



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNR, MNDC, FF

Tenants: DRI, CNC MNDC, OLC, RPP, LRE, LAT, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought a monetary order and the tenants sought to dispute a rent increase; cancel a notice to end tenancy; an order to have the landlord comply with the *Residential Tenancy Act* (Act), regulation or tenancy agreement; return the tenants' personal property; suspend or set conditions on the landlord's right to enter the unit; authorize the tenants to change the locks on the rental unit; and a monetary order for compensation for damage or loss.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

At the outset of the hearing the tenants confirmed that they have moved out of the rental unit and there is no longer a need to dispute the rent increase; the notice to end tenancy; or for an order to have the landlord comply with the Act, regulation or tenancy agreement; to suspend or set limits on the landlord's right to enter the unit; or to authorize the tenant to change the locks on the rental unit.

I amend the tenants' application to include only their application for a monetary order for compensation for damage or loss and an order to have the landlord return the tenants' personal property. The tenants also amend the amount of their claim to reduce it to \$700.00 in recognition that they vacated the rental unit after September 2011. I also accept these amendments.

The landlord also noted that she no longer wanted to pursue \$700.00 of her claim related to the loss of quiet enjoyment, blocking the common path; lock removal and damage to a gate and unnecessary stress. The landlord still seeks compensation for carpets and rent. I accept the landlord's amendments.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for compensation for damage or loss and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to an order to have the landlord return personal property; a monetary order for compensation for the loss of quiet enjoyment; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the original tenancy began in July of 2009 as a month to month tenancy with rent due on the 1st of each month. The rent as of January 2011 was \$800.00 per month but was reduced in February 2011 to \$700.00 as a temporary reprieve from the landlord after the female tenant lost her job in January 2011. The parties disagree with what the terms were in relation to when the rent would go back to \$800.00.

The landlord is the mother of the female tenant and the relationship between the landlord and tenants had been very casual and familial until a falling out between the mother and daughter in late August 2011.

On August 30, 2011 the landlord provided a typewritten notice to the tenants that their rent would be going back to the original \$800.00 per month effective October 1, 2011. The notice included the following statement: "Thirty days notice, in writing, is required by yourselves to vacate the residence. Notice to vacate by me will be in writing, with a 90 day timeline to move.

On September 15, 2011 the landlord provided a typewritten notice giving the tenants 90 days to vacate the rental unit. The notice states the landlord wants to do renovations and requires the unit to be vacant by January 1, 2012. The notice also states that should the tenants want to leave sooner than December 15, 2011 they must provide the landlord with a letter giving 30 days notice.

The tenants testified that 6 days after they had received this notice the landlord verbally advised them that she wanted them out as soon as possible. The tenants vacated the rental unit over the next several days and finished moving everything by October 1, 2011 at which time they contacted the landlord to complete a move out inspection, the

landlord did not attend. The landlord seeks compensation for rent for the month of October, 2011 in the amount of \$800.00.

Both parties provided substantial documentation of the relationship between the two parties over the course of the last month and each provided testimony in relation to their interactions. Both parties acknowledge the tenants made attempts to block usage of gate that transitioned from their patio and yard area to the landlord's patio and yard area and the landlord made attempts to remove that blockage.

Each of the parties provided testimony of an incident where the landlord tried ringing the tenant's doorbell several times and when the tenant did not answer the landlord got her key for the unit and opened the door.

The tenants testified the landlord came into the unit was confrontational to the point where the female tenant threatened to call the police. The landlord testified that she just took one step into the unit and the tenant threatened to call the police. As a result the tenants seek compensation for the loss of quiet enjoyment in the amount equivalent to one month's rent for the month of September 2011.

The parties agreed the carpets in the rental unit had been replaced in 2009. The landlord provided photographic evidence and testified that the carpet had several stains; they smelled of pet urine; and that there was some fraying where the carpet met the tile flooring.

The tenant testified that she thought that her pet's may have urinated in one spot but not sufficient to warrant new carpeting and that the fraying resulted from poor installation and an incident where her heel got caught in the area and then her pets may have exacerbated the condition.

The landlord provided a copy of a receipt dated November 18, 2009 for the original installation of the carpet in the amount of \$1,364.25 and noted that she was informed the price would be higher now. The landlord claims \$2,000.00 for replacement carpet.

