



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order and an order permitting them to retain the security deposit and a cross-application by the tenants for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Are the landlords entitled to a monetary order as claimed?

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that this tenancy lasted for approximately 10 months, ending on August 21, 2012 when the tenants vacated the rental unit. They further agreed that the rental unit is located in the lower floor of a home in which the landlords occupy the upper floor and that the tenants paid a \$375.00 security deposit.

The landlords seek to recover the cost of repainting the unit, the cost of replacing a carpet and recovery of the filing fee paid to bring their application.

The landlord's agent testified that the tenants damaged the walls in a number of areas, requiring repair of the drywall and repainting and provided an invoice showing that the landlords were charged \$560.00 to perform repairs and repainting. The tenant in attendance at the hearing acknowledged that the walls were damaged and would require repair. The parties agreed that at the end of the tenancy, the tenants verbally told the landlords that the landlords could keep the security deposit and that the tenants agreed to be responsible for any costs above the amount of the security deposit.

The landlord's agent testified that the landlords also seek an award equivalent to the amount of the security deposit to cover the cost of replacing a carpet in which there were 2 tears. She testified that the tears were in the centre of the room and could not

be easily covered by furniture. The landlords had not obtained an estimate for the cost of repairs and testified that the carpet was approximately 3 years old. The tenant in attendance at the hearing testified that in her opinion, the carpet was much older than 3 years. She did not dispute having caused the tears in the carpet.

The tenants seek an award for double their security deposit, recovery of rent from August 21 – 31, the cost of the rental of a mailbox, the cost of renting a truck to move and an award for loss of quiet enjoyment.

The parties agreed that the tenants provided their forwarding address in writing in a letter dated August 23 which was sent to the landlords via registered mail and received by August 25. In the letter, the tenants requested the return of their security deposit. The landlords filed their application for dispute resolution on September 12.

The tenant in attendance at the hearing testified that she had to abruptly end the tenancy because of actions by the landlords' son on August 10 and 18. She testified that on the late evening of August 10, she could hear loud noises from the landlords' living room, which was right above her bedroom, and that her husband knocked on the ceiling to alert the landlords to the noise. The noise did not abate, so the tenants telephoned the landlords to complain about the noise. She testified that shortly thereafter, the landlords' son came downstairs and yelled outside the door of the rental unit, using foul language. The son also broke the window of the rental unit. The tenants went outside to speak with the son and the tenant testified that she became afraid because the son made a fist and seemed threatening, so she telephoned the police.

The landlord's agent testified that the son's response was provoked by the tenants having knocked on the ceiling and claimed that the tenants also behaved and spoke inappropriately during the incident. She acknowledged that the son broke the window, but claimed that he did not do so intentionally.

The tenant testified that on August 18, the son and his friends were in the back yard drinking until 1:00 am the following morning, which frightened the tenant as she was home alone with her child.

The tenant testified that because she was afraid of the landlords' son, she and her husband ended the tenancy as soon as they were able to find alternate accommodation. In addition to the return of her rent and the cost of renting a truck, she seeks the cost of renting a mailbox as she was afraid to give the landlords her street address. The tenants seek an award for loss of quiet enjoyment in compensation for the harassment of August 11 and the unease that followed.

Analysis

First addressing the landlords' claim, as the tenants have acknowledged that repair and repainting was required and did not dispute the amount claimed, I award the landlords \$560.00.

The tenants did not dispute having damaged the carpet. The landlords did not submit a written estimate for the cost of replacing the carpet and I am not satisfied that their repair estimate is accurate. As the landlords have not yet replaced the carpet, I am not persuaded that replacement is required and I find it more appropriate to award the landlords a sum representing the diminished value of the carpet. I find that an award of \$70.00 will adequately compensate the landlords and I award them that sum.

As the landlords have been substantially successful in their claim, I find that they are entitled to recover their filing fee and I award them \$50.00 for a total award of \$680.00.

Turning to the tenants' claim, while I accept that the landlords did not file their application for dispute resolution within 15 days of the date they received the forwarding address in writing, I find that because the tenants acknowledged that they told the landlords they could retain the security deposit, the tenants are stopped from making a claim for double the deposit as they led the landlords to believe that they had the tenants' agreement to retain the deposit. I therefore dismiss the claim for double the security deposit.

I find that the actions of the landlords' son on the night of August 18 were an unreasonable interference with the tenants' right to quiet enjoyment. Although the tenants should have immediately contacted the landlords rather than banging on the ceiling to alert them, I find that the reaction of the landlords' son was excessive and uncalled for. The tenant A.S. was the only witness to the event to testify at the hearing and I am persuaded by her testimony that the behaviour of the landlords' son, including yelling, shaking his fist and breaking the window, was sufficiently egregious so as to attract compensation. I find that \$200.00 will adequately compensate the tenants and I award them this sum.

I am not satisfied that the tenants had the right to end the tenancy with no notice and I note that under section 45(3) of the Act, the tenants could have given the landlords written notice that they had breached a material term of the tenancy by not controlling their son and giving him time to correct the breach, failing which the tenants could end the tenancy on short notice. As the tenants did not follow the procedure prescribed

under the Act, I find that their claim for recovery of rent paid for August as well as their moving costs must be dismissed.

I also dismiss the tenants' claim for the cost of renting a mailbox. I am not satisfied on the evidence that after the night of August 18, either the landlords or their son posed any continuing risk to the tenants and I find that the tenants must therefore bear the cost of the mailbox rental.

As the tenants have been partially successful in their claim, I award them one half, or \$25.00, of their filing fee for a total award of \$225.00.

Conclusion

The landlords have been awarded \$680.00 and the tenants have been awarded \$225.00. Setting off these awards as against each other leaves a balance of \$455.00 owing by the tenants to the landlords. I order the landlords to retain the \$375.00 security deposit in partial satisfaction of their claim and I grant them a monetary order under section 67 for the balance of \$80.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: December 4, 2012

Residential Tenancy Branch