Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes — Landlord: OPC, OPB, FF, MND, MNSD, MNDC
Tenants: MT, CNL, MNR, MNDC, OLC, LRE, FF, O

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for cause, an Order of Possession for breach of an agreement and to recover the filing fee from the tenants for the cost of the application. The landlord filed a second application requesting a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The tenants applied for more time to make an application to cancel a notice to end tenancy; for an order cancelling a notice to end tenancy for landlord's use of property; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order that the landlord comply with the *Act,* regulation or tenancy agreement; for an order permitting the tenants to change the locks to the rental unit; and to recover the filing fee from the landlord for the cost of the application.

All three applications were joined to be heard together.

The hearing did not finish on the first day of testimony and was adjourned for a continuation of the evidence. During the course of the hearing, the parties advised that the tenants moved from the rental unit on October 31, 2011 and therefore the landlord's applications for an Order of Possession are withdrawn. Similarly, the tenants' application for more time to make an application to cancel a notice to end tenancy; for an order cancelling a notice to end tenancy for landlord's use of property; for an order that the landlord comply with the *Act,* regulation or tenancy agreement; and for an order permitting the tenants to change the locks to the rental unit are also withdrawn.

Issue(s) to be Decided

The remaining issues to be decided are:

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
- Is the landlord entitled to an order permitting the landlord to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Are the tenants entitled to a monetary order for the cost of emergency repairs?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on June 25, 2011 and ended on October 31, 2011. Rent in the amount of $1,400.00 per month was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of $700.00. The rental unit is a house and acreage and the tenancy agreement, a copy of which was provided for this hearing, provides that the landlord will provide feed for the landlord's horse, and the tenants would take care of the landlord's horse on the rental property.

The landlord testified that on June 26, 2011 the tenants were given a blank move-in condition inspection report. It was very late when the tenants arrived and everyone was tired so the parties didn't get around to completing it until August, although the landlord tried to get it done sooner. The parties eventually agreed to August 27, 2011 by exchange of emails. The landlord had gone to a neighbor's home to copy the form and when the landlord returned, the tenant had gone to work and the spouse refused to sign it because it was the other tenant who had done the inspection. Copies were left with the intention that the tenants would sign it and return it the next day. The landlord returned the next day and the form was not located in the tack room where the landlord had expected to find it. Instead, the landlord was met by a big dog in the tack room. The tenants arrived while the landlord was there, but no condition inspection report was provided even though the tenants knew that's why the landlord was there.

The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property and testified that the landlord's daughter was moving into the rental unit and that the tenants would not sign the move-in condition inspection report. The

landlord felt the tenancy was not working out so told the landlord's daughter that she could move in. The landlord tried to talk to the tenants to find a convenient date. The tenants had told a real estate agent that they were looking for a new place, the landlord thought they found a suitable place and issued a 1 Month Notice to End Tenancy for Cause on September 11, 2011 for continually denying the landlord access to the property. A copy of the notice was provided for the hearing and it states that the tenants or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord, and breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord testified that the tenants made it difficult for the landlord to visit the landlord's horse, and provided reasons for issuing the notice.

On October 31, 2011 the landlord arrived at the rental unit to complete the move-out condition inspection report but the tenants did not participate. The landlord started with the out-buildings, and the tenants got into their truck, drove away, and then returned to hand over the keys to the landlord, yelling and screaming about the landlord's friend.

The landlord claims $700.00 in damages, and described the damages as follows:

- 27 hours of cleaning done by the landlord, a neighbour, the landlord's friend and the landlord's daughter on October 31, 2011 at $20.00 per hour, for a total of $540.00;
- $134.46 for a missing griddle;
- $19.97 for a rug missing from the garage.

One of the tenants testified that the tenants had agreed to do the move-in condition inspection report, but the landlord didn't have time before catching a ferry at the outset of the tenancy. The landlord then insisted on a monthly inspection on August 27, 2011. The landlord attended with some aggressive people with her, and the tenant provided a photograph of a man with his fists clenched at the tenants. The tenants also provided several other photographs that were taken on October 31, 2011.

On August 28, 2011 the tenant was forced to stay home from work after the landlord served the tenants with a notice to end the tenancy. The tenants only have one vehicle,

and the landlord was screaming at the tenants; the tenant felt that leaving a spouse on the property without a vehicle was not wise. The landlord was supposed to pick up the condition inspection report from the steps of the house, not from the tack room. Also, the landlord had the notice to end tenancy at the time. The tenant claims $297.45 for a missed shift at work.

