



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of this application. The landlord also filed an amended application, and a second amended application prior to the hearing, the latter requesting an Order of Possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, to recover the filing fee from the tenants, and in the details portion of the amended application, the landlord seeks loss of rental income if applicable, and for a monetary order for receipts, painting, changing locks and changing the range hood, and to keep the security deposit.

An agent for the landlord company and both tenants attended the conference call hearing, gave affirmed testimony and each of the parties called one witness who both gave affirmed testimony.

The landlord testified during the hearing that each of the named tenants were served with the Landlord Application for Dispute Resolution and notice of hearing documents on June 15, 2012 by registered mail and provided copies of the Registered Mail Customer Receipts issued by Canada Post as evidence of such service, and I find that the tenants have been served in accordance with the *Residential Tenancy Act*.

The parties also provided evidence in advance of the hearing, however some of the evidence provided by the tenants was not provided to the landlord. The parties were given an opportunity to cross examine each other and the witness on the testimony provided.

All testimony and evidence, with the exception of the evidence that was not provided to the landlord, has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord withdrew the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for damages to the unit, site or property?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on October 1, 2011 and was to expire on September 30, 2012. The tenancy ultimately ended on June 8, 2012 after the tenants had given a month's notice to vacate; the notice was given on June 1, 2012. The tenants provided a forwarding address in writing on June 12, 2012.

Rent in the amount of \$1,350.00 per month was payable in advance on the 1st day of each month, and the landlord collected a security deposit from the tenants in the amount of \$675.00 on September 18, 2011.

The landlord's agent was asked whether or not a move-in condition inspection report was completed at the beginning of the tenancy, but the agent did not know. No move-out condition inspection report was completed.

The landlord's agent further testified that the tenants left the rental unit without returning the keys, and the landlord claims \$85.00 for changing the locks and provided a copy of a receipt to substantiate that claim.

The landlord further claims painting costs, stating that the tenants had painted inside the rental unit and the landlord painted to return the walls back to the original color. The tenants also took the range hood and the landlord testified that the invoice provided to substantiate the costs include painting and replacement of the range hood. The invoice is in the amount of \$527.00, however the landlord agrees that he amount ought to be reduced to \$427.00 because the range hood was more expensive than the original one.

The landlord's agent further testified that the tenant had complained about mould in the rental unit, and the landlord sent out service personnel who found no moisture.

The landlord advertised the rental unit on Craigslist, a free internet advertising site, which stopped at the end of June, 2012 due to the long weekend. The landlord will be placing an advertisement there again.

The landlord claims \$1,350.00 for rent for the month of June, 2012; \$1,350.00 for loss of revenue for the following month; \$85.00 for changing the locks; \$427.00 for painting and replacing the range hood; and \$50.00 for recovery of the filing fee for the cost of this application.

The landlord's witness testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant and the tenant's father were sitting there and the witness gave the tenant an envelope and a Proof of Service document to sign and told the tenant what was in the envelope.

The first tenant testified that the rental unit required a multitude of repairs which were requested of the landlord when the tenants moved in. The majority have still not been completed. The tenants moved out due to mould in the rental unit. The tenant agrees that the landlord sent out service personnel who did a moisture reading test, but the tenant spoke to him later and learned that the test is not reliable for detecting mould; the tests are not done through ducts but by the area in each room only. The tenant further testified that a pipe was leaking in the laundry room from the cold water valve to the washing machine. The landlord's agent was told about the mould on April 30, 2012. The spoors were found in the basement and the tenants cleaned it with bleach. The tenants' daughter needed puffers for respiratory problems that never existed prior. The landlord's agent was called on May 2 and the service personnel arrived on May 3, 2012. On May 26, 2012 the tenant had a contractor inspect the house and found some building defects including the fact that the earth is too high on the house which causes moisture and mould.

The tenant agrees to pay the \$49.00 fee for the range hood.

The tenant also testified that he went to the rental unit on June 16, 2012 to remove light fixtures, kitchen cabinet and bathroom cabinet handles that the tenants had installed, and to clean. The tenant still intended to paint the bedroom back to its original colour. The tenant went back again on June 19, 2012 to pick up a few items from the garage and mould samples for testing. The tenants thought they had until the end of June to move, having been told that by another employee of the landlord company.

