



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing was convened by way of a face to face hearing in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for: unpaid rent; damage to the rental unit and to recover the filing fee for the cost of making the Application.

While both Landlords and the Tenant attended the hearing, only the female Landlord and the Tenant provided affirmed testimony during the hearing. The Tenant confirmed receipt of the Landlord's Application, the Notice of hearing documents including the fact sheet about the dispute resolution process and the Landlord's documentary evidence, all of which I find were served to the Tenant by registered mail pursuant to section 89(1)(c) of the *Residential Tenancy Act* (the "Act") and the Rules of Procedure.

The Tenant did not submit any evidence prior to this hearing. However, the Tenant stated that he was not aware that he was able to submit evidence. I confirmed with the Tenant that this was detailed in the fact sheet on the dispute resolution process, which he had not read, and that he could have also enquired with an Information Officer on how to submit evidence for this hearing.

At the start of the hearing, the Landlord confirmed that they did not require an Order of Possession as they had received control and possession of the rental suite. As a result, the Landlords withdrew their Application requesting an Order of Possession. However, the Landlords made a request to retain the Tenant's security deposit in partial satisfaction of their claim. As a result, I amended the Landlord's Application to include the recovery of the security deposit under the authority afforded to me by section 64(3) (c) of the Act.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Are the Landlords entitled to unpaid rent for the month of March, 2014?
- Are the Landlords entitled to monetary compensation for damage to the rental room and the common areas?
- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's claim?

Background and Evidence

Both parties agreed that this tenancy started on October 7, 2013 on a month to month basis. The Tenant paid the Landlords a security deposit in the amount of \$250.00 on October 8, 2013 which the Landlords still retain. Rent was payable by the Tenant on the last day of each month in the amount of \$499.00. The tenancy involved the rental of a single bedroom located in a 5 bedroom house in which the Tenant shared kitchen and bathroom facilities with the other renters. The rented room and the common areas were provided to the Tenant fully furnished.

The Landlord acknowledged that the Tenant and the renters occasionally shared the common areas but submitted that the Tenant had possession of the common areas adjacent to his room by himself for the most part of the tenancy as two other renters had move out half way through the Tenant's tenancy.

The Landlord testified that on conducting an inspection of the rental suite on February 28, 2014 with a witness, the Tenant informed them that he was vacating the rental unit on that day. The Landlord testified that she explained to the Tenant the requirement to provide written notice of his desire to end the tenancy as they had already turned down two potential renters who they could have accommodated had the Tenant given prior proper notice.

The Landlord testified that the Tenant also failed to pay rent on this day and as a result, the Landlords returned to the rental suite on March 1, 2014 to issue the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") which was served by attaching it to the Tenant's door. The Landlord testified that one of the other renters in the property informed the Landlord that the Tenant had indicated to the renter

that he was going to return today to do the inspection; the Landlord testified that they remained in the unit but the Tenant did not appear.

On March 3, 2014, the Landlord saw the Tenant in the rental suite who explained that he was still in the process of removing his belongings. The Landlord explained that they needed to complete a move out condition inspection report and they both agreed to do this on March 4, 2014 at which point the Tenant agreed to return the keys to the Landlords. However, the Landlord testified that the Tenant failed to appear for the move out condition inspection and return the keys as promised and had moved out all of his belongings.

The Landlord testified that the other renters had informed them that the Tenant had been leaving the property unlocked on numerous occasions and since the Tenant still had the keys for the premises, this jeopardized the safety of the other renters. As a result of the Tenant abandoning the property and to address the safety concerns of the other renters, the Landlords changed the locks to the premises.

