



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF, (MND) (MNSD)

Introduction

This matter dealt with an application by the landlords to obtain a Monetary Order for Unpaid Rent, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application. The landlord also sought to amend their application to include a Monetary Order for damages to the unit, site or property. I have also allowed the landlord to amend their application to keep the security deposit as they have detailed this claim in their written submissions. The tenants did not raise any objections to this amendment. The landlords withdraw their application for an Order of Possession as the tenants have moved from the rental unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenants on August 18, 2011.

The parties advised me there was an error in the last name of one of the tenants and the spelling of her first name. The parties did not raise any objections to the error being corrected and this has now been amended.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on October 01, 2010. No written tenancy agreement was in place however both parties agree this was a month to month tenancy and rent is \$950.00 per month due on the 1st of each month. The tenants paid a security deposit of \$475.00 and a pet deposit of \$200.00 both on September 27, 2010.

The landlord's testify that they did not conduct a move in condition inspection at the property when the tenants moved in. They state they gave the tenants opportunity to attend a move out inspection but the tenants failed to attend.

The landlord's testify that the tenants owed an NSF fee of \$25.00 for a returned cheque for Julys rent. The tenants failed to pay rent for August, 2011 of \$950.00. A 10 Day Notice was served upon the tenants on August 02, 2011. This Notice indicated that the tenants had five days to pay the outstanding rent, dispute the notice or the tenancy would end on August 12, 2011. The landlords state the tenants did not pay the outstanding rent and failed to pay rent for September, 2011 of \$950.00.

The tenants do not dispute that they failed to pay rent for August, 2011 but do dispute having to pay rent for September. The tenants testify they gave the landlord verbal Notice to end their tenancy on July 15, 2011 effective on August 15, 2011. They state the landlord informed them that the Notice had to be given for one month by the first of the month. The tenant's testify the house was available for viewings from July 15, 2011. The tenant testifies they had a walkthrough of the house with the landlords and brought up problems they were

having with mouse droppings and they asked the landlord to take a look at this. The tenant's testify that as the landlords did not act upon this so they withheld their rent. The tenants state as they had given Notice in July which would have been legally effective from July 31, 2011 the landlord is not entitled to claim for September's rent from them.

The landlords testify that the tenants left the carpets in the master bedroom and second bedroom with large stains some of which were urine stains from their dog which were still fresh at the end of the tenancy. The landlords argue that from the furniture impressions left on the carpets and the position of the staining it is evident that these stains were caused during the tenancy. The landlord's testify the carpet was only three years old at the start of the tenancy. The landlord's testifies when they pulled up the carpets and underlay there was no staining on the floor which shows no moisture was getting onto the carpets from the floor. The carpets were replaced with laminate flooring as this was the cheaper option and they seek to recover the sums of \$397.32 for flooring and \$196.00 for the underlay. (Receipts provided). The landlord also seeks to recover the sum of \$200.00 paid to a neighbour to help the landlord fit the flooring (no receipt provided).

The landlords testify the tenants left the unit in an unclean condition at the end of the tenancy. The walls had to be repainted because of damage and dirt on the walls and baseboards. The landlords also states the tenants had left unpainted fresh drywall where they had made a repair. The landlord seeks to recover \$98.91 for paint and \$26.97 for primer for the bare drywall. (Receipts provided).

The landlords testify that the tenants removed the backdoor screen after the landlords noticed it had been broken. They state the tenants replaced this with the front door screen and have not returned the back door screen since the end of their tenancy. The landlords have had to purchase a new screen and seek to recover this cost of \$192.04. (Receipt provided).

The landlords testify that the tenants had done some cleaning at the end of the tenancy but it was unacceptable and they had to pay the sum of \$200.00 to have the unit professionally cleaned. The landlords seek to recover this cost from the tenants. (Receipt provided).

The landlords testify they have deducted the tenant's security deposit of \$475.00 from the outstanding rent and still retain the pet deposit of \$200.00 pending this decision for damage to the carpets.

The tenant's testify that the landlord failed to do a move in condition inspection of the unit with them at the start of the tenancy. The tenants also claim the landlords photos were taken before the tenants had cleaned the unit. The female tenant testifies that one of the photos shows a chalk drawing on a wall. She states she wiped this off at the end of the tenancy which shows when the landlord's photos were taken.

