and then again on August 13, 2010. The oven door was repaired at the end of October 2010. I accept that at the commencement of the tenancy the oven door appeared to be operational. I find insufficient evidence the tenants caused damage to the oven door and I accept the tenants' submission that the repairman indicated that doors on those ovens were prone to fail. I find the length of time it took to have the oven door repaired to be unreasonably long. I find a more reasonable length of time to repair the oven door upon notification of the problem would have been closer to the end of July 2010. I grant the tenants' request for compensation of \$200.00 for the month of August as I accept the tenants' submission that the escaping heat from the oven cause greater discomfort in summer months than other months. I also grant the tenant's request for compensation of \$50.00 for the months of September and October 2010. **The tenants are awarded \$300.00.**

Loss of use of window coverings in master bedroom

The tenants notified the property manager that the blinds in the master bedroom would not swivel closed and did not adequately block the light via an email sent June 3, 2010. The property manager responded that day and indicated he would notify the owner but that the owner was out of town. The landlord's video shows the blinds in an open position. I found the landlord's assertion that the resident manager inspected the blinds and did not find a problem to be unsupported by evidence. I can find no reason why the tenants would complain of this issue on June 3, 2010 if in fact it were not true. Thus, I prefer the tenants' submissions that they complained of this issue in June 2010 and the blinds were not repaired or replaced. I accept that the inability to close the master bedroom blinds all the way reduced the tenants' ability to enjoy the rental unit. I grant the tenants' request for compensation at the rate of \$50.00 per month starting July 2010. **The tenants are awarded \$250.00.**

Loss of use of properly closing windows

The tenants notified the property manager that the window handles were broken off the living room windows via an email dated June 7, 2010. It was not in dispute that the window handles were replaced approximately one week prior to this hearing by the resident manager. I find the length of time for the window handles to be replaced to be unreasonably long. I accept that it was difficult to use the windows with broken handles. I grant the tenants' request for compensation at the rate of \$10.00 per month starting July 2010. **I award the tenants \$50.00.**

Loss of use of visitor parking pass

I find the tenancy agreement does not specifically provide for visitor parking or a visitor parking pass; however, the Act does provide that a landlord must not unreasonably restrict access to the residential property by the tenant or a person permitted on the

property by the tenant. The tenants indicated that a visitor pass could be obtained from the strata for a \$20.00 deposit. It is unclear to me why the tenants did not pay the deposit and return the pass to the strata at the end of their tenancy and request reimbursement of the deposit. **I deny the tenant's request for compensation** as I am not satisfied the tenants did whatever was reasonable to mitigate any loss associated with the visitor parking pass.

Cleaning

The tenants and the property manager had a number of exchanges via email about the cleanliness of the rental unit at the commencement of the tenancy. The landlord provided a video of the rental unit taken when other people were in the unit. Neither the landlord or property manager were not present when the tenants took possession of the rental unit. Further, the tenants supplied photographs taken a couple of days after they took possession showing a build up of mould on the shower curtain. Thus, I accept that the unit was not sufficiently clean and **I award the tenants \$100.00** for the loss of use and enjoyment of the unit because of its unclean condition.

In light of the above, the tenants are provided a Monetary Order in the total amount of \$1,100.00 to serve upon the landlords. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

Filing fee

As both parties established an entitlement or partial entitlement to compensation from the other party, I order that each party bear the costs of their respective applications.

Conclusion

The landlords are awarded \$1,275.00 for November's unpaid rent and are authorized to retain the tenants' security deposit in satisfaction of that amount. The landlords' claim for loss of rent for the month of December 2010 was dismissed with leave to reapply.

The tenants are awarded \$1,100.00 for loss of use and enjoyment of the rental unit and have been provided a Monetary Order to serve upon the landlords.

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: December 29, 2010.

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