



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O
CNR, ~~MNSD~~, OLC, RP, O, MNDC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities, 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 tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and for an order that the landlords make repairs to the unit, site or property.

One of the landlords and the tenant attended the hearing, and the tenant was assisted by an advocate. The tenant also called one witness. The parties and the witness gave affirmed testimony, and the parties also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

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

During the course of the hearing the tenant advised that an incorrect box was checked on the Tenant's Application for Dispute Resolution, and applied to amend the application to show that the tenant is not at this time applying for return of the security deposit, but claims a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlord did not object to the amendment, and the application is hereby amended accordingly.

Also, during the course of the hearing, the parties agreed to end the tenancy effective July 31, 2014 and consent to an Order of Possession in favour of the landlord effective

that date at 1:00 p.m. Therefore, the tenant's application for an order cancelling a notice to end tenancy is hereby dismissed as withdrawn.

Similarly, the landlord advised that there are currently no rental arrears, and the landlords' application for a monetary order for unpaid rent or utilities is withdrawn. Also, since the tenancy has not yet ended and there are no rental arrears, the landlords withdraw the application for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for cleaning and moving costs?
- Should the landlords be ordered to make repairs to the unit, site or property?

Background and Evidence

The tenant testified that this month-to-month tenancy began on May 15, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$850.00 per month is due on the 1st day of each month and there are no rental arrears. On May 8, 2014 the landlords collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlords. No move-in condition inspection report was completed by either party. A copy of the tenancy agreement has been provided.

The tenant further testified that the rental unit had not been cleaned by the landlords prior to the beginning of the tenancy, and the tenant did not notice it until she had taken possession. The tenant testified that she had to clean the bathtub, tub surround, windows, window sills, the oven and stove top, counters, back splash and floors. The tenant found mold on the floor boards and a smell of sewage in the rental unit as well as mold and garbage left in the basement. The tenant advised the landlord who tried to clean, but the smell of what the tenant believed was animal urine was still evident. The tenant and friends spent 4 to 6 hours cleaning prior to moving in and the tenant did not actually move in until May 28, 2014. After that date, the tenant spent about 15 hours of cleaning and had to purchase cleaning supplies. The floors were full of paint stain and the continued odor of animal urine. The tenant also replaced the shower head which was very dirty and the tenant felt was unsanitary. The tenant also testified that the bathtub was not sanitary and the tenant could not get it clean, so purchased a re-glazing kit. The tenant has provided photographs of the rental unit and testified that

some were taken before the tenant cleaned and some taken after. Also provided are receipts for cleaning supplies from Rona dated May 28, 2014 in the amount of \$6.02 and from The Home Depot in the amount of \$45.42.

On June 1, 2014 the tenant had a conversation with the landlord and asked for compensation for the cleaning and the landlord agreed to reduce rent by \$100.00 but has not yet done so.

On June 3, 2014 the tenant attempted to serve the landlord with a request for repairs to be made to the rental unit, but the landlord refused to accept it or any rent money and told the tenant that the landlord did not want to make any repairs to the rental unit. The tenant again tried to give the request to the landlord on June 4, 2014 but the landlord again refused it. The tenant's sister was with the tenant on that occasion and witnessed the landlord's refusal.

The tenant testified that she paid about \$150.00 for cleaning supplies and the landlord has not reimbursed the tenant for any of it and told the tenant the unit was cleaned.

After the tenant had applied for dispute resolution, the tenant decided to move out of the rental unit and gave the landlord a notice to end the tenancy on June 30, 2014 to be out of the rental unit on July 31, 2014.

The tenant has also provided a hand-written list of cleaning supplies purchased, and claims \$156.00 for cleaning supplies, \$225.00 for the time to clean at the rate of \$15.00 per hour, and \$163.44 for moving costs. The tenant testified that the landlord's failure to make repairs or clean the rental unit have caused the tenant to incur moving expenses. The tenant has provided a copy of a receipt for a moving truck in the amount of \$163.44 which was rented when the tenant moved into the rental unit and claims that amount from the landlord.