The Landlord testified that they did not have sufficient time to rent out the suite for March, 2014 and claim from the Tenant the unpaid rent in the amount of **\$499.00**. The Landlords also claim for the replacement of the door locks and keys to the property in the amount of **\$75.00**. The Landlord testified that she contacted four Locksmiths, the details of which were provided as evidence, who provided a range of estimates for the cost of changing the locks in the amounts of \$105.00, \$99.00, \$90.00 and \$89.00. However, the Landlords only seek \$55.00 from the Tenant for the cost of changing the locks and \$20.00 for new keys for which an invoice was provided as evidence.

The Tenant submitted that he had to leave his tenancy because his relationship with the Landlords had deteriorated. The Tenant made a number of submissions relating to the fact that the Landlords had interfered with his right to peaceful and quiet enjoyment during the tenancy but provided no corroborative evidence that he had addressed these issues with the Landlord in writing and given them a reasonable amount of time to correct the breaches that he claimed. The Tenant testified that it was all too much for him and decided to leave the tenancy without giving any written notice to the Landlords.

The Tenant testified that he did come back to the rental suite to collect the remainder of his belongings and to clean his room and the common areas after telling the Landlords he was vacating the premises on February 28, 2014. The Tenant also confirmed that he had not returned the keys to premises until March 13, 2014 and these had been given to another renter residing in the property.

The Landlords continued to present their evidence in relation to damages listed on the Monetary Order Worksheet which was attached to Application, which they claim were caused by the Tenant.

The Landlords claim **\$43.58** for damage caused to the kitchen blinds in the common areas and **\$55.20** for stove hood filters which were claimed to be broken by the Tenant.

The Landlord claims **\$42.00** for missing items which were not present when the Tenant left. The Landlord testified that these included pillow shams, pillows, water glasses and various kitchen utensils. The Landlord testified that the this list of missing items was taken to a second hand store who provided an estimate in the amount of \$42.00 for replacement with second hand ones.

The Landlords claim **\$24.13** for the cost of photographs provided as evidence which had to be taken for this hearing.

The Landlords claim **\$20.00** for the cost to have the quilt, which was provided to the Tenant for his tenancy, dry cleaned at the end of the tenancy. The Landlord testified that the Tenant was provided with a list of cleaning that was to be done at the end of a tenancy which included the dry cleaning of the quilt. The Landlord testified that this was not done by the Tenant.

The Landlord testified that the Tenant did not clean the common areas and his room after he left. As a result, the Landlords together had to clean the mess left behind by the Tenant and claim a total of **\$230.00** for 11.5 hours of cleaning at \$20.00 per hour. In support of this the Landlord provided photographs taken after the cleaning was done which indicate clean appliances and common areas.

The Landlord provided a number of photographs indicating damage to the blinds, the mess left behind by the Tenant and dirty appliances such as the fridge, stove, toaster and microwave which were not cleaned. The Landlord also provided photographs indicating the condition of the common areas and the mess the Tenant lived in during the tenancy which were taken in February, 2014.

The Landlord also provided the move in condition inspection report which was completed on October 8, 2013 indicating that the rental unit was in good condition. The move out condition inspection was not completed as the Tenant failed to appear for the ones scheduled on March 1 and 4, 2014.

The Tenant disputed the Landlords' claim for damages to the property submitting that there were other renters in the house who also shared the same facilities as him. The Tenant testified that he did clean the rental unit at the end of the tenancy which is the reason why he came back to the rental suite after he had move out his belongings.

The Tenant testified that the kitchen utensils were also used by other renters and that the items provided were so old that some of them broke, such as an old can opener. The Tenant testified that he tried to clean the range hood filter but it was so old and brittle that it broke. However, he did not inform the Landlords about this. The Tenant testified that he had provided the Landlords with new pillows and shams at the end of the tenancy.

Analysis

Section 26(1) of the Act states that a Tenant is required to pay rent when it is due under the tenancy agreement. Section 45(1) of the Act explains the Tenant's obligations when ending a month to month tenancy. The Act states that a Tenant **must** give the Landlord a notice of at least one **full rental month** before ending the tenancy and this **must** be done in writing as required by section 52 of the Act.

