



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on August 22, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. An Order authorizing the tenant to change the locks to the rental unit 0 Section 70.

The Landlord applied on August 27, 2013 with an amendment made on September 23, 2013 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for damage to the unit – Section 67;
3. A Monetary Order for unpaid rent - Section 67;
4. A Monetary Order for compensation – Section 67;
5. An Order to retain all or part of the security deposit; and
6. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing, the Tenants confirmed that the tenancy has ended and withdrew their application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed and undisputed facts: There is no written tenancy agreement. The tenancy started on May 15, 2012 and ended on September 15, 2013. Rent of \$1,200.00 was payable monthly on the fifteenth (15th) day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. Although the Parties conducted a walk-through of the unit at move-in, no condition inspection report was completed. The Parties did not conduct a move-out inspection and no move-out report was completed. The Tenants owe unpaid rent of \$600.00 for the period August 15 to September 15, 2013.

The Landlord states that on August 10, 2013 the Tenants gave verbal notice to end their tenancy for September 15, 2013. The Landlord states that they did not try to contact the Tenants after the Tenants made their application for dispute resolution other than on September 15, 2013 when the Landlord left a note on the unit door for an inspection. The Landlord states that there was a verbal agreement with the Tenants to rent the unit for a three to four year rental term and to provide three months notice to end the tenancy. The Landlord claims lost rental income for September/October and October/November 2013. The Landlord states that they thought that as the Tenant made an application for dispute resolution that the Tenants would stay in the unit until the hearing. The Landlord states that no repairs have been made to the unit as they thought they could not do anything until after the hearing. The Landlord states that they claim the lost rental income as the unit remained empty after the Tenants moved out.

The Tenants state that they did not agree to a fixed term tenancy and that they told the Landlord that they would be renting the unit for a minimum of a year. The Tenant states that they provided their notice to end tenancy both orally and in writing by email on

August 10, 2013. The Tenants state that they previously corresponded by email with the Landlord.

The Landlord states that the Tenants left the unit damaged and claims as follows:

- \$1,260.00 estimated as the cost to paint five walls of the unit that were each damaged by approximately four holes, some of which were made by screws and some by drilling. The Landlord provided a quotation for this amount and it is noted that the costs quoted include an unknown portion for installing curtain rods and valances for vertical blinds. It is also noted that no claim has been made for damages to any of the window coverings. The Tenant states that they were given permission by the Landlord to drill the holes and that at the end of the tenancy these holes were foamed outside and then filled and sanded inside the unit. The Tenant states there were no other holes other than the ones that were filled and sanded by the Tenants and some marks were only rub marks. The Tenant states that they used existing nails to hang pictures and all other pictures were hung with picture hanging nails;
- \$5,830.00 estimated cost to replace the carpet and underlay in the living room and family room. The Landlord states that the carpet and underlay are soiled with urine and feces caused by the Tenant's pets. The Landlord states that the carpets are about 12 to 15 years old and that the unit was purchased by the Landlord 6 years ago. The Landlord states that they lived in the unit for 4 years which was followed by a one year no pet tenancy and then the current tenancy with pets. The Tenant states that the carpets are at least 30 years old and that the carpets were all steam cleaned at the end of the tenancy. The Tenant states that although their pets did urinate on the carpet on occasion that each time this occurred the Tenant's immediately cleaned and shampooed the area. The Tenant states that the Landlords also had a dog in the unit while living in it. The Tenant states that their dogs did not cause the extent of damage claimed and did not cause any damage to the floor beneath the carpet and underlay;

- \$500.00 for the cost of a moisture inspection of the flooring beneath the carpet and underlay followed by a sealant to cover the wood to contain urine moisture in the wood. The tenant states that their dogs did not cause any harm to the wood underneath the carpet and underlay as their dogs urine was cleaned immediately. The Tenant states that the photos provided by the Landlord show old stains and that at move-in the Tenants steam cleaned the carpets three times and that each time the water came out black.

The Parties agreed that the house was otherwise left in immaculately clean condition.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 5 of the Act provides that landlord and tenants may not avoid or contract out of the Act and that any attempt to do so has no effect. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the agreed facts, I find that the Landlord has substantiated an entitlement to **\$600.00** in unpaid rent. Considering that the Tenant disputes an agreement to a fixed term tenancy and considering that no written tenancy agreement exists, I find that there was no fixed term tenancy and that the tenancy was a month to month tenancy.

Although the Landlord states that there was an oral agreement that the Tenants would provide three months notice to end the tenancy, as the Act only provides only a one month notice requirement from tenants, I find that this oral agreement is in conflict with the Act and is therefore of no effect. As the Landlord failed to provide any evidence of efforts to mitigate the lost rental income claimed, I dismiss this claim.

Given the lack of a move-in and move-out condition report and no wall photo evidence from the Landlord and considering the Tenant's evidence of repairs done to the walls by the Tenant at the end of the tenancy, I find that the Landlord has failed on a balance of probabilities to establish that the Tenants caused damages to the walls to the extent claimed. As there is no way to determine any proportionate amount of damage done by the Tenant or the proportionate costs to repair any damage done by the Tenant, I dismiss this claim.

The Residential Tenancy Branch provides a guideline on the useful life of building elements and this guideline sets the useful life of a carpet at ten (10) years. Based on the evidence of both Parties that the carpet is older than 10 years and considering that no evidence was provided that the carpet in the unit would otherwise have had a substantially longer life, I find on a balance of probabilities that the carpet was well past its useful life during the tenancy. Given the age of the carpet and the evidence of previous pets in the unit, I find on a balance of probabilities that the Landlord has failed to show that the Tenants caused the damages as claimed to the carpet and I dismiss this claim. Had the Landlord conducted a moisture investigation before making the claim for the investigation, it may be that there would have been sufficient evidence to show that recent urine caused damage to the flooring requiring the application of a sealant. However as there is no evidence to show any recent wood moisture on the flooring under the carpets, and considering that the Tenant's evidence of immediate cleaning after their dog urinated on the carpet is supported by the otherwise agreed immaculate state of the unit at move-out, I dismiss the Landlord's claim for the moisture inspection and sealant.

As the Tenants agreed that \$600.00 is owed to the Landlord and as the Landlord has otherwise not had any success to their claim, I decline to award recovery of the filing fee. As the Landlord still holds the security deposit of **\$600.00** plus zero interest, I order the Landlord to retain this amount in full satisfaction of the claim.

Conclusion

I order the Landlord to retain the security deposit and interest of \$600.00 in full satisfaction of the 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: October 10, 2013

Residential Tenancy Branch