



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, AS, OPR, MND, MNR, MNSD, 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 for:

1. An Order Cancelling a Notice to End Tenancy - Section 46;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply with the Act - Section 62; and
4. An Order allowing an assignment or sublet – Section 65.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for damage to the unit – Section 67;
4. A Monetary Order for compensation – Section 67;
5. An Order to retain the security deposit – Section 38; 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 under oath. At the onset of the Hearing the Tenant withdrew all claims except for the claim for compensation as the Tenant moved out of the unit. The Landlord withdrew the claim for the order of possession.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a cabin started on September 1, 2013 with a monthly rent of \$800.00.

The Landlord collected \$400.00 for a security deposit and \$400.00 as a pet deposit.

The tenancy of a house on the same property as the cabin and that included the cabin started on October 1, 2013 at a monthly rent of \$2,300.00. The Landlord collected an additional \$700.00 for the deposits. The Tenant does not dispute the Landlord's claim for **\$23.13** for a phone bill.

The Parties agree that the Tenant was given a 10 day notice to end tenancy for unpaid rent and the Tenant provided a copy of this Notice dated January 4, 2014. The Parties disagree on the rental amount paid for November 2013. The Landlord claims that the Tenant owes arrears of \$2,400.00 prior to January 2014. The Landlord provided no accounting documentation for the rents received and during the Hearing gave oral evidence of receipt of monthly amounts indicating that the amount outstanding as of January 1, 2014 was \$210.00. The Tenant provided oral evidence of monthly amounts indicating that all rents were paid to January 2014. As set out in the monetary worksheet, the Landlord claims \$5,410.00 for unpaid rent. The Tenant disputes having to pay for rent past February 15, 2014.

The Landlord states that on February 9, 2014 the Unit was attended and found to be empty with the door left unlocked. A few items had been left in the basement and some old furniture was outside. The Landlord states that the Tenants house and cell phone were out of service when the Landlord tried to call the Tenants so the Landlord put a request for an inspection for February 11, 2104 on the door. The Landlord states that the Tenants did not attend and the Landlord completed the inspection alone but did not complete a report.

The Tenant states that on February 10, 2014 while the Tenant was cleaning the unit the Landlord attended the unit. The Tenant described the circumstances in detail and states that the Landlord was told that morning that the Tenant would not be out of the unit until February 15, 2014. The Tenant states that after the Landlord left the Tenant also left the unit for about an hour and half. The Tenant states that before leaving she left a note informing the Landlord that she would be back. The Tenant states that when she returned the Landlord had written a note on the back of the Tenant's note asking the Tenant to leave the keys. The Tenant states that she again returned on February 12, 2014 to complete the garbage removal but that the unit was locked. The Tenant states that they could not call the Landlord as they had been earlier instructed by the police not to contact the Landlord. The Tenant states that on February 15, 2014 she entered the unit through a window to complete the interior cleaning and that the unit and cabin were both fully cleaned and empty except for a couple of boxes.

The Landlord denies seeing the Tenants on February 10, 2014 but agrees that the handwriting on the Tenant's note is the Landlord's. The Landlord states that she was at the unit on that day and left the note about the keys but not on a note from the Tenant. The Landlord states that on February 12, 2014 the locks were changed as the Tenant had failed to return the keys. The Landlord claims \$270.06.

The Landlord states that the Tenants caused damages to the bathroom in the cabin. In her submissions the Landlord indicates that on February 12, 2014 when she attended the cabin to change the locks, she discovered that "the bathroom was flooded with water and the water was still running – the frozen plumbing had thawed and the toilet tank burst". The Landlord states that when she was at the unit on February 10, 2014 the Landlord turned on the heat before she left. The Landlord argues that the Tenant caused the damages and claims \$2,190.00 for the estimated costs of labour and materials to make repairs. It is noted that the written estimate includes repairs to the house and replacement of a baseboard heater. The Landlord's submissions indicate only repairs to the wall of the house due to holes. The Landlord made no oral submissions at the Hearing in relation to additional damage to the house other than spit

being left on the walls and pink gobs left on the floors. The Tenant states that the baseboard heater in the bathroom smelled like it was burning so the Tenants turned it off but that the Landlord had not been informed.