In this instance, I find that the Tenant failed to pay the March, 2014 rent in the amount of \$499.99 as required by the Notice and failed to give the Landlord proper notice to end the tenancy before leaving.

Section 45(3) of the Act also states that a Tenant may end a tenancy if the Landlord has failed to comply with a material term of the tenancy and has not corrected the breach within a reasonable period after the Tenant gives the Landlord written notice of the breach.

In this case, I find that the Tenant provided insufficient evidence that the Landlords had breached a material term of the tenancy and that written notice of the breach and a reasonable time for correction of the alleged breach was provided to the Landlords. Therefore, I find that there is not sufficient evidence provided by the Tenant to rely on this provision of the Act for ending the tenancy in the manner it was.

As a result, I find that had the Tenant provided the Landlords with proper written notice, this would have enabled the Landlords to re-rent the suite for the following month. However, as the Tenant failed to do this I find that it would not have been possible for the Landlords to rent out the room for the month of March, 2014 and therefore I find that the Landlord is entitled to March, 2014 rent in the amount of **\$499.00**.

Section 37(2) (b) also stipulates that at the end of the tenancy, the Tenant is required to return the keys to the Landlord. In this case, I find that the Tenant failed to appear for the move out condition inspection report on March 1 and 4, 2014 and return the keys to the Landlord. I accept the Landlord's testimony that for the safety of the other renters due to the Tenant coming in and out of the property, the Landlords were justified in changing the locks after the keys had not been returned on March 4, 2014 and after the Landlords were informed by the Tenant that he was leaving on February 28, 2014. As a result, I find that the Landlords are also entitled to the **\$75.00** cost of changing the locks and replacing the keys as supported by the invoice and quotes provided as evidence.

The Act does not allow me to award a party the cost of photographs for preparing for dispute resolution proceedings and each party must bear their own costs in this respect. Therefore, I dismiss this portion of the Landlords' claim.

The Tenant testified that he had tried to clean the stove hood filters but because they were so old, they easily broke. However, I find that if this had been the case, then it would have been prudent for the Tenant to explain this damage to the Landlord when it occurred in order to show that the damage had not occurred as a result of his neglect and a request could have been made for replacement. However, the Tenant did not do this and I find that the evidence of both parties, on the balance of probabilities, give rise to the Landlord's claim which I grant in the amount of **\$55.20**.

I have dismissed the remainder of the Landlord's monetary claim for damages as I find that the Landlord has not met the burden of proof based on the evidence of both parties for this hearing. The majority of these damages claimed by the Landlord relate to the common areas of the property which were shared by other renters. Although the Landlord submitted that the Tenant had the majority of use of these areas, the Landlords accepted that other renters did have access to these arrears and would occasionally used the facilities such as the stove and fridge. The Tenant submitted that he had no knowledge of the missing items claimed by the Landlord and I find that unless the Landlord can prove that the Tenant had exclusive use and control of the common areas, it is possible that these items could be attributed to the other renters in the property.

In addition, unless the Landlord can prove through other means of evidence, such as CCTV footage or substantive witness statement of damage being directly caused by the Tenant, I find that the Landlord has not have met the burden of proof and the claim must fail.

While the Landlord submitted a number of photographs showing the condition of the rental suite during the tenancy and after the tenancy, again the majority of these photographs relates to the common areas and above findings would also apply. The few photographs provided by the Landlords regarding the Tenant's room do not contain sufficient detail to show what cleaning was required in the Tenant's room as this is also not shown on the move out condition inspection report which should have been completed in the absence of the Tenant.

As the Landlords have been successful in their claim, I award the Landlords the **\$50.00** filing fee for the cost of making the Application pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlords is \$604.20.

As the landlord already holds the Tenant's \$250.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$354.20.

Conclusion

For the reasons set out above, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$354.20**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlords' instructions.

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 08, 2014

Residential Tenancy Branch

