



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD, MNDC, O

For the landlord – MND, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order for the return of the security deposit and amended their application to include a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or tenancy agreement. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application.

The tenants along with an advocate and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary issues

At the start of the hearing I asked the landlord if the landlord had anyone else attending the hearing with her. The landlord responded that she did not. No further parties announced their presence in the hearing at that point. Halfway through the hearing an unidentified person announced that they were a contractor for the landlord acting as a

witness. I explained that I could not hear evidence from that witness as they had not announced themselves as a party to the proceedings and had been present throughout the hearing. The witness left the hearing without giving evidence.

Issue(s) to be Decided

- Are the tenants entitled to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to as Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agree that this month to month tenancy started on October 01, 2004. Rent for this unit was \$750.00 by the end of the tenancy. The tenants paid a security deposit of \$350.00 on September 11, 2004.

The tenants' application

The tenant DL testifies that the landlord served the tenants with a Two Month Notice to End Tenancy on March 08, 2013. This was served to the tenants in person by the landlord's husband and had an effective date of June 01, 2013. The Notice informed the tenants 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 tenant testifies that upon receiving the landlords Notice to End the Tenancy the tenants gave the landlord the required 10 days notice on March 08, 2013 to inform the landlord that the tenants would be vacating the unit on April 01, 2013. The tenants

testify that the landlord did not provide compensation to the tenants for the Two Month Notice to an amount equivalent to one month's rent. The tenants therefore seek a Monetary Order to obtain this compensation of \$750.00.

The tenant testifies that the landlord did not do a move in or move out condition inspection of the property with the tenants at the start and end of the tenancy. The tenant testifies that they gave the landlord a forwarding address in writing on March 08, 2013. The landlord has not returned the tenants security deposit within the allowable 15 days and the tenants therefore seek to recover the security deposit. The tenant testifies that they would now like to recover double the security deposit as allowed under the Act and request a Monetary Order for \$700.00.

The tenants testify that the landlord put the house up for sale after the tenants moved out and the property has subsequently been sold the tenant testify that having to move caused disruption to their lives, the landlords did not have any permits or approvals and simply sold the property. The tenant testifies that all the landlord did was put in some hardwood flooring and paint and this was insufficient to require the unit to be vacant. As the landlord did not do what was stated on the Two Month Notice the tenants seek to amend their application to recover further compensation from the landlord equivalent to two months' rent.

The landlord disputes the tenants' claims. The landlord testifies that the tenants gave the landlord 10 days notice to end the tenancy and therefore the tenants moved from the unit because of that. The landlord states the tenants should not get any compensation.

The landlord testifies that she spent \$15,000.00 to renovate the unit and this involved redoing the floors and carpets and the renovations were needed in order to sell the property. The landlord testifies that she does not know what other work was done in the unit as her husband handled it.

The landlord testifies that she did not return the tenants' security deposit as the tenant received cheaper rent to maintain the property and the tenants owed rent.

The landlord's application

The landlord testifies that the tenants owed rent from 2010. They owed \$100.00 for July, \$70.00 for August and \$150.00 for October, 2010. The landlord agrees that she has never served the tenants with a 10 Day Notice to End Tenancy for unpaid rent. The landlord has provided some bank statements in evidence however these statements are not clear as to what rent has been paid and by who.

The landlord testifies that she asked the tenants many times to pay this rent but they never did. The landlord testifies that the tenants have never paid any amounts in cash for rent. The tenants had the landlord's bank account details to pay rent into the landlord's bank.

The landlord testifies that the tenants failed to remove garbage and wood from the property. The landlord testifies that she had to pay someone to remove the garbage and wood and has provided an invoice for \$800.00. This invoice indicates that 16 loads of wood and garbage were removed out of the yard and taken to the dump. The invoice also indicates that a further load of garbage was removed and the house was cleaned for an additional \$50.00. The landlord testifies that she did not see the wood or garbage herself. The landlord testifies that after the tenants moved out a realtor came to look at the house and the landlords started to clean up the house. The landlord testifies that they gave the tenants two more weeks to clean up after they moved out but the tenants did not come back to do this cleaning.

