



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MND, MNDC, FF
For the tenants: MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The landlord applied for a monetary order for damage to the rental unit, for compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

The tenants applied for a monetary order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to sections 67 and 72 of the Act?

Are the tenants entitled to a monetary order pursuant to sections 51, 67 and 72 of the Act?

Background and Evidence

I heard testimony that this tenancy started on August 1, 2010, and the parties agreed that this tenancy ended on March 5, 2011, when the tenants vacated the rental unit as a result of a 2 Month Notice to End Tenancy (the "Notice") for Landlord's Use issued to them by the landlord.

The monthly rent was \$1,525.00 and the tenants paid a security deposit of \$762.50, which was returned to the tenants on February 7, 2011.

Landlord's Application:

The landlord's monetary claim is \$832.72, which includes unpaid utilities, garbage removal, damage repair, and clean-up of the rental unit.

The landlord submitted copies of receipts for garbage removal; for unpaid utilities; a copy of the receipt for payment of the security deposit returned to the tenants, dated February 7, 2011, which notated "Tenancy ending on March 6, 2011," signed by the female tenant and the landlord; small, unclear copies of photos of the rental unit, allegedly depicting dirty cupboards and walls and wall damage; an invoice from a cleaner for 8 hours of cleaning; a receipt from a contracting company; a letter from the tenants, dated March 22, 2011, requesting a month's rental payment, minus the utility bills and the prorated rent for March for the five days the tenants remained in the rental unit; four copies of photos allegedly depicting renovation work performed on the rental unit; the Notice; and permit applications.

The landlord stated there was no move-in or move-out condition inspection report.

The tenant reaffirmed her letter of March 22, 2011, that the tenants owed the utility bills of \$128.95 and \$153.77. Therefore it was not necessary to consider this portion of the landlord's application.

In support of her application, I heard testimony from the landlord that she tried to assist the tenants in their move, by offering different accommodations and returning their security deposit early prior to the move-out. The landlord further submitted that she offered to clean the rental unit for the tenants, but upon entering the rental unit, did not expect to find the "garbage, filth and furniture" remaining. The landlord further submitted that there were excessive nail holes in the walls.

The landlord submitted that it was necessary to give the tenants a 2 Month Notice as she required living accommodations for herself and her children while her own home was undergoing renovations. The two homes are adjoining. The landlord stated that her partner and his brother were performing the renovations and that the brother-in-law, his wife and child were also living in the home, along with the landlord, her three children and her partner.

The landlord stated that she did not believe that she owed the tenants compensation of a month's rent as the tenants had not provided her a 10 day written notice to vacate.

The landlord submitted that she filed her application in response to the tenants' request for compensation for the month of March.

Tenants' application:

The tenants have applied for monetary compensation in the amount of \$4,046.31. This claim includes a request for the equivalent of a month's rent, as allowed in section 51 of the Act pursuant to receiving a 2 Month Notice to End Tenancy, minus the utilities and prorated rent for five days in March, and the equivalent of 2 months' rent for the landlord's failure to use the rental unit for the stated purpose listed on the Notice.

In support of their application, the tenants submitted the 2 Month Notice; the tenancy agreement; moving truck receipt dated March 3, 2011; the letter to the landlord dated March 22, 2011, requesting compensation; two handwritten statements from persons assisting the tenants with their move-out, stating that the rental unit had been cleaned and that some recyclable items had been left for pick-up; a printed form from Canada 411 allegedly showing the landlord's registered telephone number was still listed at her former address and not the tenants' address; and a significant amount of copies of text messages between the tenant and the landlord, beginning July 31, 2010, through March 22, 2011, regarding tenancy issues.

In support of her claim for the rent for March, the tenant stated that she informed the landlord on February 6 via text message that the tenants would be out of the rental unit by March 6, 2011. I note the evidence shows that the landlord responded on that same day, stating that she was pleased the tenants had found a place.

The tenant submitted that the tenants' additional notice of the end of the tenancy was contained in the security deposit refund receipt of February 7, 2011, signed by the parties.

