Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, MNR, MNDC, FF, O
For the landlords: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened to deal with the cross applications of the parties.

The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent, for a Monetary Order for damage or loss under the *Residential Tenancy Act (the "Act"*), regulations or tenancy agreement, and for costs for emergency repairs and to recover the filing fee.

The landlords applied for an Order of Possession based upon unpaid rent, for a monetary order for unpaid rent and for damage or loss under the Act, authority to retain the security deposit and to recover the filing fee.

The tenants and the landlords' son and agent appeared, were affirmed into the hearing and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

At the outset of the hearing, the landlords' son expressed his surprise that the tenants would appear at the hearing considering the allegations made against the tenants, which will be explained further in more detail. I explained the tenants had an application as well and we would proceed with the hearing.

Upon my query, the landlords' son stated he was representing his parents at the hearing as agent due to his fluency in the English language and his parents' lack of English language skills. The agent stated that he had the full and complete knowledge and information of the issues, and was fully able to represent the landlords' interests in the hearing. Any reference to the landlords' submissions or testimony will be considered the agent's submissions or testimony.

On a procedural note, as will be explained in further detail in this Decision, the parties each stated they were in possession of an original tenancy agreement. The parties were requested, and agreed, to provide to the Residential Tenancy Branch the original tenancy agreement within one week of the hearing, on or before July 29, 2011.

The tenants complied and sent in their original document, received on July 25, 2011.

The landlords failed to comply, instead sending in a two page document, dated July 25, 2011. This document was not requested and not provided prior to the hearing. Therefore I consider this a late submission of evidence and the document was not reviewed or considered. Thus the Decision was based upon the evidence submitted prior to the hearing and the tenants' original tenancy agreement which was submitted in compliance with my request.

On a further note, I have listed the parties as they appear on the tenant's application, with exception of the spelling of the landlords' surname. The spelling of the landlords' surname is as it appears on a previous Dispute Resolution Decision and as it appears as the landlords' signatures on the tenancy agreement. The landlords' application listed the female tenant as a party and also had a different spelling of the landlords' first names.

Issue(s) to be Decided

1. Are the tenants entitled to monetary compensation for damage or loss under the Act, regulations or tenancy agreement and for the cost of emergency repairs?
2. Are the tenants entitled to an order cancelling the Notice to End Tenancy?
3. Have the landlords established an entitlement for an Order of Possession?
4. Are the landlords entitled to monetary compensation for damage or loss under the Act, regulations or tenancy agreement and for unpaid rent?
5. Is either party entitled to recover the filing fee?

Background and Evidence

The parties were previously in dispute resolution on the tenants' application on June 15, 2011, which was adjourned to consider a jurisdictional issue, and on June 23, 2011, to conclude the hearing. The tenants supplied a copy of that Decision. In that Decision by another Dispute Resolution Officer (DRO), it was established that the rental unit is one of two suites in a house, the landlords live next door, the tenancy started on May 15, 2010, and rent of $1,250.00 is due on the 15th day of each month.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain why the Notice had been issued.

Landlords' Application

The landlord testified that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on June 16, 2011, by a neighbour. The landlord submitted a proof of service into evidence, which listed the landlords' son actually delivering the document and witnessed by that neighbour and the male landlord. Neither the neighbour nor the male landlord was present at the hearing to confirm delivery of the Notice.

The tenants denied receiving the Notice and only learned that a Notice existed by checking periodically with the Residential Tenancy Branch.

I note that the 10 Day Notice entered into evidence by the landlords is an original document, not a copy, as it contains yellow, highlighted blocks for "Because," "Tenant:...," and "NOTICE:...," which appears on the form downloaded and printed from the Residential Tenancy Branch's (RTB) website.

The Notice listed the amount of $1,250.00 as unpaid rent for June 15, 2011, and had an effective move out date of June 25, 2011.

The landlord stated that the tenants had not paid rent for June or July and requested an order of possession and a monetary order for the unpaid rent for June.

The landlords submitted into evidence a copy of a tenancy agreement and written submissions which state that the tenant has committed forgery. The forgery is allegedly contained on the tenancy agreement entered into evidence by the tenants.