The tenant testified that a panel of the soffits is open on the south side of the house exposing the attic to the outside elements, which has still not been repaired. The back yard was full of prickly bushes and rebar and the landlord told the tenants they would have to do the work and the landlord would haul it away. The tenants did so but the landlord didn't remove it. The City received a complaint by a neighbour which finally caused the landlord to remove it but it sat there for 4 months. The deck was dry-rotted and very soft for about a 4 by 6 foot area above the garage. In late April, the landlord said someone would look at it. A contractor put silicone on the deck linoleum and told the tenant to nail sheet metal onto it, but the landlord told the tenant not to do the repairs. Further, the windows froze up in the winter and the landlord's agent told the tenant that the owner refused to replace them.

The tenants still have not been provided with the move-in condition inspection report.

The other tenant testified that the tenants were treated poorly in spite of always paying rent on time and were good tenants. The landlord's agents never gave notice to show up, and it took a long time to get things done.

The tenants' witness testified that the tenants take good care of properties that they rent, and were patient to a fault regarding repairs required in the rental unit. The tenants were lied to by the landlord's agents and their lack of response to repairs was inexcusable. For example, the tenants were lied to about the fireplace being told that the City banned the use of fireplaces when really the City only banned some types of firewood. Also, the landlord refused to deal with leaky pipes and to remove the debris.

Analysis

Firstly, the tenants agree to the cost of the range hood and therefore, I find that the landlord is entitled to recover \$49.00.

With respect to the landlord's claim for damages, the *Residential Tenancy Act* states that a landlord's right to claim against a security deposit for damages is extinguished if the landlord fails to complete a move-in and a move-out condition inspection report, and the *Act* places the onus on the landlord to ensure that a tenant is provided with at least 2 opportunities to participate in the inspections. Further, the *Act* states that the reports are evidence as to the condition of the rental unit at the beginning and end of a tenancy. In this case, I have no evidence of either inspection. One of the tenants testified that the tenants were not given a copy of the move-in condition inspection report, so I must assume that one was completed, but the landlord's agent testified that no move-out condition inspection report was completed, nor did the landlord provide a copy of the move-in condition inspection report for this hearing.

If a landlord has failed to comply with the *Act* or the tenancy agreement, a tenant may give the landlord less than the required one month's notice to vacate the rental unit in some circumstances. I have reviewed the evidence and find that the tenants requested repairs at the outset of the tenancy and the landlord's agents responded in writing but did not complete the repairs.

In this case, on June 1, 2012 the tenants provided the landlord with a month's written notice to vacate the rental unit and on June 4, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The *Act* states that if a tenant does not dispute the notice or pay the rent in full within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenants did not pay the rent or dispute the notice and therefore, I find that the tenants accepted that the tenancy ended on June 14, 2012, being the effective date contained in the landlord's notice. I further find that the tenants are responsible for the payment of June's rent.

With respect to the landlord's claim for loss of revenue, the tenants take the position that they were justified in breaking the fixed term tenancy, and I agree that a fixed term tenancy requires a tenant to remain in the rental unit until the end of the fixed term, but the landlord also has the responsibility of doing whatever is reasonable to re-rent the rental unit. I find that placing an advertisement on Craigslist is not sufficient to establish doing whatever is reasonable. So whether or not the tenants were justified in breaking the fixed term, the landlord did not do what was reasonable to mitigate any loss. The landlord's application for loss of revenue for the following month is hereby dismissed.

With respect to the landlord's claim for changing the locks to the rental unit, the tenants did not dispute the landlord's agent's testimony that the keys for the rental unit were not returned to the landlord at the end of the tenancy. Therefore, I find that the landlord had no choice under the *Act* but to change the locks for future tenants and the landlord has established a claim in the amount of \$85.00.

With respect to painting, the tenants did not deny that painting was done by the tenants, and stated that they expected to re-paint the room back to its original color but also expected that they had until the end of June because that was the date specified in the tenants' notice to end the tenancy. However, the landlord's notice to end the tenancy was effective June 14, 2012 and the tenants only had until that day to complete all cleaning and repairs. I have also reviewed the invoice provided by the painter and I find that the tenants are responsible for the painting bill in the amount of \$298.00.

In summary, I find that the landlord has established a claim for unpaid rent in the amount of \$1,350.00; \$49.00 for the range hood; \$85.00 for changing locks; \$298.00 for

painting and \$50.00 for recovery of the filing fee for the cost of this application. The landlord currently holds a security deposit in the amount of \$675.00 which I set off from the amount owing to the landlord, and I grant the landlord a monetary order in the amount of \$1,157.00 for the difference.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,157.00.

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: July 10, 2012.

Residential Tenancy Branch