



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application.

Both named landlords attended the conference call hearing, both gave affirmed testimony and provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenants. One of the named tenants attended and represented the other named tenant. The tenant also gave affirmed testimony and provided evidence in advance of the hearing to the Residential Tenancy Branch and to the landlords. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to a monetary order for damage to the unit, site or property?

Background and Evidence

This month-to-month tenancy began on October 1, 2010 and was to end on September 30, 2011, however the tenants did not fully move from the rental unit until October 1, 2011. Rent in the amount of \$1,000.00 per month was payable in advance on the 1st day of each month, or was sometimes collected at the end of the previous month, and there are no rental arrears. No written tenancy agreement was prepared or signed by the parties. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$500.00. No move-in or move-out condition inspection reports were completed.

The parties agree that a previous hearing was conducted by the Director, Residential Tenancy Branch which dealt with the security deposit.

The first landlord testified that when the tenants first looked at the rental unit there were a few items that required repair or attention that were pointed out to the landlords. The landlords took care of the list, which included repair of pin holes in the walls, wiping walls and sills, repairing a hole in a wall, and touch-up painting. The tenants returned to the rental unit and were happy with the results and agreed to rent the unit. They took photographs and friends were also there who took photographs all around the rental unit. A few days after moving in, the tenants asked for replacement light bulbs and the landlords also complied. The rental unit is an apartment-style condominium suite. The landlord testified that the tenants advised that only the two of them would be residing in the rental unit, but the landlords were disappointed that two other people moved in and there were 4 people residing in the rental unit.

At the end of August, 2011 the tenants gave the landlords written notice of their intention to move from the rental unit on September 30, 2011 but did not leave the rental unit until about 7:00 p.m. on October 1, 2011. The landlords' daughter and her friends were moving into the rental unit and the tenants' over-holding caused delays in their rental situations. The landlords' daughter pays the landlord \$1,150.00 per month, and the tenancy could not begin until October 15, 2011 because the tenants had not moved out by September 30, 2011. The landlords claim one month of rent for over-holding.

On October 2, 2011 the landlords attended the rental unit and discovered that the unit required cleaning, even though the tenants' mother(s) attended to clean. The floors were sticky and the tenants had not shampooed the carpets. The landlords hired 2 people to clean the rental unit and shampoo the carpets. The landlords provided a receipt in the amount of \$41.98 dated October 2, 2011 from The Home Depot, although it does not indicate what item was purchased. The landlord testified that the receipt is for carpet cleaning solution. The landlords paid 2 people \$200.00 and claims \$250.00 for cleaning the rental unit and carpet cleaning.

The landlord also testified that the blinds in the rental unit had been damaged by the tenants. The landlord attempted to open the blinds on October 2, 2011 but a part in the mechanism was broken and the blinds would not turn. The landlord has not yet replaced the blinds; they are expensive because they are for a very large window. Also provided for the hearing is a quote for replacement in the amount of \$640.64 including HST.

During cross examination the landlord testified that the statements provided by the landlords' witnesses as evidence for this hearing quote unit #12. The tenants resided in unit #11 and the landlords own both rental units. The quotes in the witness statements are an error. Further, during cross examination, the landlord was asked why the

landlords didn't call the tenants on September 30 if there was no agreement to the October 1 move date. The landlord responded that it was not the responsibility of the landlords to retrieve the keys, but the responsibility of the tenants to return them. Later in testimony the landlord testified that the tenants were phoned but did not answer.

The second landlord testified after hearing the testimony of the first landlord, and confirmed the landlord's testimony that minor repairs were made to the rental unit for the tenants before they moved in. The tenants were also told that upon moving out they would be required to clean the carpets. Also, the tenants had asked for new light bulbs and they were provided by the landlords because they were an expensive type of bulb. The landlord testified that the tenants had requested minor repairs, which were made by the landlords, but the tenants never reported to the landlords that the blinds were broken. If they were broken at the outset of the tenancy, surely the tenants would have advised the landlords, as they did for other repairs.

The tenant testified that the parties had agreed that the tenants would move on October 1, 2011 rather than September 30, 2011 because October 1 was a Saturday and it worked well for the tenants and their helpers.

The tenant further testified that upon attending at the rental unit on October 2, 2011 to retrieve the security deposit, the landlords' daughter had already moved in. The tenant saw furniture and people were there moving things around. The tenant disagrees that the landlords' daughter couldn't move in until October 15, 2011.