The landlord submitted that the tenants did not supply their evidence to them, but that he, the son, only found out about the alleged forged document when he went to the Residential Tenancy Branch to apply for dispute resolution and was told by an information officer that the tenants had filed an application.

According to the landlord, he viewed the tenant's file and discovered the alleged forged document, which he knew to be forged as he, the agent, had the "original valid tenancy agreement."

The landlords' submissions were quite detailed in outlining the punishment for forgery, stating that forgery is an indictable offense, a violation of Section 366(1) of the *Criminal Code* and "is liable to imprisonment for a term not exceeding ten years."

The landlords in the written submissions go onto characterize the male landlord as the "Victim" and the male tenant as the "Accused."

As proof of the forgery, the landlord pointed out, among other things, that the actual, full names of the landlords were incorrect on the tenants' document, the length of tenancy was incorrect, different items were provided for in the forged document in the tenancy not provided for in the real document, and incorrect dates were listed.

The landlord questioned the authenticity of all documents by the tenants due to the alleged forged document submitted by the tenant.

The landlords also requested through the written submissions the name and identification number of the assigned Dispute Resolution Officer as their Decision will hold strong importance in potential future legal proceedings. This request was not, however, repeated at the hearing, although I introduced myself with my first initial and surname.

Upon my query, the landlord testified that the "real" tenancy agreement was signed by all parties on *May 15, 2010*, as shown on the copy submitted by him, and further upon my query, he stated, without hesitation, the tenancy agreement itself was printed from the Residential Tenancy Branch (RTB) website on *May 13, 2010*.

I made a note of these statements, repeated them to the landlord and he affirmed the testimony and dates emphatically.

I then directed the landlord's attention to the bottom of page 1 of 6 of the tenancy agreement he provided into evidence and asked the landlord how it was possible that a document which was not created or available for printing from the RTB website until *March 2011,* as indicated on the document he submitted at the bottom of page 1 of 6, was signed on May 15, 2010.

I further asked if he was aware that the RTB was not within the Ministry of Energy and Mines on May 15, 2010, as indicated on the document he submitted at the bottom of page 1 of 6.

The landlord at this time refused to make any further statements about the tenancy agreement until he had a chance to talk to his lawyer, who at that time had the document, according to the landlord.

The tenants denied receiving the landlords' evidence, application or notice of hearing.

Tenant's Application:

In addition to seeking a cancellation of the Notice, the tenants have listed a claim in the amount of $5,000.00 in their application; however, the written submissions establish that the tenants' total monetary claim is for the amount of $21,164.15 for repairs, carpet replacement, landscaping/lawn mowing, clean up and unpaid utility bills for the other tenant, which includes property management.

The tenants submitted into evidence a copy of the tenancy agreement, carpet receipts, furnace cleaning receipts, toilet repair and replacement receipts, an oven repair receipt, and requests for landscaping/lawn maintenance and clean-up costs and unpaid utility bills.

The tenants contend that the DRO in the previous Decision instructed them to submit an application for monies owed. I note that no such instructions were listed in that Decision; however, the DRO did make a finding that the tenants acted on the landlords behalf as property manager when the tenant accepted rent from the other tenant, living in the rear suite, made repairs to the other tenant's suite and wrote to the other tenant with respect to parking and unpaid utilities.

The DRO also dismissed the tenants' amended application for a monetary order for $21,164.15, with leave to reapply, as the amended application was not served on the other party in sufficient time to provide an opportunity to be heard.

The DRO went onto to inform the landlords that they are responsible for making required repairs to both rental units.

The tenant testified that when they moved in they were told by the landlords that they could buy the home, which led the tenants to spend their own money for cleaning, upgrading and repairing of the rental unit. The tenant submitted that they, the tenants, would not have spent their own money, in excess of $20,000.00, if they were not led to believe they would be purchasing the property.

There was no move in condition inspection report; however, the tenants submitted receipts which show payments for repair of both their unit and the other tenant's rental unit. Further, the tenants submitted proof of upgrades to the rental unit.

The tenant further submitted that when they had complaints about the rental unit or requests for repairs, the landlords said that they, the landlords, were not responsible as the tenants were going to buy the home.

The tenant submitted that they have acted as the property manager for over a year, with rent receipts from the other tenant, payable to the tenants, as proof of being in the position of property manager for the landlords.

