



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF
 MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the conference call hearing and each gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord indicated that the landlord had intended to apply to keep the security deposit, but neglected to do so on the Landlord's Application for Dispute Resolution. The Rules of Evidence require amendments to be made prior to the commencement of the hearing, and in any event, must provide for an opportunity for the opposing party to consider the application made. I found that amending the application during the hearing would prejudice the tenants and the amendment was not allowed.

No Issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 16, 2011 and ended on September 30, 2012. Rent was originally set at \$1,950.00 per month but was reduced by the landlord to \$1,500.00 per month effective July 1, 2012 because renovations were being completed in the rental unit that inconvenienced the tenants. Rent is payable on the 1st day of each month and there are no rental arrears. In April, 2011 the landlord collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlord. A copy of the tenancy agreement was provided for this hearing.

The landlord further testified that the tenants left without paying the hydro bill which is estimated at \$238.57 as owed by the tenants, but the landlord testified that none of the hydro bills have been provided to the tenants. The landlord has provided a copy of a bill dated September 7, 2012 for the dispute address for this hearing. The total amount of the bill is \$511.26, due by October 1, 2012 and contains a late payment charge of \$1.37, a service alteration charge of \$306.00 and HST on that amount totalling \$36.72. The second part of the bill contains basic and usage charges from July 07 to September 06 in the amount of \$167.17. The landlord has written on the bill \$50.00 is the owner's share, which the landlord testified was discounted for the landlord's use of power while renovating and using power tools, which leaves a balance of \$117.17 on that portion of the bill. The landlord has calculated that amount to be \$1.95 per day, and from September 7 to 30 equals \$46.40. The landlord testified that the same calculation was

used to estimate the hydro bill for October, 2012 and claims an additional \$75.00. The combined sums equal \$238.57.

The landlord further testified that one of the tenants is a painter and dumped waste from the painting business beside the house, but in the yard of a vacant neighbouring house. Photographs of the debris have also been provided for this hearing. The landlord testified to paying someone \$200.00 to clean up the waste, but did not provide any evidence of having done so.

The landlord also claims the sum of \$561.43 for the tenants' over-holding of the rental unit, in that the notice to end tenancy issued by the landlord contained an effective date of vacancy of November 11, 2012 but the tenants paid no rent for October or November, 2012 and the tenants had been out of the rental unit and the landlord changed the locks to the rental unit on November 9, 2012. The landlord did not provide a calculation that justifies the amount claimed.

The landlord claims \$238.57 for the unpaid hydro, \$200.00 for cleaning debris and \$561.43 for over-holding, for a total of \$1,000.00.

The first tenant testified that the tenants received a 2 Month Notice to End Tenancy for Landlord's Use of Property on September 12, 2012 which contained an expected date of vacancy of November 11, 2012. The tenant tried to contact the landlord about it and about the security deposit but had difficulty reaching the landlord. The tenant finally did reach the landlord and asked for a time to discuss the compensation, the security deposit, and to return the keys to the rental unit. The landlord said at that time that the landlord didn't owe any compensation to the tenants. A copy of the notice to end tenancy has been provided for this hearing. It is dated September 12, 2012 and contains an expected date of vacancy of November 11, 2012, and the reason for issuing the notice is stated to be that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants moved out gradually starting at the end of September, 2012 but left tools in the rental unit. When they returned, the locks had been changed.

The tenant further testified that no move-in or move-out condition inspection reports were completed, and the landlord was personally handed the tenants' forwarding address in writing on November 9, 2012.