The tenant denies any damages. Garbage is collected weekly at the rental unit, and occupants pay $2.00 per bag for excess garbage, and the tenants had cleaned and left 8 excess garbage bags.

The tenant also testified that the landlord's friend kept showing up on the property unannounced. The friend kept a trailer on the property beyond the house for a business, and was on the property sometimes 2 or 3 times in a day. Some of the tenants' tools went missing, and the tenants were not provided with their right to quiet enjoyment. The *Residential Tenancy Act* requires a landlord to provide at least 24 hour written notice to enter onto rental property, but the tenants gave the landlord a concession of 8 hours. The tenant kept notes on a calendar, a copy of which was provided for this hearing, showing the dates that the landlord and/or the dates the landlord's friend attended the property announced or unannounced. The tenants claim $1,400.00, being the equivalent of one month's rent for loss of quiet enjoyment.

The tenants disagree with the landlord's description of the common areas, and stated that the only common area was a driveway to the first gate. The landlord had a storage space attached to the barn, but the barn, riding ring, paddocks and pasture were included in the rent and were material terms of the tenancy.

The tenants also claim $200.00 for emergency repairs made by the tenants. A fence had rotted and the landlord's friend told the tenant what trees to cut to complete the repairs. The tenant cut down the trees, removed the bark and trimmed the trees to build a new fence. The tenants claim $20.00 per hour for 10 hours of labor.

Analysis

I have reviewed the tenancy agreement, and I find that the parties had agreed that the tenancy included the barn, riding ring, paddocks, pasture and furniture. The Addendum to the agreement specifies that the landlord and other persons entering the property for the purpose of riding or care of horses, gardening or to retrieve personal items stored on the property will give the tenants 8 hours notice. The *Residential Tenancy Act* states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;
(b) freedom from unreasonable disturbance;
(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
    (i) the purpose for entering, which must be reasonable;
    (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry if for that purpose and in accordance with those terms;
(d) the landlord has an order of the director authorizing the entry;
(e) the tenant has abandoned the rental unit;
(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

The *Act* also specifies that parties may not avoid or contract out of the *Act* or the regulations, and any attempt to do so is of no effect. Therefore, I find that the term in the Addendum to the tenancy agreement that states that persons, including the landlord will give the tenants 8 hours notice prior to entering the property is a term that is of no effect; the tenants are entitled to at least 24 hours written notice unless the tenants otherwise agree either at the time of the entry or not more than 30 days before the entry. In this case, I find that the landlord did not afford the tenants with the notice required under the *Act,* and the tenants made it abundantly clear to the landlord that they did not agree that the landlord's entry, or the entry of the landlord's friend on the property, was considered reasonable by the tenants. The tenants testified that the 8

hours was a concession given to the landlord, but the landlord and the landlord's friend did not honour that. The tenants have provided a copy of a calendar noting the number of days that the landlord or the landlord's friend attended on the property. The landlord questioned the tenant about some of those dates, and testified that the landlord was not on the property for some of those dates, but I also find that some of the dates mentioned by the landlord are shown on the calendar as dates that the landlord's friend attended, which is also contrary to the *Act.* The landlord provided a list of 15 dates that the landlord or representatives attended the property from July 2, 2011 to September 13, 2011, which also states that all visits were with notification to the tenants. Some of those visits were for the purpose of serving the tenants with notices to end the tenancy. However, I further find that the tenants were not provided with their right to quiet enjoyment. Therefore, I find that the tenants have established a claim.

With respect to the quantum of damages the tenants are entitled to, I refer to Residential Tenancy Policy Guideline 16 – Claims in Damages, which states: "Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected." It is clear to me in the evidence provided by the parties that the landlord or the landlord's friend entered onto the property contrary to the *Act* on at least 15 occasions during July, August and September, 2011. The reasons for entering onto the property were obviously considered reasonable by the landlord, but not by the tenants. There is a discrepancy in the number of times that the landlord or the landlord's friend attended the rental unit, but I find that the tenants' claim for one month's rent as compensation for the loss of quiet enjoyment is excessive in the circumstances. I find that the tenants are entitled to compensation in the amount of half a month's rent, or $700.00.