The tenant's witness testified that she attended the landlord's place of business on June 4, 2014 with the tenant and observed the landlord refuse the tenant's rent money and request for repairs.

The landlord testified that on May 5, 2014 the rental unit was cleaned by the landlord, the landlord's spouse and another cleaner. The landlord has also provided a receipt in the amount of \$325.00 from the cleaning company dated May 9, 2014 as evidence.

The landlord further testified that the tenant looked at the rental unit on May 8, 2014 and signed the tenancy agreement and addendum. The landlord's husband noticed a

cockroach in the rental unit on May 9, 2014 and hired an exterminator. The tenant was present when the rental unit was being treated when the tenant had stopped in to see the rental unit one more time prior to actually moving in. A copy of the receipt for the exterminator has also been provided. The tenant did not mention anything that needed to be done in the rental unit before moving in.

On June 1, 2014 the landlord's spouse went to the rental unit to collect rent and the tenant requested a reduction. The tenant also wanted to make a change to the existing fence, but didn't have the rent money. The landlord went to collect rent the next day, and still no rent. On June 3, 2014 the tenant sent a text message to the landlord saying that the tenant had the rent money. The landlord again attended at the rental unit but the tenant was not at home. The following day, the tenant went to the landlord's spouse's place of employment with a written request for repairs, and the landlord's spouse stated that he would take the request if the tenant paid the rent.

Analysis

In this case, the tenant applies for damages as against the landlords for the landlords' failure to provide a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. In order to be successful in such a claim, the onus is on the claiming party to satisfy the 4-part test:

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 the claiming party made to mitigate, or reduce such damage or loss.

The tenant testified that about 15 hours of cleaning had to be done by the tenant for the unsanitary conditions and requested repairs and compensation in the amount of \$100.00 from the landlords. The landlord testified that the rental unit was clean when the tenant moved in and has provided a receipt from a cleaner dated just prior to the commencement of the tenancy.

The *Residential Tenancy Act* states that a landlord and a tenant must inspect the rental unit together at the beginning of a tenancy and places the onus on the landlord to ensure that the tenant is given at least 2 opportunities to complete the inspection. The regulations to the *Act* state that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, there is no move-in condition inspection report; the landlords did not

complete one, however, the tenant did not do so either. The tenant also testified that the condition of the rental unit wasn't noticed until after the tenant moved in. The tenancy agreement was signed on May 8, 2014 for a tenancy to begin on May 15, 2014 and the tenant actually moved in on May 28, 2014. The landlord also testified that the tenant was also in the rental unit on May 9, which was not disputed by the tenant.

The tenant has provided photographs of the rental unit and testified that some were taken before cleaning and some were taken after the tenant had cleaned. I have reviewed the photographs and it is not clear which were taken when. Where a party disputes the facts, the claiming party must prove the test. The landlords have provided evidence of hiring a cleaner and the landlord testified that the landlords and the cleaner participated in cleaning the rental unit prior to the commencement of the tenancy, and I am not satisfied that the tenant has established that the rental unit was not suitable for occupation. I further find that the tenant has failed to establish element 3 in the test for damages with respect to cleaning supplies purchased. The tenant has provided a hand-written note listing approximate values of supplies, but only 2 receipts which total \$51.44.

The tenant also claims moving expenses in the amount of \$164.33 and I am satisfied that the amount claimed is supported by evidence, but I am not satisfied that the tenant has established that the tenant had to move out of the rental unit as a result of the landlord's failure to comply with the *Act* or the tenancy agreement. The tenant made an application for dispute resolution requesting compensation and repairs and then decided to move out of the rental unit before the hearing.

Since the tenant is moving out of the rental unit, I decline to order the landlords to make repairs to the unit, site or property.

Since the parties have agreed to end the tenancy and neither party has been successful with the balance of their respective applications, I decline to order that either party recover the filing fee from the other.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective July 31, 2014 at 1:00 p.m., by consent.

The landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed as withdrawn.

The tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby dismissed as withdrawn.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed without leave to reapply.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby order the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*.

This order is final and binding 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: July 28, 2014

Residential Tenancy Branch