Analysis

The *Residential Tenancy Act* requires a landlord to provide to tenants 2 full months notice to end a tenancy for any of the reasons set out in the *Act*, which includes an intention to demolish or renovate a rental unit in a manner that requires the rental unit to be vacant once all permits are in place. However, if rent is payable on the 1st day of each month, the notice must be given before the 1st of the month and must not be effective less than 2 months after issuing it, and must end the tenancy at the end of the month. In this case, the tenancy agreement specifies that rent is payable on the 1st day of each month and the landlord has issued a notice to end tenancy on the 12th of the month which contains an effective date of vacancy of the 11th of the month 2 months later. However, in order to be effective, the notice had to end the tenancy on November 30, 2012. The *Act* also requires a landlord who serves such a notice to pay to the tenants the equivalent of 1 months' rent payable under the tenancy agreement, and states that once served, the tenant may end the tenancy earlier by giving the landlord 10 days notice in writing.

In this case, the landlord did not collect any rent for the month of October, 2012, and therefore, I find that the tenants were provided with the compensation that the landlord is required to provide after the issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants provided the landlord with 10 days notice to end the tenancy effective November 19, 2012, but the landlord changed the locks to the rental unit on or about November 9, 2012. The landlord claims over-holding in the amount of \$561.43 and the tenants claim 21 days of compensation in the amount of \$1,365.00. In the circumstances, I find that the tenants had already been provided with the compensation they were entitled to. The tenants, having given the 10 day notice, are obligated to pay rent beyond October 31, 2012, being the first 8 days in November, 2012, or \$400.00. Although I agree that the tenants ought to have had possession of the rental unit until November 19, 2012, the tenants would be obligated to pay rent for that period. Since the tenants paid no rent for the month of November, 2012, the tenants are not entitled to any further compensation from the landlord, and the landlord is entitled to recover \$400.00.

With respect to the security deposit, a landlord is required to repay to the tenants the full security deposit or apply for dispute resolution to keep any portion of it, within 15 days of the later of the date the tenancy ends or the date the landlord receives a tenant's forwarding address in writing. In this case, I find that the landlord received the tenants' forwarding address in writing on November 9, 2012, but did not apply to keep the security deposit and did not return any portion of it. The consequence for failing to deal

with the security deposit within that 15 day period is that the landlord is required to repay the tenants double the amount of such deposit, and I find that the tenants are entitled to a monetary order for \$2,000.00.

With respect to the landlord's claim for cleaning up the neighbouring yard, I find that the landlord has failed to establish that the tenants caused such debris to remain beside the abandoned neighbouring house and has also failed to prove the cost of such cleaning, and therefore the landlord's application for \$200.00 for cleaning debris cannot succeed.

With respect to the landlord's claim for payment of hydro, the *Act* states that a landlord may treat unpaid utilities as unpaid rent but not until 30 days after a written demand for payment is given. The tenants have not received a copy of the bill except in the evidence package provided by the landlord for this hearing. I have reviewed the tenancy agreement and the hydro bill and it is clear that electricity and heat were not included in the tenancy, and the tenants are required to pay hydro. With respect to the amount claimed by the landlord, I accept the landlord's testimony that \$50.00 was voluntarily deducted from the tenants' obligation because of power used by the landlord. That deduction reduced the bill from \$167.17 to \$117.17, and I find that the tenants are obligated to pay that amount. I am not satisfied with respect to the balance claimed because the landlord's calculation is \$1.95 per day and the bill shows that the basic charge is \$0.19250 per day and the usage charge is \$0.09150 per kW.h and the landlord has not established what the usage would be, and then what the HST would be. Therefore, I order the tenants to reimburse the landlord the sum of \$117.17 for utilities.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee from the other.

In summary, I find that the tenants have established a monetary order as against the landlord for double the amount of the security deposit, or \$2,000.00. The tenants' application for compensation is hereby dismissed without leave to reapply. The landlord's application for unpaid rent is hereby awarded at \$400.00 and the landlord's claim for payment of hydro is hereby allowed at \$117.17. The landlord's application for the cost of cleaning debris is hereby dismissed without leave to reapply.

The *Residential Tenancy Act* also permits me to set off amounts owing by the parties, and I therefore grant a monetary order in favour of the tenants for the difference in the total sum of \$1,482.83.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,482.83.

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: March 05, 2013

Residential Tenancy Branch