The tenancy agreement also specifies a security deposit in the amount of $700.00 and that amount includes a pet deposit. Under the *Residential Tenancy Act* the two are very separate deposits and a landlord can only claim against a pet damage deposit for damages caused by a pet. Therefore, I find that the $700.00 collected by the landlord is a security deposit, being half of the monthly rent amount.

With respect to the landlord's claim for damage to the unit, site or property, the *Act* states that a landlord's right to claim against the security deposit for damages is extinguished if the landlord does not cause a move-in condition inspection report to take place. The *Act* states that the move-in condition inspection must take place on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. The landlord takes the position that August 27, 2011 was the mutually agreed day. The tenant testified that the landlord insisted on monthly inspections and August 27, 2011 was a monthly inspection, not a move-in condition inspection, and that a move-in condition inspection was arranged at the outset of the tenancy, but the landlord didn't have time before catching a ferry. In the circumstances, I do not find that waiting 2 full months after the tenants moved in to conduct the move-in condition inspection report was reasonable.

The regulations go into great detail about how the landlord is required to ensure that the report is completed by the parties:

> **17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
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> (2) If the tenant is not available at a time offered under subsection (1),
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> > (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
> >
> > (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
>
> (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I find that the landlord has not complied with the *Act* and the regulations because the inspection was done long after the tenants moved in; inspecting for damages that exist at the time the tenancy agreement is entered into is not helpful, nor lawful, 2 months later. The landlord also failed to comply with the *Act* by offering 2 opportunities to complete the move-out condition inspection report. The landlord arrived at the rental unit on October 31, 2011, but provided no evidence that the tenants were give a notice in the approved form, which would have provided evidence that the landlord complied

with the regulations mentioned above. Therefore, I find that the landlord's right to claim against the security deposit is extinguished.

The landlord's right, however, to claim for damages is not barred by the legislation. In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the opposing party'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 such damage or loss.

The landlord claims missing items, a griddle and a rug, that are not listed on the inspection report. Those items cannot be awarded to the landlord because there is no evidence that those items were in the rental unit at the time and there is no proof of their value. With respect to the landlord's remaining claim for damages, I have compared the photographs of the tenant and the landlord to the move-out condition inspection report prepared by the landlord, and note that the condition inspection report shows that the stove and oven were filthy upon move-out, but the photographs show a clean range in good condition. The report also shows that windows, sills and screens had not been cleaned by the tenants, but the tenants only resided in the rental unit for 4 months, and I find that the landlord has failed to establish that the tenants did not leave the rental unit reasonably clean and undamaged except for normal wear and tear, as provided in the *Act.*

With respect to the security deposit, having found that the landlord's right to claim against it for damages has been extinguished, I must order that the landlord return it to the tenants. The tenants have not provided the landlord with a forwarding address in writing, and therefore, the tenants are not entitled to double the amount of the security deposit as provided for in Section 38 of the *Act.*

With respect to the tenant's claim for the cost of emergency repairs, the *Act* states that emergency repairs are repairs that are necessary to protect life or property. Further, a landlord must reimburse a tenant for the cost of such repairs if the tenant claims it from the landlord and gives the landlord a written account accompanied by a receipt. In this case, the tenant claims $200.00 for fixing a fence that was required to protect horses, however there is no evidence before me that the tenants ever claimed reimbursement from the landlord at the time. Therefore, the tenants' application for the cost of emergency repairs must be dismissed.

In summary, I find that the landlord's right to claim against the security deposit for damages has been extinguished, and therefore, the landlord's application to keep all or part of the pet damage deposit or security deposit must be dismissed. The landlord's application for a monetary order for damage to the unit, site or property has not been proven and must be dismissed. The tenants' application for a monetary order for the cost of emergency repairs must also be dismissed for failure to provide the landlord with a written account of the repairs completed. The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement is hereby awarded at $700.00. I also order the landlord to return the $700.00 security deposit to the tenants. The tenants are also entitled to recovery of the $50.00 filing fee for the cost of the application. Since the landlord has not been successful with the applications before me, the landlord is not entitled to recovery of the filing fee for either of the landlord's applications.

Conclusion

For the reasons set out above, the landlord's applications are hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $1,450.00. This order is final and binding on the parties and may be enforced.

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: January 9, 2012.

Residential Tenancy Branch