

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord submitted written evidence that his hand delivery of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was witnessed by an individual who saw the landlord give that Notice to the male tenant at 3:00 p.m. on August 15, 2011. The female tenant (the tenant) confirmed that the tenants received the landlord's 10 Day Notice. The tenant also confirmed that the landlord handed a copy of the dispute resolution hearing package to the tenants on August 25, 2011. I am satisfied that the landlord served these documents to the tenants in accordance with the *Act*.

At the hearing, the parties agreed that the tenants have vacated the rental premises before this hearing. As such, this tenancy has ended and the landlord said that he no longer required an Order of Possession.

Preliminary Matters – Tenants' Notices to End this Tenancy

There was disagreement between the parties regarding the tenant's testimony regarding notices to end tenancy the tenants allegedly attempted to serve to the landlord. The tenant said that she provided oral notice to end this tenancy in July. She testified that on July 5, 2011, she attempted to give the landlord the tenants' written notice to end this tenancy by August 15, 2011. She testified that the landlord refused to accept the tenants' written notice to end this tenancy at that time. She said that the landlord did sign a document tallying the amount of rent owing and paid for July 2011, which also included her written notice to end this tenancy due to the landlord's failure to attend to her concerns about renovations and the condition of the rental premises. At the hearing, the tenant read into the record the entire contents of this document containing the tenants' July 5, 2011 written notice to end this tenancy. She also testified that she handed the landlord a written notice to end this tenancy by the end of August 24, 2011, the day before the landlord's 10 Day Notice was to take effect.

The tenant's witness testified that the document read into evidence by the tenant was the same document that the tenant had the landlord sign on July 5, 2011. However, the tenant's witness admitted that she was not present during all of the meeting between the tenant and the landlord on July 5, 2011. She said she did not know if the landlord refused to accept the tenant's written notice to end this tenancy on that date.

The landlord said that the tenant did not give her a written notice to end this tenancy on July 5, 2011. The landlord testified that he did sign a document confirming the amount of rent owing and the allowance given for renovations during July 2011. However, he said that there was no reference in that document to the tenants' written intention to vacate the rental unit by August 15, 2011. The landlord testified that he did receive the tenants' written notice to end this tenancy on August 24, 2011.

At the hearing, both parties agreed that the landlord signed a document on July 5, 2011, the contents of which were in dispute. The contents of that document were read into evidence, although neither party presented the signed document as written evidence before the hearing. Since both parties were given an opportunity at the hearing to provide oral testimony and ask questions about the contents of the July 5, 2011 document, I asked the tenant to fax a copy of that document to me. I advised both parties that I would only be considering this document if the tenant provided it to the Residential Tenancy Branch within 24 hours of the hearing. I noted that the purpose of obtaining the document would be to verify that the contents were as entered into oral testimony at the hearing. Neither party objected to my request for this document, nor the purpose to which I told the parties I would be utilizing this document.

I received the tenant's fax of the July 5, 2011 document within 24 hours of this hearing. I did not find the document determinative of whether the landlord initialled his name on his breakdown of rent owing and the allowance given or whether it signified he had accepted the tenant's handwritten addition to that document indicating her intention to vacate the rental unit by August 15, 2011. As my decision does not turn on this document, I have not considered it in my decision regarding the landlord's application.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties agreed that this month-to-month tenancy commenced on April 1, 2011. The parties agreed that monthly rent was initially set at \$1,300.00. However, after the landlord realized that the tenants had a dog, the parties agreed that an extra \$100.00 monthly charge was added to the tenants' rent. The tenants were also responsible for paying a portion of the utilities for this rental property.

The tenant testified that she made an initial payment to the landlord of \$2,200.00 on March 11, 2011. After some discussion between the parties, the parties agreed that \$1,300.00 of this amount was for their base rent for April 2011, \$100.00 was for the monthly charge for keeping a dog on the premises, \$675.00 was for the tenants' security deposit and the remaining \$125.00 was a pet damage deposit. The landlord confirmed that he continues to hold the tenants' security and pet damage deposits.

The landlord did not provide a standard Residential Tenancy Agreement approved by the Residential Tenancy Branch for this tenancy. Rather, the landlord entered into written evidence a one-page document entitled Tenant and Landlord Renting Agreement (the Agreement). Although the parties agreed that this formed the basis for this tenancy, this Agreement appears to have included the entire two storey rental property. This Agreement included another rental unit one of the tenants was apparently supposed to look after for the landlord. The Agreement identified the monthly rent as \$2,100.00 plus the previously mentioned \$100.00 monthly charge for keeping a dog.

The Agreement between the parties did not contain many standard features required in a standard Residential Tenancy Agreement. For example, there are no tenant names or landlord names on this Agreement, other than their signatures at the bottom of the Agreement. Other than the overall address for the rental property (without a municipality), the location of the rental premises is not indicated on the Agreement. The Agreement also contains clauses that are not standard and are contrary to the *Act* (e.g. Four percent rent increase every year.)

The landlord applied for a monetary award of \$2,600.00, as he maintained that the tenants failed to pay rent for August and September 2011.

The tenant testified that various problems associated with this tenancy should be taken into account in considering the landlord's claim for a monetary award. The tenant confirmed that she had not submitted any application for dispute resolution seeking a monetary award from the landlord. She asked that the July 5, 2011 written notice to end tenancy that the landlord refused to accept be taken into consideration in limiting the tenants' responsibility for unpaid rent. She testified that the tenants vacated the rental premises on August 24, 2011, and left the keys for the landlord on the counter.

