



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, O
MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlords and by one of the tenants. The tenant's application was filed on January 6, 2014 seeking an order permitting more time to make an application to cancel a notice to end tenancy than permitted by the *Residential Tenancy Act*, and for an order cancelling a notice to end tenancy for unpaid rent or utilities. The landlords applied on February 5, 2014 for monetary orders for damage to the unit, site or property; for unpaid rent or utilities; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords and both tenants attended the hearing on February 20, 2014, at which time the parties discussed the possibility of settlement. During the course of the discussions, the tenants advised that they had moved out of the rental unit on January 26, 2014, and therefore I dismissed the tenant's application. The hearing did not commence on February 20, 2014, no evidence was taken, and the disputes did not settle. The hearing of the landlords' application was adjourned to February 25, 2014 at 9:00 a.m. Both landlords attended that hearing, however the tenants did not attend. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, but the only participants who joined the hearing were the landlords.

One of the landlords gave affirmed testimony.

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

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2013 and was to expire on August 31, 2014, although the tenants vacated the rental unit on or about January 26, 2014 and had all items removed when the parties conducted the move-out condition inspection on January 29, 2014. Rent in the amount of \$1,800.00 per month was payable in advance on the 1st day of each month, and a copy of the tenancy agreement has been provided. On August 13, 2013 the landlords collected a security deposit from the tenants in the amount of \$900.00 which is still held in trust by the landlords.

The tenants failed to pay rent when it was due for the month of January, 2014 and on January 2, 2014 the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice has been provided, which states that the tenants had not paid \$1,800.00 for rent that was due on January 1, 2014 and contains an expected date of vacancy of January 15, 2014.

The tenants did not move from the rental unit by January 15, 2014 and the landlords claim loss of revenue for the month of February, 2014. Further, the tenants did not leave the rental unit reasonably clean and undamaged, but left a number of damaged items that the landlords had to repair before being able to re-rent the unit. Therefore, the landlords claim loss of revenue for the month of March, 2014.

The landlord further testified that both landlords and both tenants attended the move-in and move-out condition inspections, and that the father of one of the tenants and the brother of one of the landlords were also present during the move-out condition inspection. A copy of the reports has been provided which shows both reports on the same page. It shows a move-in inspection date of October 5, 2013 and is signed by

one tenant acknowledging that the report fairly represents the condition of the rental unit. The end of tenancy date is January 29, 2014 and again is signed by a tenant agreeing that the report fairly represents the condition of the rental unit, and agreeing to the landlords retaining the \$900.00 security deposit.

A number of photographs have also been provided to depict damages claimed by the landlords, although it was agreed by the parties on the first day of the hearing that not all of the photographs were taken at the end of the tenancy. The landlords have also provided a Monetary Order Worksheet, and make the following claims:

- \$523.58 for replacement of the refrigerator. The landlord testified that the refrigerator was new at the commencement of the tenancy and provided a receipt for that amount showing a date of delivery of June 25, 2013 and a stamp showing received on July 21, 2013. The bottom portion of the fridge was broken at the end of the tenancy which appeared to be consistent with someone standing on it. Also, the light shield is missing and the right side of the wall was caved in. The landlord has not checked into repairing it, but claims the cost of a new appliance as it was new at the beginning of the tenancy.
- \$336.00 for cleaning the rental unit. The landlord testified that the rental unit was left very soiled and provided a quote from a cleaning company dated February 5, 2014 for \$32.00 per hour weekdays or \$37.00 per hour on weekends, based on 1 cleaner with a 4 hour minimum. The estimate also states that based on the information provided to the cleaning company from the landlords, the cleaning will cost between \$268.80 and \$336.00 including taxes. The landlord testified that the claim is for 8 hours at \$37.00 per hour and feels the landlords are entitled to the higher amount, but has not yet hired the cleaning company and only some of the work has been completed by the landlords to date. The landlord estimates the remaining cleaning will take 4 hours of 2 people, and the cost includes cleaning supplies, and pointed out that the move-out condition inspection report shows that numerous items were left dirty at the end of the tenancy.
- \$19.75 for cleaning supplies for cleaning the landlord testified has been done by the landlords to date. The landlords have provided a receipt for that amount, but no items are listed on the receipt, only amounts.
- \$174.46 for damaged items in the rental unit, for which the landlord has reduced to \$44.68, broken down as follows:
 - \$7.49 for replacement of the furnace filter;
 - \$4.99 for oven cleaner;
 - \$1.99 for an appliance bulb replacement;

- \$3.98 for replacement of a broken light switch;
- \$24.98 for a broken smoke detector; and
- \$1.25 for “eco fees;” and
- GST and PST.