The tenants testify that the carpets looked as if they had been cleaned when they first moved in to the unit but a few months later they noticed that the carpets in the small bedroom were moist. As summer came with the heat the tenants testify a stain appeared through on the master bedroom carpet. The tenants dispute that their animals caused these stains and dispute that urine stains on the carpet were fresh at the end of their tenancy as their pets had been removed from the unit on July 15, 2011. The tenants agree there were a few small stains on the carpets but when they went to clean the carpets at the end of the tenancy the the carpets had already been removed by the landlords.

The tenants testify that when they moved into the unit there were a lot of holes and screws on the walls. The male tenant testifies he fixed some of these for the landlord with his permission.

The tenants do not dispute that they removed a screen door and take full responsibility for this cost.

The tenants testify that they cleaned the house at the end of the tenancy and took photos which are provided in evidence on August 31, 2011. They state the house was clean when they left it and it was left in the same condition they originally rented it in. The tenants claim the only thing left in the house was some garbage in the garage and some cleaning materials. These items were removed the next day.

The landlords testify that they did take their pictures on August 31, 2011 before the tenants had fully moved out. They suggest, as the tenants did not return all the keys to the unit that they returned to the unit after the landlords cleaner had cleaned the unit and took pictures showing the unit clean.

The tenants testify that the landlord is not entitled to keep their security and pet damage deposits as they failed to do a move in condition inspection.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses, With regards to the landlords claim for unpaid rent for August and September, 2011; Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently as the tenants did not have a right to withhold their rent for August due to mice droppings I find the landlord is entitled to recover unpaid rent for August, 2011 of **\$950.00**. The tenants argue that they gave the landlord notice to end the tenancy and therefore the landlord is not entitled to recover rent for September, 2011. In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. The tenants agree the Notice they gave the landlord was verbal notice and not written notice. S. 45 of the Act requires the tenants to give a landlord written notice to end their tenancy. As the tenants failed to do this I find the landlord is entitled to rely on the 10 Day Notice and are therefore entitled to a loss of rental income for September, 2011 of **\$950.00**.

The landlord seeks to recover an NSF fee of \$25.00 however the landlords have provided no evidence that this fee was charged by their bank and there is no tenancy agreement in

place indicating that this kind of fee will be applied for returned cheques. Consequently this portion of the landlords claim is dismissed.

With regard to the landlords claim to keep the security deposit and pet deposit, Sections 23(4), of the *Act* require a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved in, I find the landlords contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(a) of the *Act* says that the landlord's right to claim against the security and pet deposits for damages is extinguished.

I find however, that sections 38(4)(b), 67 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security and pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. In this matter as I have found in favour of the landlords claim for unpaid rent I order the landlord to keep the tenants' security and pet damage deposits to the sum of **\$675.00** to offset against unpaid rent.

With regard to the landlords claim for flooring, painting I have applied a test used for damage and loss claims as follows: the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have no evidence before me with respect to the landlord's claim that the tenants did cause staining on the carpets and damage to the walls. As the tenants have contradicted the landlord's evidence and testimony the burden of proof falls to the landlord to provide corroborating evidence to support their claim that the carpets and walls were in a reasonably good condition at the start of the tenancy. The landlords failed to conduct a move in condition inspection to show the condition of the unit at the start of the tenancy and

therefore, I find that the landlord has failed to satisfy element 2 of the above test and the landlord's claim for damages to the carpets and walls cannot succeed and is therefore dismissed.

With regard to the landlords claim for cleaning; the tenants have testified they left the unit in a clean condition at the start of the tenancy and the landlords have agreed they took the photos sent in evidence before the tenants had moved out. I cannot therefore rely on the landlord's photographic evidence showing the unit in an unclean condition and there is nothing to substantiate the landlord's claim that the tenants returned to the rental unit after the landlords cleaner and cleaned the unit again. Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and this section of their claim is dismissed.

With regard to the landlords claim for a screen door; the tenants take responsibility for the screen door therefore the landlord is entitled to recover the sum of **\$192.04** from the tenants pursuant to s. 67 of the *Act*.

As the landlords have been partially successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for August, 2011	\$950.00
Loss of rental income for September, 2011	\$950.00
Replacement screen door	\$192.04
Subtotal due to the landlord	\$2,092.04
Plus filing fee	\$50.00
Less security and pet deposits	(-\$675.00)
Total amount due to the landlord	\$1,467.04

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,467.04**. The order must be served on the respondents and is enforceable through the Provincial Court as an order 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*.

Dated: September 22, 2011.

Residential Tenancy Branch