Later in the hearing, she testified that further cleaning by the tenant(s) occurred after August 24, 2011 and the keys were left for the landlord on August 30, 2011.

Although the tenants vacated the rental premises before August 30, 2011, the landlord said that the rental premises were not left in acceptable condition at the end of this tenancy. The landlord said that there were ongoing discussions between the landlord and the male tenant with respect to cleaning and repairs that the landlord claimed were necessary to restore the rental unit to rentable condition. The landlord has not submitted any claim for a monetary award for damage to the rental unit.

The landlord testified that he did not obtain vacant and clear possession of the rental unit and the keys to the rental unit until September 2, 2011. The landlord said that he has not made any efforts to re-rent the rental premises because the tenants left the rental unit in poor condition and considerable repairs will be required before the premises can be rented to new tenants.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for August 2011, the tenants would have needed to provide notice to end this tenancy in writing before July 1, 2011. Section 52 of the *Act* requires that a tenant provide this notice in writing.

Based on the evidence before me, there is no question that the tenants have not paid rent for either August or September 2011.

I will first address the landlord's claim for a monetary award for unpaid rent for August 2011. Even if the tenant is correct in maintaining that the landlord refused to accept her written notice to end this tenancy on July 5, 2011, a written notice to end tenancy issued on that date would have no effect on the tenants' responsibility for paying rent for August 2011. I find that the tenants did not comply with the provisions of section 45(1) of the *Act* and made no rent payment for August 2011. Consequently, I find that the landlord is entitled to a monetary award of \$1,400.00, the amount the tenants were paying to occupy the rental unit with their dog for August 2011.

In considering the landlord's claim for a monetary award for unpaid rent for September 2011, the parties have presented conflicting evidence regarding the date the tenants provided written notice to end their tenancy as well as the actual date when they vacated the rental unit. Although leaving keys in the rental unit for the landlord is not the best way to surrender vacant possession to a landlord, the tenant testified that they were no longer living in the rental premises by the time the landlord's 10 Day Notice was to take effect on August 25, 2011. However, ending a tenancy also requires removing all of the tenants' personal possessions arising out of that tenancy. The tenant admitted that the landlord and the male tenant continued to communicate about the state of the rental unit. She claimed that the cleaning process and the clearance of all of the tenants' possessions was completed and keys provided to the landlord by August 30, 2011. The landlord said that his attempts to have the tenants properly clean the rental premises did not conclude until September 2, 2011 when he obtained final possession of the premises.

Based on the evidence presented by the parties and on a balance of probabilities, I find that this tenancy likely ended by August 30, 2011. The process of discussion regarding the condition of the rental unit at the end of this tenancy extended between the date the tenants physically vacated the rental unit on August 24, 2011 and September 2, 2011 when the landlord said he discontinued efforts to have the tenants conduct further cleaning and repair of these premises. The keys were available for the landlord's pickup in the rental unit before the effective date of his 10 Day Notice. I find that this tenancy did not extend to September 2, 2011 as maintained by the landlord. Unsuccessful attempts to obtain further cleaning of the rental unit after the tenants vacated the rental unit does not equate to an extension of this tenancy beyond August 30, 2011.

There is undisputed evidence that the tenants did not pay any rent for September 2011. Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord testified that he has made no effort to re-rent the rental premises for September 2011 because the tenants have left the rental unit in poor condition requiring considerable repair. Other than his oral testimony at the hearing, the landlord provided no photographic or written evidence to support his assertion that the tenants were responsible for damaging the rental unit to the extent that he has been unable to re-rent the premises for September 2011. He provided no joint move-in or move-out condition inspection reports, he submitted no before and after photographs, and has not submitted an application for dispute resolution to obtain a monetary award for damage. At the hearing, the tenant claimed that the premises were not in proper condition when they moved in and that they did not obtain clear and vacant possession when they first occupied the premises in April 2011. The tenant submitted undisputed oral testimony that the landlord agreed to reduce their July 2011 rent to account for renovations that the tenants had to undertake in order to remain in the rental unit. The tenant also testified that the tenants were unaware when they moved in that the property had been used as a “drug house” before they commenced their tenancy.

Based on the evidence submitted, I find on a balance of probabilities that the landlord has not satisfied to the extent necessary that he has discharged his responsibilities under section 7(2) of the *Act* to mitigate the tenants’ losses for unpaid rent for September 2011. Consequently, I dismiss the landlord’s application for a monetary award for unpaid rent for September 2011 without leave to reapply.

I allow the landlord to retain the tenants’ \$675.00 security deposit and \$125.00 pet damage deposit in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Since the landlord has been partially successful in his application, I allow him to recover \$25.00 of his filing fee for this application from the tenants.

Conclusion

The landlord’s application to end this tenancy and obtain an Order of Possession is withdrawn.

I issue a monetary Order in the landlord’s favour in the following terms which allows the landlord to recover unpaid rent for August 2011 and part of the landlord’s filing fee and to retain the tenants’ security and pet damage deposits.

Item	Amount
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Unpaid August 2011 Rent (Base Rent plus Rent for Tenants' Decision to keep a dog on the premises)	\$1,400.00
Less Security Deposit	-675.00
Less Pet Damage Deposit	-125.00
Recovery of ½ Filing Fee for this application	25.00
Total Monetary Order	\$625.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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*.