The receipt shows 2 air filters, for which the landlords claim only one.

- \$61.58 for replacing the locks on the rental unit. The landlord testified that the tenants were given 3 keys at the beginning of the tenancy, and returned one original and a copy that had a logo on it. The landlord had not given one with a logo and testified that the tenants had made that copy. Another was returned to the landlords during the move-out condition inspection, but another key given has still not been returned.
- \$5,400.00 for loss of revenue. The landlord testified the rental unit could not be advertised for rent until the tenants moved out, and were in arrears for the month of January, 2014. They didn't move out until near the end of January, 2014, and as a result of the repairs and cleaning required, the landlords were not able to advertise for the month of March, 2014 and claim that month as well as against the tenants. The landlords had shown the rental unit to 2 separate potential renters, but one declined to take it due to “the drama” with the current tenants, and has provided a copy of that person's email specifying that. The other potential tenant also found another place.
- \$4,000.00 for repair of the hardwood floor, for which the landlord reduces the claim to \$2,966.00. The landlords have provided a quote for \$4,000.00 but the landlord testified that a contractor who is more local gave the lower estimate. Photographs of the damaged hardwood floors have been provided and the landlord pointed out that the move-in condition inspection report shows that at the commencement of the tenancy all of the hardwood floors were newly refinished.
- \$1,338.75 to replace the kitchen linoleum. Photographs of the floor show gouges and cuts in the linoleum and the move-in condition inspection report shows that the floor was new at the commencement of the tenancy. The landlords have also provided a quote for that amount and the landlord testified that the same company was used as before, and the installer knew what type of flooring to use in the quote based on the previous installation. At move-out, the report shows a “3 inch slice” and “13 nicks.”
- \$300.00 for filling, sanding and painting damaged walls. The landlord testified that he intends to do the work himself and estimates the cost of supplies. Photographs provided show damage to the walls in a bedroom and in the stairwell.
- \$175.99 for copying and photographs for preparation for this hearing.

- \$100.00 for the cost of filing this application.
- \$20.16 for Canada Post for the cost of serving the application by registered mail.
- \$669.76 for replacing the bathroom vanity. The landlords had installed a new vanity prior to the commencement of the tenancy and have provided a copy of the receipt. It is dated 07/09/13 in that amount and the landlord testified that the top of the counter has 3 or 4 stains about as big as a dime which the landlord has tried to remove but has been unsuccessful. He testified that he is prepared to cut the bill in half and will still attempt to remove the stains by some other method not yet tried, but claims that amount from the tenants. The vanity is a style that is attached to the wall and removing and replacing it will be a big job requiring remedial work to the wall.

The landlord also testified that the landlords invested about \$80,000.00 into the rental unit in order to be able to charge \$1,800.00 per month, and claims these amounts from the tenants to protect that investment.

Analysis

Dealing firstly with the claim for unpaid rent, I am satisfied that the tenants have not paid rent for the month of January, 2014, and the landlords are entitled to recovery of that amount. With respect to the claim for February and March rent, I am not entirely satisfied that the landlords have mitigated their loss, as required under the *Residential Tenancy Act*. Although I accept the testimony of the landlord that 2 prospective renters were lost which may very well have been as a result of the “drama,” there is no evidence that the landlords have attempted to advertise the rental unit for rent or to finish the repairs and cleaning. I accept that the landlords are also busy people, but I do not find that the tenants ought to continue to pay rent as a result. I do, however, find that the landlords have established that the rental unit could not have been rented prior to February 15, 2014 and I grant the landlords a monetary order for half of that month. The landlords’ claim for a monetary order for loss of revenue for the month of March, 2014 is hereby dismissed.