The tenant submitted that the rental unit was cleaned, even though the landlord told the tenants they did not have to clean the rental unit and that any items left behind was for a recycle pick-up.

The tenant submitted that the male tenant attended the rental unit after the tenants had moved out; however it appeared that the landlord had not moved in. Additionally the tenants called Canada 411, with the landlord's telephone number being entered, which

showed the landlord's original address, further proving that the landlord had not moved into the rental unit. The tenant submitted that the landlord's failure to move into the rental unit entitled the tenants to monetary compensation equivalent to two months' rent.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

Landlord's Claim:

Section 23(3) of the Residential Tenancy Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy and Section 35, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

In the absence of a condition inspection report, I find there to be insufficient evidence to meet the burden of proof establishing that the tenants damaged the rental unit or left the rental unit unclean. Additionally, I find that the landlord failed to establish that the tenants were required to clean the rental unit as she had informed the tenants she, the landlord, would clean the rental unit.

Therefore I **dismiss** the landlord's claim for garbage removal, cleaning and repair.

I have declined to award the landlord recovery of the filing fee.

I find the landlord has established a **monetary claim of \$282.72**, comprised of \$128.95 for the hydro bill and \$153.77 for the water/sewer billing.

Tenants' Claim:

Section 51 of the Act sets out that a tenant who receives a notice to end tenancy for landlord's use is entitled to compensation equivalent to one month's rent.

Under section 50 of the Act, a tenant who has received a notice to end tenancy for landlord's use may end the tenancy early by giving a written 10 day notice to end the tenancy on a date earlier than the effective date of the landlord's notice.

Section 88 of the Act provides for methods a document may be served upon the other party. Text messages are not deemed to be an acceptable form of delivery under this section. However, section 71 of the Act permits that I may make an order that a document not served in accordance with section 88 was sufficiently served for purposes of this Act.

The evidence entered by the tenants show that text messaging appeared to be the primary or major form of communication between the parties. I therefore order that the tenants' text message delivery of their notice, dated February 6, 2011, to vacate on March 6, 2011, was sufficiently served.

I find that the landlord acknowledged this notice on two separate occasions, with her text message reply to the tenant on February 6, 2011, and her signature on the security deposit refund, which clearly stated the end of tenancy date was on March 6, 2011.

Under section 50, where the tenant has paid full rent for the first of the two months, and not the second, and has given a written 10 day notice to vacate on a date that falls in the second month, the tenant receives free occupancy for a portion of the last month, and then is entitled to receive financial restitution for the remaining days of the last month, after the tenant has vacated.

I therefore find, pursuant to section 51, that the tenants are entitled to compensation for the month of March in the amount of \$1,525.00, less the prorated rent for five days of \$250.07. I find the tenants have established a monetary claim in the amount of **\$1,274.32**. ($\$1,525.00 \text{ monthly rent} \times 12 \div 365 \text{ for a daily rate of } \$50.14. \$50.14 \times 5 \text{ days} = \250.07).

As to the tenants' claim for compensation equal to two months' rent under section 51(3), they have argued that the landlord has not used the rental property for the stated purpose. However I find the majority of the evidence consisted of disputed verbal

testimony which does not sufficiently meet the burden of proof. I therefore find that the tenants have submitted insufficient evidence to prove that the landlord is not occupying the home as was stated on the landlord's notice to end tenancy and I **dismiss** their claim for \$3,050.00.

I award the tenants the filing fee of **\$50.00**.

Given the above I find the tenants are entitled to a **monetary order** in the amount of **\$1,041.60**, comprised of **\$1,274.32** for compensation under section 51 and the filing fee of \$50.00, less **\$282.72**, for the hydro bill and for the water/sewer billing owed to the landlord.

I am enclosing a monetary order for **\$1,041.60** with the tenants' Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this monetary order.

Conclusion

The landlord has established a monetary claim of **\$282.72**, which has been subtracted from the monetary claim of the tenants.

The tenants are granted a monetary order for **\$1,041.60**.

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: July 05, 2011.

Residential Tenancy Branch