The tenants were required to pay for the utilities for the entire home, and collect the other tenant's share of the bill. The other tenant's portion of the latest utility bill, $125.00, has not been paid.

The tenants stated that since the landlords have been cautioned against the tenants acting as property manager, the yard and premises have become overgrown and unkempt.

The tenants submitted photos of the premises and home, depicting the state of the rental unit at the beginning of the tenants' occupancy, including a carpet filled with dog urine, mould and water, dead rats in the crawl space, plumbing problems with the toilet and connecting water pipes held together by duct tape, exposed pipes, missing ceiling tiles with exposed and leaking pipes and poor landscaping, all of which required repairs to be performed by the tenants.

Analysis

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

I have given careful consideration of all oral and written evidence before me; however, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Awards for compensation are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). In order to be successful in obtaining an award for damage or loss, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the Applicant, each party in this case, must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

The landlords allege forgery by the tenants, which is depicted by the tenancy agreement submitted by the tenants. The landlord, both in written submissions and testimony, stated that he had the original tenancy agreement signed by the parties on May 15, 2010, in his possession, the copy of which he supplied into evidence. The landlord submitted that the "real tenancy agreement" he has in his possession would prove the tenants committed forgery.

However, when questioned specifically about that document, the landlord declined to answer further questions until speaking to his lawyer, who I note was not in attendance at the hearing.

In an effort to substantiate the alleged forgery, the landlord agreed that he would send to this Dispute Resolution Officer the original "real tenancy agreement" within one week of the hearing; yet the only original document I received was from the tenants, who had also agreed to send in their original tenancy agreement. The copy of this document was previously submitted into evidence by the tenants and was the document which the landlords claim was forged.

Instead of the "real tenancy agreement," the landlords submitted what are apparently further written submissions. As I have previously stated, the submission was not reviewed or considered as it was not the requested document and was not timely submitted prior to the hearing in accordance with rules for submission of evidence.

I find the copy of the tenancy agreement submitted by the landlords as having been signed by the parties on May 15, 2010, was not created or available online to print from the RTB website until March 2011, and that the RTB was not within the Ministry of Energy and Mines as listed on that document, until March 2011.

I therefore find, on a balance of probabilities, that the forged document submitted to the RTB for consideration in this dispute resolution hearing was that of the landlords'.

As I have found that the landlords submitted a forged document in order to discredit the tenants and mislead the Residential Tenancy Branch, I find the landlords proceeded with malicious intent. Due to this finding, I further find that the landlords lack credibility and which brings all evidence and testimony of the landlords into question.

As I have found that the landlords' testimony and evidence lacks credibility or reliability, the testimony and evidence of the tenants will be preferred.

Tenants' application:

The tenants stated that the landlords declared that they, the tenants, would be buying the house and relied on these statements to make repairs and upgrades which the landlords would not. I accept this testimony and evidence.

I therefore find the tenants have established a monetary claim of a loss for carpet replacement for $750.00, furnace and duct cleaning for $353.05, plumbing repair for $773.86, toilet replacement for $118.41, and oven repair for $139.83, through their receipts, in the total amount of **$2,135.15**.

The tenants submitted that the landlords did not provide and maintain the rental unit in a reasonable state of decoration and repair and that it was not suitable for occupation by the tenants. I accept this testimony and find it reasonable that the tenants had to have an initial clean up at the start of the tenancy to bring the rental unit into a reasonable state of decoration and repair. However, I do not accept that the tenants are entitled to the claimed amount of $1,500.00. I find the amount of $600.00 to be reasonable and find that the tenants have established a **monetary claim** of **$600.00** for initial clean-up.

The tenants submitted that they have paid all utilities for the other tenant for the year and have submitted copies of bills. I accept this testimony.

However, I am unable to determine from the bills submitted the correct, true amount for which the other tenant would be responsible. The tenants claimed the amount of 12 months @ $100.00 per month for a total of $1,200.00. However, without specific proof, I am unable to accept this amount. I find the amount of $500.00 to be reasonable for the unpaid utilities for a year and I find the tenants have established a **monetary claim** of **$500.00 for unpaid utilities** for the other tenant for which the landlords are responsible.