With respect to the landlords’ claim for damages, in order to be successful in such a claim, the onus is on the landlords to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party’s failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts landlords made to mitigate, or reduce such damage or loss.

I have reviewed the move-in and move-out condition inspection reports as well as the receipts, invoices and photographs. Although I recognize that some of the photographs were taken prior to the end of the tenancy and prior to the date of the move-out condition inspection, I accept the testimony of the landlord that none of the damages were repaired by the tenants at the end of the tenancy.

With respect to the refrigerator, I find that the appliance was new at the beginning of the tenancy, and considering that the break is at the bottom, below the crisper drawers, and considering that it is damaged in 3 places, I find that the landlords have established a claim in the amount of \$523.58 for its replacement.

With respect to the landlords' claim in the amount of \$336.00 for cleaning the rental unit, I accept that the landlords are entitled to hire a cleaning company to complete the job that the tenants ought to have finished, but I am not satisfied that the work needs to be completed on a weekend for the higher rate. The landlord testified that the work will likely take 4 hours of 2 cleaners, and I find that the lower amount in the estimate provided by the cleaning company in the amount of \$268.80 including GST has been established.

With respect to the claim in the amount of \$19.75 for cleaning supplies, there is no way of determining what was purchased from the evidence of the receipt. Nothing is itemized, and I find that the landlords have failed to establish element 3 in the test for damages.

I find that the landlords have established a claim as against the tenants for the oven cleaner, appliance bulb replacement, broken light switch, broken smoke detector, and eco fees as evidenced by the condition inspection reports, receipts and photographs. For those items, I calculate those to be a cost of \$41.50. With respect to the claim for a furnace filter, I refer to Residential Tenancy Branch Policy Guideline #1 which places the onus on the landlord to replace furnace filters, and therefore, the landlords' claim in this regard is dismissed.

I also find that the landlords have established a claim in the amount of \$61.58 for replacing the locks on the rental unit. I accept the landlord's testimony and the condition inspection report showing that the tenants were provided with 3 keys at the beginning of the tenancy and failed to return all of them to the landlords at the end of the tenancy.

With respect to the landlords' claim for hardwood floor repair, I am satisfied from the condition inspection reports and photographs that the tenants caused the damage during the 5 month tenancy, and the landlord has established a claim for the lower amount of \$2,966.00 after receiving and providing a quote in the amount of \$4,000.00. The landlords have proven the elements in the test for damages, and I award the lower amount.

Similarly, I find that the landlords have established a claim in the amount of \$1,338.75 to replace the kitchen linoleum.

With respect to the damaged walls, having viewed the photographs, I find that the landlords' estimate for completing the work themselves is not unreasonable, and I award \$300.00 for filling, sanding and painting damaged walls.

With respect to the bathroom vanity, I find that the damage caused has not been corrected by the tenants, nor have the landlords been successful in removing the stains. Considering the vanity was new at the commencement of the tenancy and its cost has been proven, I find that half of its value, or \$335.00 is reasonable.

The landlords' claims for costs of preparing photographs and photocopies for this hearing, and for serving documents are not recoverable under the *Act*, and I dismiss those claims.

Since the landlords have been partially successful with the claim, the landlords are entitled to recovery of the \$100.00 filing fee for the cost of the application.

In summary, I find that the landlords have established monetary claims as against the tenants for:

- \$1,800 for unpaid rent;
- \$900.00 for loss of revenue;
- \$5,504.93 for damages;
- \$268.80 for cleaning;
- \$61.58 for changing the locks;
- \$100.00 for recovery of the filing fee;

for a total of \$8,635.31.

I hereby order the landlords to keep the \$900.00 security deposit in partial satisfaction of the claim, and I grant the landlords a monetary order as against the tenants in the amount of \$7,735.31.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby order the landlords to keep the security deposit and I grant a monetary order in favour of the landlords as against the tenants, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,735.31.

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: February 28, 2014

Residential Tenancy Branch

