



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB MNR MNSD O FF
 MNDC MNSD RP RR FF

Preliminary Issues

During the hearing the parties confirmed the Tenant had vacated the property and the Landlord has regained possession of the unit.

Based on the aforementioned, and upon review of the applications for dispute resolution the Landlord confirmed he was withdrawing his request for an Order of Possession and the Tenant confirmed he was withdrawing his request for Orders to have the Landlord make repairs to the unit, site or property, and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and or damage deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of their security or pet deposit, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the

testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlords be awarded a Monetary Order?
2. Should the Tenants be awarded a Monetary Order?

Background and Evidence

The following facts were not in dispute:

- The parties entered into a verbal tenancy agreement for the above noted rental property that began on July 1, 2011;
- Rent was payable on the first of each month in the amount of \$995.00;
- The Tenant paid a pet deposit of \$500.00 which was transferred to this tenancy effective July 1, 2011;
- On or before August 31, 2012 the Landlord attended the rental unit and was personally served a notice to end tenancy issued by the Tenant indicating the Tenants would vacate the property by September 15, 2012;
- The Tenants vacated the property sometime between September 15, 2012 at 3:00 pm and Monday September 17, 2012 at 10:00 a.m. at which time they sent a text to the Landlord advising the rental unit keys were inside the mailbox;
- The Tenants did not pay September 2012 rent to the Landlords;
- The Tenants had rented the entire house from the Landlords and took on a sub-tenant who occupied the suite in the basement and who paid rent to the Tenants
- There was a substantial increase in water usage which drew attention to a water leak
- There was an excessive amount of mold inside the basement suite.

The Landlord submitted evidence which included, among other things, copies of: the original tenancy agreement pertaining to a different address; letters issued to and from the Tenant; the Tenants' notice to end tenancy; and the Landlord's written statement.

The Landlord is seeking to retain the deposit and obtain a Monetary Order for September 2012 unpaid rent. The Landlord asserted that the Tenant was informed of the increased water consumption and that he did nothing to determine where the water was going until the Landlord requested he contact a neighbouring plumber. When the plumber arrived a major leak was found as well as excessive mold in the basement suite.

The Tenant has filed seeking 20 days of compensation for having to live in the rental unit with mold and mushrooms. He confirmed he did not submit evidence to support the allegations as to the condition of the unit and argued the Landlord refused to repair the damaged walls and simply told them to repair it or move out. They decided to move out.

In closing, the Landlord stated that the Tenant simply ignored his requests to check into the increase in water consumption. He asserted that they must have known about the mold problem as it would have had to have been present for several months to get to the point of covering all of the walls, yet nothing was done to inform the Landlord about it. He stated that this was not an issue that arose in the last fifteen or twenty days so the Tenant or his sub tenant ought to have known there was an issue, yet they simply ignored it and his requests to determine why the water usage had increased.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After careful consideration of the aforementioned I find there to be sufficient evidence to prove the Tenants breached section 26 of the Act by failing to pay their rent that was due September 1, 2012.

I further find the Tenants breached section 45 of the Act by failing to provide 30 days written notice to end their tenancy which has caused the Landlord to suffer a loss of rental income for September 2012. Accordingly, I award the Landlord **\$995.00** for September 2012 rent.

The Landlord has been successful with their application, therefore I award them recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of September 2012 Rent	\$ 995.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,045.00
LESS: Security Deposit \$500.00 + Interest 0.00	<u>-500.00</u>
Offset amount due to the Landlord	<u>\$ 545.00</u>

Upon review of the Tenant's request for compensation for the last twenty days of living in the rental unit I find there to be insufficient evidence to prove the Landlord breached the Act or that the Tenants suffered any loss as they continued to live in and have full use of the rental unit. Accordingly I dismiss the Tenants' claim without leave to reapply.

As the Tenants have not been successful with their application I find they must bear the burden of the cost to make their application.

Conclusion

The Landlords are HEREBY awarded a Monetary Order in the amount of **\$545.00**. This Order is legally binding and must be served upon the Tenants.

The Tenants application is HEREBY DISMISSED, 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: September 20, 2012.

Residential Tenancy Branch