When the tenant spoke to the landlord about return of the security deposit, the landlord told the tenant that \$150.00 had been deducted from it for carpet cleaning, but the tenant disagreed. The tenant had bought some carpet cleaner and spot cleaned; only 2 small rooms had carpets, the rest of the floors were laminate. The tenant disagrees that carpet cleaning would cost \$150.00 and was subsequently provided with a copy of a receipt for \$41.98, not \$150.00. Further, the carpets were in the same condition when the tenants moved out as they were when the tenants moved in.

The tenant further disagrees with the landlord's interpretation of the time of departure; the tenant testified that they were finished moving by 11:45 a.m. on October 1, 2011 and gave the keys to the landlords at 12:30.

The tenant provided photographs of the blinds hanging in the rental unit and testified that they show an accurate view of the blinds when the tenants moved into the rental unit but does not recall the date the photographs were taken. The tenant also testified

that the landlords were not asked to fix the blinds because the tenants didn't care about the blinds as a part of the tenancy.

Analysis

Where a party claims damages from another party, 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 other 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, or reduce such damage or loss.

In this case, the parties agree that damage to the blinds exists, but we do not have the benefit of a move-in or move-out condition inspection report, as required under the *Act*. Further, the tenant disputes that the damage or loss exists as a result of the tenants' failure to comply with the *Act* by repairing any damage to the rental unit. The onus is on the landlords to prove that claim. The tenant provided photographs of the blinds but does not recall the date they were taken. The landlords claim that the damage did not exist at the beginning of the tenancy, but testified that the tenant was in the rental unit with friends taking photographs before the tenants actually moved in. The photographs do not contain any furniture around the windows, and I find it just as reasonable to assume that the photographs were taken when the tenants were looking at the rental unit. I find that the landlords have failed to establish that the damage to the blinds was caused by the tenants.

The landlord also testified to hiring people to clean the rental unit and shampoo the carpets. Again, I find that the landlord has failed to establish that the tenants left the rental unit in any state other than reasonable wear and tear.

The *Act* states that a landlord MUST cause a move-in and a move-out condition inspection report to take place, and the regulations go into detail about how those inspections are to take place. The *Act* places the onus on the landlord to ensure that the inspections take place and the landlord must provide the tenant with at least 2 opportunities to conduct the inspections. The Residential Tenancy Branch website contains the forms that are very useful to assist. It is very difficult to prove a claim for cleaning or damages inside a rental unit when the landlord has no evidence to assist in determining what the condition of the rental unit was at the beginning of the tenancy. Where a tenant disputes such damage, in the absence of that or similar evidence, the landlord's application cannot succeed.

With respect to the landlords' claim for loss of revenue by the tenants' over-holding, firstly, I do not agree that the landlords are entitled to a whole month of rent for one day, even if the parties didn't have an agreement for staying an extra day. The landlord also testified that the landlords' daughter moved in on October 15, 2011 and pays \$1,150.00 per month for rent while the tenants' rent was \$1,000.00, which would serve to reduce any entitlement to the landlord. However, most importantly, I find that the landlords have failed to establish that the tenants' over-holding was not agreed to, and I find that the landlords have failed to establish that the landlords' daughter didn't move in until October 15, 2011. The tenant disputes that testimony, and stated that upon arriving at the rental unit on October 2, 2011 the tenant witnessed furniture in the rental unit. The onus is on the landlords to prove the claim. It may very well be that the landlords didn't collect rent from the landlords' daughter or roommates until October 15, 2011, however, the *Act* also requires the landlord to do whatever is reasonable to reduce any loss suffered. I am not satisfied that the landlords called the tenants on September 30, 2011 to inquire as to why or when the rental unit would be vacant. One of the landlords testified that the tenants were called on September 30, 2011, but the tenant has provided phone records to prove that no call was received. The landlord does not recall which tenant was phoned, but the landlord did not dispute the fact that the landlords had phone numbers for both tenants. Further, I accept the testimony of the tenant that furniture was in the rental unit on October 2, 2011. Whether or not the landlords collected rent from their daughter for the first part of October, 2011 is not the responsibility of the tenants.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed in its entirety without leave to reapply.

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: May 02, 2012.

Residential Tenancy Branch