



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPC, MND, MNR, MNDC, FF
Tenants: MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought a monetary order.

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

At the outset of the hearing the landlord clarified the tenants are no longer living in the rental unit and as such there is no longer a need for an order of possession. I amend the landlord's Application to exclude the matter of possession.

Further the landlord acknowledged the tenant vacated the rental unit prior to the end of August 2012 and as such there is no longer a claim for unpaid rent for the month of September 2012, I amend the landlord's Application to reduce the amount of the claim by the equivalent of 1 month's rent.

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; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for terminating a service and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement for a 6 month fixed term tenancy agreement beginning on March 1, 2012 for a monthly rent of \$650.00 due on the 1st of each month with a security deposit of \$300.00 paid.

The landlord seeks compensation for outstanding charges incurred for the restoration of the rental unit after the tenants caused smoke damage to the rental unit by leaving something burning on the stove. The tenants do not disagree that the smoke damage was caused by their actions.

The landlord testified they had checked with their insurance company and they would have to pay a \$500.00 deductible and their premium rates would increase if they were to make a claim against the insurance. The landlord submitted this was offered to the tenant but the tenant was not willing to pay the deductible and increased premiums for the landlord but rather agreed to pay for the full restoration. The parties agreed the tenant paid the contractor \$400.00 for materials and the work began.

The landlord has submitted a letter from the restoration company representative who was present when these discussions took place. The letter states the following:

“I had then recommended that Mr. [landlord] call in the incident to his insurance company and have a restoration company come in and quote the repairs. It was determined by Mr. [landlord] that settling the incident privately was in the best interest due to the increase in insurance premiums that would have followed it.”

The tenant submits that he did not pay the balance of \$1,392.00 because he felt he had paid enough for the damage as it was not that big of a deal.

The landlord also seeks to have the tenant pay rent for the month of August 2012 as they failed to pay rent when it was due. The tenant submits that because the landlord failed to provide compensation in the equivalent of 1 month's rent for issuing an 2 Month Notice to End Tenancy for Landlord's Use of Property, they did not have to pay rent for the month of August.

The landlord had provided into evidence a 1Month Notice to End Tenancy for Cause issued to the tenants on June 30, 2012 in response to the smoke damage with an effective date of July 30, 2012 and a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 10, 2012 for rent that remained unpaid for the month of August 2012.

The tenant submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on June 28, 2012 with an effective date of August 29,

2012 citing the landlord or a close family intended to occupy the rental unit. The tenants submit they did not receive the 1 Month Notice to End Tenancy for Cause.

The landlord confirmed that they had issued the tenant several notices to end the tenancy and that for the most part the tenants kept rejecting them. She did confirm that they had issued the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant seeks compensation in the amount of \$400.00 for the loss of the use of the stove when the landlord turned off the stove because the tenants were continuing to use the stove inappropriately after the smoke damage incident, on or before August 14, 2012.

The tenant also submits the landlord also refused access to the internet. The landlord testified they had a problem with their internet that required the password be reset and since the tenant had not paid rent for August 2012 the landlord decided she would not provide the password to the tenants.

The tenants have established this amount at \$25.00 per day for 16 days because of the additional food expenses incurred. The tenant has provided no evidence to show any additional costs incurred. The landlord testified the tenant used his own electrical stove in the unit to cook food and he should not have incurred additional expenses.

Analysis

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 32 of the *Act* requires a tenant to repair damage to a rental unit that is caused by the actions or neglect of the tenant.

I accept, based on the testimony and evidence of both parties that the tenants are responsible for the damage to the rental unit and as such the landlord has suffered a loss. I find that the tenants' failure to pay for the damage is a violation of the tenants' obligations under Section 32.

However, Section 7 of the *Act* requires that if a landlord claims for compensation for damage or loss that results from the tenant's non-compliance with the *Act*, regulations or tenancy agreement the landlord must do whatever is reasonable to minimize the damage or loss.

As per the testimony of the landlord and the submission from the landlord's restoration contractor I find it was the landlord who determined that they would not pursue a claim through their insurance. By failing to pursue this as an insurance claim, I find the landlord has failed to take reasonable steps to minimize the damage or loss.

If the landlord's insurance does stipulate a \$500.00 deductible, and the tenant has already paid the contractor \$400.00 then the tenant has nearly met the deductible amount. However, the landlord has provided no documentary evidence to establish what the deductible was and as such, I cannot determine if the tenant owes any additional monies up to what a deductible would have been.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice if the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 51 states that if a tenant receives such a notice, the tenant is entitled to compensation in the amount equivalent of rent for 1 month.

In relation to the landlord's claim for unpaid rent, regardless of the fact that the landlord issued a number of notices to end the tenancy and for various reasons, I find that since the tenants received a notice under Section 49 they are entitled to the 1 month's rent compensation. As such, I find the landlord is not entitled to the payment of rent for August 2012.

Section 27 of the *Act* stipulates that a landlord may not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit has living accommodation. The section does allow a termination or restriction of service or facility if it is not essential by giving the tenant 30 day's notice and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy.

I find the provision of a stove to be essential and normally not a facility that could be restricted, however as the tenancy is now ended there is no need to provide a decision on that issue. However, I find that since the landlord did terminate the use of the stove the tenant is entitled to compensation for its termination.

As to the value of that compensation, while the tenant submits \$25.00 due to “additional food costs” the tenant has provided no evidence of what those additional costs were or how they were incurred. As such, I will base my decision on the amount of compensation on the reduction in the value of the tenancy due to the termination.

Based on the amount of rent for the unit of \$650.00 I find that reasonable compensation for the termination of a stove to be \$100.00 per month and as the tenants went without a stove for approximately 2 weeks, I find the tenants are entitled to \$50.00.

Conclusion

For the reasons noted above, I dismiss the landlord’s Application in its entirety.

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$75.00** comprised of \$50.00 compensation and \$25.00 of the \$50.00 fee paid by the tenants for this application as they were only partially successful in their claim.

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 18, 2012.

Residential Tenancy Branch