The Tenant denies causing any damage to the bathroom. The Tenant states that the heat in the cabin had been left on by the Tenant and that the instructions provided by the Landlord in January 2014 about leaving water trickle during low temperatures were followed. The Tenant states that when she checked the cabin on February 10, 2014 the water was still trickling as required.

The Landlord states that the Tenant failed to clean the unit and provided an estimated cost of \$690.00. The Landlord states that 10 hours of cleaning was done at a cost of \$500.00 by the Landlord and a cleaner and that two truckloads of garbage were hauled to the dump so far for a cost of \$50.00. The Landlord states that the unit was rented for May 1, 2014 and that there is still a lot of garbage to remove. The Tenant denies the extent of cleaning claimed as set out above and argues that because the Landlord locked the Tenant out the Tenant was unable to finish the cleaning and removal of garbage. The Tenant states that some furniture items including mattresses and a deep freezer were left outside and that they broke a unit window. The Tenant claims return of the security and pet deposits. The Tenant provided photos of the unit.

The Tenant states that prior to their signing of the tenancy agreement for the house and cabin the Parties discussed a rent to own option and the Tenants introduced the Landlord to a 3rd party as a prospective purchaser who would rent the cabin for \$800.00 per month. The Tenant states that on the basis of having the 3rd party as a renter of the cabin the Tenants signed the rental agreement. The Tenant states that after signing the tenancy agreement the Landlord denied this 3rd party as both a purchaser and renter and as a result the Tenants lost rental income for October 2013. The Tenants state that they advertised to find a new renter for November 2013 but were unable to do so. The Tenant states that they asked the Landlord to alter the rental agreement to remove the cabin but that the Landlord refused. The Tenants state that they found a

renter for January 1, 2014 and that this person paid the Tenants \$600.00 to the Tenants in December 2013 to hold the unit. The Tenants state that the Landlord then refused this tenant. The Tenant states that the \$600.00 amount was returned to the person. The Tenant claims \$2,300.00 for the loss of rental income and \$1,000.00 for the cost of heating the cabin. The Tenant provided a copy of the heating invoice in the amount of \$3,073.32.

The Landlord states that the tenancy agreement was actually signed on October 18, 2014 but was backdated to commence on October 3, 2014. The Landlord states that before this signing, the Tenants were informed that the 3rd party was refused as a purchaser and that the Landlord would not want this person to be a renter. The Landlord states that this person offended the Landlord. The Landlord states that the Tenants agreed with the Landlord about this person. The Landlord states that no conditions were placed on the sublet of the unit. The Landlord argues that she should not be responsible for the Tenants' lost rental income as this prospective tenant was rejected by the Landlord for specific reasons and that the Tenants had opportunity to find other subtenants. Further the Landlord argues that she has no responsibility as the Tenants agreed to rent both the house and cabin. The Landlord states that by the time the Tenants obtained a prospective renter for January 1, 2014 the Tenants had already been served with an eviction notice and that the Landlord did not reject this person. The Tenant denies that the tenancy agreement was signed on October 18, 2014 and states that it was signed October 3, 2014 as indicated on the tenancy agreement. The Tenant provided details of events around the signing of the tenancy agreement on this day by both Parties.

The Tenants provided transcripts of Facebook messages between the Landlord to the prospective tenant/purchaser and I note that in the message dated October 4, 2013 the Landlord agrees to rent the cabin to this person directly from the Landlord, another email dated October 6, 2013 in which the Landlord tells the prospective tenant that the cabin will be rented by the Landlord if the person does not respond and additional messages indicating negotiations on rent for the month of October 2013 and the

eventual breakdown of negotiations. This person also provided a letter dated February 12, 2014 in relation to the negotiations for the rental of the unit directly with the Landlord and that the Landlord informed this person that he would not be allowed on the property again.