I find the tenants are responsible for grass cutting and routine yard maintenance under the Residential Tenancy Branch policy guidelines. I do not have evidence that the

tenants' claim is for other than routine yard maintenance. I therefore **dismiss** the tenants' claim for **$1,330.00** for landscaping/lawn mowing.

The tenants submitted that they have provided property management for the landlords since they have moved into the rental unit. The previous DRO found that the tenants acted on behalf of the landlords. I accept the testimony of the tenants. Based upon the accepted tenants' testimony and previous Decision, I find that the tenants acted for and on behalf of the landlords and provided property management services.

The tenants have claimed quantum merit hours of labour for property management fees in the amount of $15,000.00. I do not find that the tenants are entitled to this amount. However, I find the amount of $75.00 per month for 13 months (May 15, 2010, through June 15, 2011) to be reasonable to charge for property management. I therefore find the tenants' have established a **monetary claim** for **$975.00**.

As I find that the tenants' application had merit, I award them the filing fee of $50.00.

I find the tenants have established a total monetary claim in the amount of **$4,260.15**, comprised of $2,135.15 for carpet replacement, furnace and duct cleaning, plumbing repair, toilet replacement, and oven repair, $600.00 for initial clean-up, $500.00 for unpaid utilities, $975.00 for property management fees and the filing fee of $50.00.

Landlords' application

The landlord testified that the tenants were served a 10 Day Notice to End Tenancy on June 16, 2011. The tenants testified that they were never served the Notice. I accept the tenants' testimony.

Section 47 of the Act states a notice to end tenancy must be given to the tenant to be effective. As I have accepted the tenants' testimony that the Notice was not served upon the tenants as required, **I order that the 10 Day Notice to End Tenancy for Unpaid Rent, signed by the landlord and dated June 16, 2011, is cancelled and is of no force or effect**, with the effect that this tenancy continues it until ended in accordance with the Act.

The tenants admit that they did not pay rent for the month of June and July as they believed they were entitled to do so by the previous DRO. However, the DRO did not give the tenants a monetary order or authority to withhold rent and, under the Act, the tenants must pay rent and pay it on the day that it is due, unless they have written

authority to withhold any amounts. I therefore **accept** the landlords' claim for **$1,250.00** for unpaid rent for June 2011.

I decline to award the filing fee to the landlords.

As I have found the tenants established a monetary claim of $4,260.15, I decline to grant the landlords a monetary order and find that the landlords' monetary claim is offset against the tenants' monetary claim.

I provide the tenants with a **Monetary Order** for the total amount of **$3,010.15** (total claim of $4,260.15 less $1,250.00 for June 2011, rent, awarded to the landlords). I **order** that the rent for June 2011 is paid in full.

In the event the tenancy ends, I am enclosing a monetary order for **$3,010.15** with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with this monetary order.

In the alternative, should the tenancy continue, I authorize the tenants to satisfy the monetary order of $3,010.15 by withholding rent of $1,250.00 for July 2011, $1,250.00 for August 2011, and $510.15 from the rent of $1,250.00 for September 2011. To clarify, the total rent for September 2011 will be in the amount of $739.85. Beginning in October 2011, the full amount of rent for $1,250.00 will be due and owing.

As to the issue of utilities for the rental premises, I find the landlords' expectation that the tenants are to be responsible for splitting and collecting the cost of hydro and natural gas consumed in a separate self contained suite with other tenants of the premises to be unconscionable.

I HEREBY ORDER the hydro and natural gas accounts for the two separate rental units to be switched into the landlords' name no later than August 9, 2011, for their collection of the utility payments from the tenants in the separate units. The tenants are at liberty to provide a copy of this Decision to the hydro and natural gas companies to ensure the utilities are put in the property owner's name in accordance with my Orders.

Conclusion

The landlords' 10 Day Notice to End Tenancy is cancelled.

The landlords have established a monetary claim of $1,250.00.

The tenants have established a monetary claim of $4,260.15.

The landlords' claim is offset by the tenants' claim and the tenants are authorized to satisfy the remaining claim of $3,010.15 by deducting future rent payments as directed above or by enforcing the monetary order.

The landlords are directed to put the utility accounts for the two separate rental units in their names no later than August 9, 2011, in order that the landlords can collect the payments from the separate rental units.

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 29, 2011.

Residential Tenancy Branch