The tenants seek to have the landlord return to them a case of wine that had been purchased and bottled from a supplier that both parties had made purchases from. The tenants testified the supplier had made a mix up with accounts and contacted the landlord in September 2011 stating her wine was ready, the landlord picked up the wine.

The tenants testified that the wine was actually their wine and the landlord had no right to pick it up and/or retain it since this time. The tenants testified the supplier has been trying to contact the landlord to resolve this matter but the landlord has not contacted the supplier.

Analysis

While I recognize that as much of this dispute is related to a family matter, I have considered only facts and statements I find relevant to the tenancy itself. However, I also acknowledge that as a result of the familial relationship between the landlord and the female tenant the impact of the actions of each of the parties may have a more profound effect than had the parties had no familial relationship.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 49 of the *Act* allows a landlord to end a tenancy with a 2 month notice, if the landlord intends to renovate the rental unit in a manner that requires the unit to be vacant. I accept that the landlord provided the tenants with notice greater than 2 months for the above stated purpose.

Section 50 goes on to say that a tenant who has received a 2 month notice to end tenancy for landlord's use may end the tenancy earlier by giving the landlord 10 days written notice and must pay the landlord the proportion of rent that would be due to the effective date of that notice.

From the documentary evidence and testimony from both parties, I find the tenants did not provide any written notification to the landlord in accordance with Section 50 and as such, I find the landlord was not informed of the tenants' intent to move earlier than the effective date of the landlord's notice was on October 1, 2011. As such, I find the tenants are responsible for rent from October 1, 2011 to October 10, 2011.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be

enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As to the amount of monthly rent, I accept the parties entered into a verbal agreement to reduce the rent from \$800.00 to \$700.00 effective February 2011. Based on the conflicting testimony of each of the parties, I find I cannot determine what may have been agreed upon in terms of when the rent would be reinstated at the original amount.

As such and in the absence of any subsequent agreement between the parties, I find the rent, for the duration of the tenancy would have remained at \$700.00 per month. Therefore, in conjunction with my finds above, I find the tenant's owe the landlord \$225.81 in rent for the month of October, 2011.

In addition, Section 51 of the *Act* stipulates that a tenant who receives a notice to end tenancy under Section 49 of the *Act* is entitled to receive from the landlord an amount that is the equivalent of one month's rent. I therefore find the tenant's are entitled to \$700.00 for this compensation.

While the tenants have brought forward, primarily two issues, in relation to the loss of quiet enjoyment (use of the patio and the landlord's entry), I find that as a result of the change in the familial relationship both parties had to begin treating the tenancy in a different manner. I find that since details of what constituted the tenants' yard or what was common area had never been an issue for the 2 year duration of the tenancy and in light of the status of the familial relationship I find it reasonable that each party would be asserting a different understanding of the patio and yard limitations.

In relation to the landlord's entry into or the opening of rental unit door without notice or the tenants' permission, I find that a single occurrence is not sufficient to warrant a breach of the covenant of quiet enjoyment. As such, I dismiss the tenants' claim for compensation for the loss of quiet enjoyment.

Section 37 of the *Act* requires tenants who are vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Based on both parties testimony, I find the tenants failed to comply with Section 37 in regard to the carpet.

I find the tenants are responsible for the staining in the carpet during the tenancy, however, I accept the tenant's position that the fraying results from the lack of a transition guard between the carpeting and the tile flooring and as such is not the

tenant's responsibility. Based on the testimony provided I accept the carpets required replacement resulting from the urine smell.

As to the value of the carpet replacement, I find the landlord has failed to establish the current value to replace the carpeting but I will accept the value indicated in the invoice from the previous replacement in the amount of \$1364.25. Residential Tenancy Policy Guideline #37 contains a table of useful life for household products and the table indicates the useful life of carpeting is 10 years, as such I discount the established value in recognition of the 2 year age of the carpets, in the amount of \$272.85.

And finally, in relation to the case of wine the tenants seek to have returned, I find this is a matter unrelated to the tenancy and I decline jurisdiction on the matter. I note the tenants remain at liberty to pursue this matter in a court of competent jurisdiction.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$667.21** comprised of \$225.81 rent owed; \$1,091.40 carpet replacement; and the \$50.00 fee paid by the landlord for this application less \$700.00 compensation to the tenants for ending the tenancy for landlord's use.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: October 20, 2011.

Residential Tenancy Branch