Analysis

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the non complying party must compensate the other party for damage or loss that results. 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.

Although the Landlord states that the tenancy agreement was signed at a later date, given the tenancy agreement indicating that it was signed on October 3, 2013, I find that the agreement was signed on that day. As the tenancy agreement is very clear I find that the Tenants accepted that they would be responsible for rent of \$2,300.00 that included the cabin. Given the lack of supporting accounting evidence, I find that the Landlord has not substantiated unpaid rent for any months other than for the agreed months of January and February 2014. I find that the Landlord is therefore entitled to unpaid rent for January 2014 of **\$2,300.00**.

Based on the undisputed evidence I find that the Landlord has substantiated its claim to **\$23.13** for the telephone bill.

Given the detailed description and copy of a note with the Landlord's writing, I accept the Tenant's evidence that the Landlord was informed that they would be out of the unit

on February 15, 2014. I therefore find that the Landlord had no basis to believe the unit was abandoned and that the Landlord had no right to lock the Tenants out of the unit on February 12, 2014. As a result, I find that the Landlord effectively ended the tenancy on February 12, 2014 and that the Tenants are only obligated to pay February 2014 rent for a period of 12 days in the amount of **\$985.68**, calculated on a per diem rate of \$84.14. I also dismiss the Landlord's claim for reimbursement of the costs for the lock changes.

Given the written tenancy agreement I accept that the Tenants were able to sublet the cabin and I accept the Tenant's evidence on a balance of probabilities that the Tenants were reasonably relying on the first sublet tenant at the time the tenancy agreement was signed. Given the evidence of communications between the Landlord and this first sublet I find that the Landlord interfered with the Tenant's right to sublet by putting herself into their position to negotiate rent for the cabin and to determine who would rent the cabin. As such I find that the Tenants have substantiated on a balance of probabilities that the Landlord acted contrary to the tenancy agreement and as a result caused the Tenants losses in both rental income and heating costs. I therefore find that the Tenants are entitled to **\$3,300.00** in compensation for the loss of rental income and heating costs as supported by the invoice. I find that the Tenants reasonably attempted to mitigate their losses by advertising and obtaining prospective tenants.

The Landlord's only evidence of causation is limited to turning on the heat prior to discovering the damaged bathroom. The Tenant gave credible evidence of maintaining the pipes. I find therefore that the Landlord has not proven on a balance of probabilities that the Tenants caused the damage claimed and I dismiss the claim for costs to repair the bathroom.

While I accept that the Tenants left some items in the unit, given the Landlord's actions to change the locks on the unit I find that the Landlord acted to prevent the Tenants ability to finish cleaning the unit or to remove the garbage. In considering the Tenant's photos of the unit, I find that the Landlord has failed to establish that the Tenant left the

interior of the unit unclean. I therefore dismiss the Landlord's claim for costs in relation to cleaning the unit or removing garbage. Given the Tenant's evidence that a window in the unit was broken and considering both Parties photos that show damage to the walls but considering that there was no breakdown or invoice for these costs I find that the Landlord has only substantiated nominal compensation of **\$200.00**.

Given the Landlord provided no evidence in relation to the problem with the baseboard heater, I find that the Landlord has not proven on a balance of probabilities that the Tenants did anything to cause the baseboard heater to stop working. I therefore dismiss the claim for its replacement.

As the Landlord's claim has met with some success I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,558.81**. Deducting the security deposit of **\$1,500.00** plus zero interest from this amount leaves **\$2,058.81** remaining. Deducting this remaining amount from the Tenants' entitlement of **\$3,300.00** leaves **\$1,241.19** owed to the Tenants from the Landlord.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,241.19**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 30, 2014

Residential Tenancy Branch

