



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, MNR, MNSD, MNDC, FF
Tenants: MNDC, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought a monetary order and an order to have the landlord complete repairs.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

The landlords testified each tenant was served with some of their evidence by courier on June 13, 2014. The tenants submit that they did not receive this evidence. The landlords provided evidence that they had sent the package by courier but did not provide any confirmation that packages were received by the tenants.

The evidence in question contained a note to the female tenant, however I find that it has very little relevance to the matters under adjudication and as such, I have not considered it in this decision.

At the outset of the hearing the parties confirmed the tenants vacated the rental unit on July 12, 2014. As a result, the landlords no longer require an order of possession and I amend the landlord's Application to exclude the matter of possession. Further, as the tenancy no longer continues there is no need to issue the tenants an order to have the landlord make repairs I amend the tenant's Application to exclude the matter of repairs.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the

tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on February 19, 2013 for a 6 month fixed term tenancy beginning on March 1, 2013 that converted to a month to month tenancy on September 1, 2013 for a monthly rent of \$2,775.00 due on the 1st of each month with a security deposit of \$1,390.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on June 2, 2014 with an effective vacancy date of June 13, 2014 due to \$2,636.00 in unpaid rent; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on June 23, 2014 with an effective vacancy date of July 31, 2014.

The landlords testified that the amount of rent was reduced from what the tenancy agreement states to \$2,636.00. The landlords seek only \$2,636.00.

The landlords submit that the tenants did pay rent for June but did not pay any rent for the month of July 2014. The tenants submit that because the landlord had issued them a notice to end the tenancy and they were not going to be in the rental unit for the full month they did not feel they should have to pay rent.

The tenants submit that they had been requesting the landlord repair the washing machine since May 2013 and that while the landlord had attempted to repair it on an ongoing basis the repairs would never last and the machine would break down. The landlord confirmed they did attempt to repair the 5 year old washing machine.

The tenants submit that they have child with special needs and as a result must do laundry daily and because the landlord failed to repair the washing machine they had to take their laundry to a laundromat at a cost of \$15.00 per load for washing only (drying was completed in the rental unit) and \$0.43 per mile for mileage to and from the laundromat. The tenants seek \$1,300.00 for this compensation.

The tenants provided no documentary evidence that they had been asking for the repair since May 2013; medical documentation confirming a child with special needs or the need to do excessive laundry amounts; the cost of a load of washing; or the distance to the laundromat from the rental unit.

The tenants also seek compensation for the replacement of a car washing brush that they submit the landlord used to power washing the siding of the rental unit. The tenants seek \$65.00 for this compensation. The tenants provided no documentary evidence of the existence of such a brush; that the brush was damaged in any way; or the value of the brush. The landlords submit that they did not use the tenants' car washing brush.

The tenants seek compensation for damage to a wooden patio furniture set that they state they purchased a year before the damage was caused at a price of \$1,400.00. The tenants seek \$700.00 for this.

The tenants submit that the landlord damaged this furniture when they were attempting to remove a wasp nest with a power washer. The tenants submit that when they were moving positions the washer sprayed the furniture and left marks on it. The tenants have provided photographic evidence of the condition of the patio furniture.

The tenants did not provide any documentary evidence of the value of the patio furniture when purchased; the condition of the furniture prior to the alleged damage; or that they took any steps to mitigate their losses such as the cost to repair any damage.

The landlords submit that they did not cause any damage to the furniture. They submit that they only sprayed at the wasp nest and did not spray anything or anywhere else.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Despite the tenant's position that they were going to move out of the rental unit because of the landlords' notice to end tenancy and therefore they were not required to pay rent for July 2014, I find that if the tenants had any intention of leaving in accordance with either of the notices to end tenancy issued by the landlord they would have vacated the rental unit on or before June 13, 2014 or July 31, 2014.

As such and pursuant to Section 26 I find that since the tenants retained possession of the rental unit on the day in the month that rent was due and continued to do so for another 12 days the landlords are entitled to rent for the month of July 2014.

In regard to the tenants' claim for compensation for lack of access to a washing machine I find that the tenants did complain to the landlords about the machine and the landlords did attempt to repair the machine.

However, I also find the tenants have failed to provide any evidence that they had been complaining about the washing machine for almost the entirety of the tenancy; that they were required to complete an excessive amount of laundry for any reason including for a child with special needs; or to establish the value of the any alleged losses.

Therefore, I find the tenants have failed to provide sufficient evidence to establish they have suffered any loss as a result of the lack of a washing machine.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In the case before me the landlord dispute that they caused any damage to the tenants' car washing brush or their patio furniture. As such, it is incumbent upon the tenants to provide additional evidence to corroborate their claim.

Likewise in regard to the tenant's claim for damage to a car washing brush, I find they have provided no evidence of a damaged brush; the value of it or that any damage was caused by the landlords' use of the brush. As such, I find the tenants have failed to provide sufficient evidence to establish that they have suffered a loss.

And finally, in relation to the tenants claim for compensation for damage to their patio furniture I find the tenants have failed to provide evidence to establish the condition of the furniture prior to the alleged incident; the value of the furniture or any steps that they may have taken to mitigate any losses such as by repairing the furniture or through any insurance claims. In addition, I find the tenants have provided no evidence to confirm their claim that the landlords were responsible for any damage at all.

Conclusion

For the above noted reasons I dismiss the tenants' Application in its entirety.

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,736.00** comprised of \$2,636.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,390.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,346.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 23, 2014

Residential Tenancy Branch

