



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent; for damage to the rental unit; and to recover the RTB filing fee. The landlord applies to retain the tenants' security deposit.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

The parties agreed the tenancy has come to an end, and the landlord therefore no longer seeks an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

The parties agree the tenancy started July 1, 2002. At that time, the tenants were obligated to pay \$1,500.00 rent monthly in advance on the first day of the month. The tenants also paid a security deposit of \$750.00.

The landlord claims the tenants did not pay rent of \$2,215.00 for each of December 2013 and January 2014, and moved out without notice on January 16, 2014. The landlord also claims a rental loss of \$2,215.00 for the month of February 2014. The landlord also claims \$2,100.00 in damage repair and removal costs.

The tenants agree they did not pay any rent for the months of December 2013 and January 2014. However, the tenants claim that the landlord raised the rent higher than the maximum allowable increase several times in the early years of their tenancy. The tenants' position is that Section 43(5) permits them to deduct the non-compliant rent increases from their rent.

The parties agree that the landlord increased the rent as follows:

Effective July 1, 2002 at start of tenancy	1,500.00
Effective July 1, 2004	1,600.00
Effective July 1, 2005	1,700.00
Effective July 1, 2006	1,800.00
Effective July 1, 2007	1,900.00
Effective July 1, 2008	2,000.00
Effective July 1, 2009	2,100.00
Effective May 1, 2012	2,137.97
Effective 2013 (month unknown)	2,215.00

The landlord gave evidence that the original rent amount of \$1,500.00 was low at the time. His evidence is that he told the tenants at the start of the tenancy that he would raise the rent \$100.00 per year, and the tenants agreed. He says the tenants only objected to the arrangement after their relationship soured.

The tenants agree they moved out January 16, 2014 without giving the landlord notice. Their evidence is that they were concerned there was a fire hazard, based on a city electrical inspection.

The landlord provided a "House Renovation Contract" from his contractor, which lists the following scope of work:

1. Yard Cleaning
2. Drywall holes repair and painting
3. Garbage removal
4. House cleaning

The document specifies a fee of \$2,100.00.

The landlord's evidence is that the contractor spent two or three weeks on the work. His evidence is that there was a lot of cleaning to be done, especially in the kitchen.

The tenants agree they caused four holes in the walls of the rental unit. They agree they left behind two sofas and a number of boxes. The tenants agree that the landlord may retain their security deposit and accrued interest to cover damage and removal. The tenants also agree the fridge and bathroom were not left clean.

The tenants gave evidence that the carpet in the rental unit was in rotting condition throughout their tenancy. Their evidence is that the carpets were taken out after their tenancy and their position is that they should not have to pay for the removal of the old carpet. The tenants also gave evidence that the carport collapsed in 2009 and the wood from the structure remained in the backyard until the end of their tenancy. Since they were not responsible for the collapse of the carport, the tenants disagree they should be responsible for the cost of removing the wood and other items left behind by workers.

The tenants disagree that it would have taken the contractor two to three weeks to clean, repair, and remove items. The tenants' position is that it would have taken about 4 hours to remove two truckloads of items, about 1 hour to repair the drywall and paint, and about 3 hours to clean.

Analysis

The \$750.00 security deposit collected by the landlord on July 1, 2002 has now accrued interest of \$26.56 (pursuant to Regulation 4) and totals \$776.56.

I accept the evidence of the parties that the tenants did not pay rent for the months of December 2013 and January 2014. The landlord is entitled to recover unpaid rent for those two months, and I set that amount at \$2,165.11 per month (as calculated below). The unpaid rent due the landlord is \$4,330.22.

I find the landlord suffered a loss of rental income for the month of February 2014 because the tenants moved out without notice in mid-January, and the rental unit then had to be cleaned and the tenants' abandoned possessions removed before the rental unit could be re-rented. I am skeptical of the tenants' evidence that they were suddenly concerned about a fire hazard in the house they had been living in for 11.5 years. In any case, the appropriate course of action would have been to seek an order for emergency repairs, rather than moving out without notice. The landlord is entitled to recover his loss of rental income from the tenants, and I set the loss at \$2,165.11.

I accept the evidence of the parties that the tenants left behind four holes in the walls that had to be repaired, that the tenants did not adequately clean the fridge and bathroom, and that the tenants left behind approximately two truckloads of items for removal. However, I find the amount of \$2,100.00 to be an excessive charge for this work. I find the two or three weeks' work done by the contractor likely included improvements to the rental unit and removal of items that are not the responsibility of the tenants. The landlord is entitled to be reimbursed for reasonable cleaning, repair, and removal costs related to the tenancy, and I set these amounts at \$150.00, \$250.00, and \$600.00 respectively for a total of \$1,000.00.

The total amount due the landlord is therefore \$7,495.33, comprised of \$4,330.22 in unpaid rent, \$2,165.11 in rental income loss, and \$1,000.00 in cleaning, repair, and removal costs.

I accept the evidence of the parties regarding the schedule of rent increases that took place. I find the landlord increased the rent by more than the maximum allowed by Regulation 22 in 2004, 2005, 2006, 2007, 2008, and 2009. I find that the tenants did not consent to rent increases that were higher than the maximum allowable, since there is no documentary evidence of such an agreement and since the landlord discontinued the practice of \$100.00 annual increases after 2009.

For that reason, I find the tenants overpaid rent for 2004 and all subsequent years of their tenancy. I have estimated the amounts of the overpayments in the following chart.

Year	Allowable Rent at start of year	Rent increase % allowed	Rent with maximum increase	Actual rent paid by tenants	Excess Rent paid by tenants
2002	1500.00			1500.00	0
2003	1500.00			1500.00	0
2004	1500.00	4.6%	1569.00	1600.00	372.00 (\$31 x 12 mos)
2005	1569.00	3.8%	1628.62	1700.00	856.56 (\$71.38 x 12)
2006	1628.62	4.0%	1693.76	1800.00	1274.88 (\$106.24 x 12)
2007	1693.76	4.0%	1761.51	1900.00	1661.88 (\$138.49 x 12)
2008	1761.51	3.7%	1826.69	2000.00	2079.72 (\$173.31 x 12)
2009	1826.69	3.7%	1894.28	2100.00	2468.64 (\$205.72 x 12)

2010	1894.28	3.2%	1954.90	2100.00	1741.20 (\$145.10 x 12)
2011	1954.90	2.3%	1999.86	2100.00	1201.68 (\$100.14 x 12)
2012	1999.86	4.3%	2085.85	2137.97	625.44 (\$52.12 x 12)
2013	2085.85	3.8%	2165.11	2215.00	249.45 (\$49.89 x 5) July thru Nov
Total:					12,531.45

I have allowed the landlord the maximum allowable increase every year on July 1st, starting with the first year that he raised the rent (2004) and continuing for the duration of the tenancy. I have ignored the fact that the 2012 and 2013 rent increases may have actually taken effect in May rather than July.

My estimate of the total excess rent paid by the tenants is \$12,531.45. This sum is significantly more than the amount due the landlord of \$7,495.33. Section 43(5) entitles a tenant to recover rent overpayments resulting from rent increases that exceed the maximum allowed under Regulation 22. For those reasons, I dismiss the landlord's application for a monetary order for damage to the unit, for unpaid rent, and to recover the RTB filing fee and I dismiss the landlord's application to retain the security deposit. **I order the landlord to return the security deposit and accrued interest totalling \$776.56 to the tenants.**

Conclusion

The landlord's application is dismissed.

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: June 10, 2014

Residential Tenancy Branch

