



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation for unpaid rent and damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The rental unit is a basement unit and the landlord lives in the upper unit with her spouse and children. The tenancy commenced May 1, 2013 for a fixed term set to expire April 30, 2014. The tenants were required to pay rent of \$850.00 on the 1st day of every month. The tenants paid a security deposit of \$425.00 and a pet deposit of \$50.00.

In the evening of July 20, 2013 a surprise birthday party was held in the landlord's unit. The tenant came to the landlord's door to request the noise level be reduced. The tenant also called the police to report a noise complaint.

On July 22, 2013, the tenant left a letter for the landlord indicating the tenants wished to end the tenancy, largely due to the events that took place on July 20, 2013 and the tenants presented the landlord with a Mutual Agreement to End Tenancy with an effective date of September 30, 2013.

The landlord signed a Mutual Agreement to End Tenancy with an effective date of August 31, 2013, signed and it returned it to the tenants for their signature.

The tenants altered the effective date on the Mutual Agreement to End Tenancy signed by the landlord to read August 1, 2013 and signed in the spaces next to the landlord's signature. The tenants left the document at the door upon vacating the unit on August 1, 2013.

It was acknowledged by the tenants that they did not otherwise inform the landlord that they intended to end the tenancy as of August 1, 2013 until they vacated the rental unit and left the altered Mutual Agreement to End Tenancy. The tenants explained that they moved out with little or no notice because the landlord violated the tenants' right to quiet enjoyment by stomping on the floor above them during the week following the party.

The landlord denied making unreasonable or excessive noise in the week following the birthday party.

The landlord is seeking to recover unpaid and/or loss of rent in the amount of \$850.00 for the month of August 2013 since the tenants moved without notice and the landlord was unable to cash the tenant's rent cheque for August 1, 2013 as the tenants closed the bank account. The landlord stated that she was able to re-rent the unit starting September 1, 2013.

The male tenant agreed the landlord could withhold \$78.00 for cleaning; however, in calculating the refund to the tenants the landlord made an error and over paid the tenants \$25.00. The landlord seeks to recover the \$25.00 she overpaid the tenants in refunding \$422.00 of their deposits.

Analysis

Under the Act, where parties have a fixed term tenancy, as in this case, the parties may end the tenancy on a date that is earlier than the expiry date in limited circumstances. Below, I have analyzed whether those circumstances apply in this case.

Where tenants are of the position the landlord has breached a material term of their tenancy agreement, such as the right to quiet enjoyment, the tenants must give the landlord written notice to correct the breach and if the breach is not corrected within a reasonable time after written notice the tenants may end the tenancy pursuant to section 45(3) of the Act. By way of the tenant's letter of July 21, 2013 I am satisfied the tenants put the landlord on written notice that the tenants considered the landlord's

actions of July 20, 2013 were in violation of their right to quiet enjoyment. However, in order to end the tenancy under section 45(3), the tenants must be able to prove, based upon the balance of probabilities, that the landlord failed to correct the breach, or continued to violate the tenants' right to quiet enjoyment, after written notice was given.

In this case, I was provided disputed verbal testimony that the landlord continued to breach the tenants' right to quiet enjoyment after the written notice was given. I find the disputed verbal testimony, in the absence of other evidence, insufficient to conclude the landlord continued to violate the tenants' right to quiet enjoyment after written notice was given to the landlord.

Parties may also chose to end the tenancy on a date that is earlier than their fixed term by way of a mutual agreement. I have considered whether the parties mutually agreed to end the tenancy as of August 1, 2013 and I have concluded that it was not ended on that date by way of mutual agreement. A document that is altered after it is signed by a party so as to change the meaning of the agreement is not enforceable unless both parties agree to the change, which is usually evidenced by way of initials next to the alteration. In this case, I find the tenants altered the effective date of the document that had been signed by the landlord, without the landlord's agreement, and in doing so, attempted to change the meaning of the document which invalidated the document. Therefore, I find the Mutual Agreement to End Tenancy with a stated effective date of August 1, 2013 to be of no force or effect.

In light of the above, I find the tenants violated the Act in ending the tenancy August 1, 2013 without the mutual agreement of the landlord or sufficient notice. Therefore, I hold the tenants responsible for unpaid and/or loss of rent for the month of August 2013 in the amount of \$850.00.

As the tenants paid deposits totalling \$475.00 and the tenant was agreeable to paying \$78.00 for cleaning, I accept that the landlord made an error in refunding \$422.00 of the deposits to the tenants. Therefore, I grant the landlord's request to recover \$25.00 from the tenants for cleaning.

Since the landlord has been successful in this application, I further award the landlord recovery of the \$50.00 filing fee paid for this Application for Dispute Resolution.

Given all of the above, the landlord is provided a Monetary Order in the sum calculated as follows:

Unpaid and/or loss of rent for August 2013	\$ 850.00
Cleaning	25.00
Filing fee	<u>50.00</u>
Monetary Order for landlord	\$ 925.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$925.00 to serve and enforce.

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 17, 2013

Residential Tenancy Branch