The landlord agrees that she did not do a move in or move out inspection of the property. The landlord testifies that the city sent a letter about a tree over the power lines. The tenant was supposed to cut down some branches however the tenant removed the tree.

The tenant DL testifies that they do not owe any rent from 2010. The tenant agrees that rent was late on occasion and testifies that they would pay cash to the landlord's husband. The tenant disputes the landlord's claim that they never paid in cash and refers to a rent receipt provided in evidence signed by the landlord's husband for rent paid in cash. The tenant testifies that this was the only cash receipt they received from the landlord's husband.

The tenants dispute the landlords claim that they left garbage and wood at the unit. The tenant DL testifies that after receiving a letter from the City concerning the tree close to the power lines the landlord asked the tenant to chop down the tree. The wood from that tree along with some other wood taken from the basement of the property from a grow up left by the previous tenant, was the only wood left at the property and was the landlords wood not the tenants. The tenant has provided photographs of the property showing some fencing and scrap wood which belonged to the tenants and was removed by the tenants at the end of the tenancy. The tenant also questions the landlord invoice provided in evidence for the removal of wood and garbage. The tenant testifies that the invoice is dated in June, 3013 and the tenants vacated the property on April 01, 2013. The tenants dispute the landlords claim that they did not clean the unit. The tenant ML testifies that the unit was left in a reasonable clean condition and any garbage was left by the tenants in the bins provided to be removed on garbage day. The tenant refers to their photographic evidence showing how tidy the tenants kept the property.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants application; I refer the parties to section 50 and section 51 of the *Act* which state:

Tenant may end tenancy early following notice under certain sections

50 (1) *If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by*

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

Consequently I find the tenants are entitled to an amount equivalent to one month's rent in compensation for the Notice given under section 49 of the Act. The tenants are entitled to a monetary award to an amount of **\$750.00**.

With regard to the tenants claim for double the security deposit; Section 38(1) of the Act says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute

Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on March 08, 2013 and the tenancy ended on April 01, 2013. As a result, the landlords had until April 16, 2013 to return the tenants security deposit and any accrued interest or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security deposit or interest and have not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenants have established a claim for the return of double the security deposit of \$700.00 plus accrued interest of \$12.40 on the original amount pursuant to section 38(6)(b) of the *Act*. A monetary award has been made for the sum of **\$712.40**.

With regard to the tenants request to amend their application to include further two months compensation as the unit was sold and not used as described on the Notice. However, in the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process and the landlords right to know what the tenants have applied for. Consequently the tenants are at liberty to file another application against the landlord for any further compensation.

With regards to the landlords application concerning unpaid rent; in this matter the burden of proof falls to the landlord to show that rent was unpaid in 2010. The landlord has provided some bank statements but these do not clearly show a record of rent paid by these tenants. The landlord has not provided any further evidence and did not serve the tenant a 10 Day Notice to End Tenancy in 2010 for these alleged rent arrears. I find the amount of time that has passed makes it difficult for the tenant to find or provide

evidence to support their claim that rent was paid and therefore I find the landlords claim for unpaid rent must be dismissed without leave to reapply.

With regard to the landlords claim for the removal of garbage, wood and cleaning, again the burden of proof falls to the landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenants argue that the wood belonged to the landlord from a tree the tenants were asked to remove and from a previous grow up located in the house. The landlord agrees that she did not see the wood and cannot therefore verify what the wood was. I have further concerns about the date on the invoice when the wood and garbage was removed as the landlord has stated that some renovations were done in the house and the landlord has not proved that some of this debris was not from the landlords work. The landlord failed to complete a move in or move out condition inspection report to show that the tenants were responsible for the wood, garbage or cleaning and therefore the landlord has failed to meet the burden of proof and this section of the landlords claim must be dismissed without leave to reapply.

As the landlord has been unsuccessful the landlord must bear the cost of filing her own application.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,462.40**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The landlord's application is dismissed in its entirety 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 13, 2013

Residential Tenancy Branch

