



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, O, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the tenants and the landlords. The tenants applied to cancel a notice to end tenancy. The landlords applied for an order of possession and for a monetary order for unpaid rent and to retain the security deposit.

By the time of the hearing, the tenants had vacated the rental unit. Accordingly, the tenants withdrew their application and the landlords withdrew their claim for an order of possession.

Both the tenants and landlords participated in the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to a monetary order for damage to the rental unit?

Background and Evidence

The parties agree the tenancy started August 23, 2013 and was a fixed term agreement until August 31, 2014. The tenants were obligated to pay \$1,200.00 in rent monthly in advance on the first day of the month. The tenants also paid a security deposit of \$600.00.

The landlords gave evidence that they purchased the property after the tenancy agreement had started, and took possession on September 25, 2013.

The tenants gave evidence that they advised the landlord verbally and by text message on January 1, 2014 that they would be moving out on January 15, 2014. They told the

landlords at that point to retain their security deposit in lieu of rent for the first half of January 2014. The tenants' evidence is that they moved out on January 15, 2014 then came back and cleaned the unit on January 16, 2014 and left the keys on the counter.

The landlords agree that the tenants gave verbal notice on January 1, 2014. The landlords did not advertise the rental unit to prospective tenants. The landlords' evidence is that they believed they had to complete the hearing process before they could re-rent the unit, and they believe they were told this by the RTB.

The landlords served the tenants with two notices to end tenancy in January 2014, however the notices are not at issue in this hearing.

The tenants gave evidence that the rental unit was in the same condition when they moved out as when they moved in, except there were some small holes in the walls where the tenants had hung pictures and shelves. The tenants provided photographs which show small holes in the walls. The tenants did not have the carpets cleaned, but their evidence is that they vacuumed the carpets. The tenants gave evidence that they had cats but their cats did not urinate on the carpet. The tenants' evidence is that the carpets were not cleaned prior to their tenancy.

The landlords gave evidence that after the tenants moved out there were small holes in the walls as described by the tenants. As well, the carpets needed to be cleaned and the dryer was not working. The landlords estimate their expenses to be \$100.00 to repair the walls, \$100.00 for carpet cleaning, and \$100.00 for a service call to repair the dryer.

The tenants agree the dryer was not working properly at the time they moved out, however they deny having damaged the dryer. The tenants' evidence is that they did not notify the landlords that the dryer wasn't working because their relationship with the landlords was difficult.

Analysis

I find that the tenants breached their fixed-term tenancy agreement by moving out prior to the end of the fixed term. The landlords are entitled to be compensated for any losses arising from the tenants' breach. The landlords are required to take steps to mitigate their losses.

I note that the landlords are mistaken in thinking they could not seek to re-rent the rental unit until after the dispute resolution hearing. The landlords are not only entitled to re-

rent the unit, but they are required to attempt to re-rent the unit to mitigate any losses they may have as a result of the tenants moving out prior to the end of the fixed term. I find it is very unlikely that the RTB told the landlords they could not seek to re-rent the rental unit until after the hearing. I find that the landlords had a responsibility to attempt to mitigate their losses by advertising the rental unit for rent immediately after the tenants gave notice on January 1, 2014. Although the tenants did not give written notice, the landlords did not indicate that they doubted the tenants' intent when the tenants gave them verbal notice that they would be moving out in mid-January 2014.

Even if the landlords had mitigated their losses by advertising promptly, the rental unit was not vacant until January 16, 2014. Additionally, the dryer and some minor damage to the walls had to be repaired before new tenants could move in. I find that the landlords would still have suffered the loss of rent for the entire month of January 2014 even if they had met their responsibility to mitigate. I therefore award the landlords a monetary order for \$1,200.00 for loss of rent for January 2014. Since the landlords did not meet their duty to mitigate their losses for February 2014, I dismiss the landlords' claim for loss of rent for February 2014.

The tenants agree that they left small holes in the walls from hanging pictures and shelves. The RTB addresses responsibility for such holes in "Residential Policy Guideline 1. Landlord & Tenant Responsibility for Premises". The relevant section reads in part:

Nail Holes

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

In this case, there was no evidence brought forward that the previous landlord gave the tenants any rules about picture hanging. In addition, the photographs provided by the tenant do not indicate that there were an excessive number of nail holes. For those reasons and in accordance with the above policy, I find the small holes left by the tenants were "reasonable wear and tear" within the meaning of Section 37.

Accordingly, I dismiss the landlords' application for compensation for damage to the walls.

The RTB also addresses responsibility for carpet cleaning in "Residential Policy Guideline 1. Landlord & Tenant Responsibility for Premises". The relevant section reads in part:

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of the tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Considering the tenants' admission that they had pets, I find the landlord is entitled to compensation for steam cleaning and I find the landlords' estimate of \$100.00 is a reasonable estimate of the landlord's loss in this respect.

Although the parties agree the dryer in the rental unit is not working properly, there was no evidence that the tenants damaged the dryer. Accordingly, I dismiss the landlords' claim regarding the dryer.

The landlords are entitled to recover their RTB filing fee of \$50.00. The total amount due the landlords is \$1,350.00, comprised of \$1,200.00 rent, \$100.00 carpet cleaning, and \$50.00 filing fee. I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$750.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlords a monetary order for \$750.00. The landlords may also retain the security deposit.

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: February 28, 2014

Residential Tenancy Branch

