



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, FF
MNDC, RP, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to return the tenants' personal property / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located in the basement portion of a house, wherein the landlord's residence is located in the upstairs portion of the house.

What ultimately became a month-to-month tenancy began on or about August 10, 2005. Documentary evidence includes 2 separate written tenancy agreements: the first one documents a 12 month fixed term tenancy beginning on August 16, 2006, and the second one documents a 12 month fixed term tenancy beginning on August 16, 2007. Monthly rent is due and payable in advance on the 16th day of each month. When tenancy ended the monthly rent was \$1,100.00. The tenancy agreements document that the tenants are responsible for paying 1/3 of the utilities, and the parties agree that utilities includes hydro, gas and cable.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated February 19, 2014. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is March 31, 2014.

Later, pursuant to section 46 of the Act which speaks to **Landlord's notice: non-payment of rent**, the landlord issued a 10 day notice to end tenancy dated February 24, 2014. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is March 06, 2014.

Ultimately, the tenants vacated the unit on March 01, 2014 without providing a forwarding address. Thereafter, the landlord filed an application for dispute resolution on July 25, 2014.

Arising from the landlord's application for "substituted service" pursuant to section 71 of the Act which addresses **Director's orders: delivery and service of documents**, a decision was issued by date of July 29, 2014. Pursuant to the decision the landlord was ordered that "she may serve the tenant with the Hearing Package by sending the Hearing Package by email to the address provided by the tenant."

The tenants later filed an application for dispute resolution on September 12, 2014.

During the hearing the parties undertook to achieve a partial resolution of certain aspects of the dispute.

Analysis

Section 63 of the Act addresses the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a partial resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the landlord will retain the tenants' security deposit of \$500.00 and that this amount will be applied against unpaid rent for the second half of February 2014 in the amount of \$550.00 ($\$1,100.00 \div 2$), leaving a balance of unpaid rent owing for the second half of February of \$50.00 ($\$550.00 - \500.00);
- that, following from the above, the tenants will pay the balance of unpaid rent for the second half of February 2014 in the amount of **\$50.00** ($\$550.00 - \500.00);
- that in consideration of interest that has accrued on the security deposit since its collection in 2005, the tenants will pay only **\$19.00** in *per diem* rent for March 01, 2014, which is the day when the tenants vacated the unit;

- that the tenants will pay utilities as follows:

\$123.01: hydro - December 19, 2013 to February 19, 2014

\$19.50: hydro - February 20 to March 01, 2014

\$82.87: gas - January 16 to February 14, 2014

\$36.00: gas - February 15 to March 01, 2014

Sub-total amount agreed to be paid: **\$330.38**

MINUS CREDIT: \$5.70 (cable overpayment)

Total agreed to be paid: **\$324.68**

Based on the documentary evidence and testimony, the various aspects of the respective claims and my related findings are set out below.

LANDLORD

\$50.00: *filing fee*

As a portion of the landlord's claim was resolved pursuant to a settlement achieved by the parties, I find that the landlord has established entitlement to recovery of half the filing fee in the amount of **\$25.00**.

Entitlement: \$349.68 (\$324.68 + \$25.00)

TENANTS

\$431.03: (\$77.44, \$40.25, \$35.00, \$14.97, \$154.87, \$16.79, \$55.54, \$11.19, \$24.98)
miscellaneous materials and supplies acquired for work undertaken in the unit

\$700.00: *labour arising from certain work undertaken in the unit*

Particulars of the above claim arise out of what the tenants allege were cleaning, painting and repairs required in the unit during the term of tenancy. Overall, the tenants consider that they made improvements to the unit. The tenants also claim there were certain deficiencies and temporary breaches of their right to quiet enjoyment. However, despite all of the foregoing, there is no evidence that the tenants previously sought a reduction in rent or other compensation arising from a claim that there was a diminished value in the tenancy, or a breach of the right to quiet enjoyment, and there is presently no such claim before me.

The landlord claims that any concerns brought forward by the tenants were addressed in a timely fashion, and included calls to qualified trades when deemed necessary. The landlord also claims that “improvements” completed by the tenants were undertaken at the discretion of the tenants and without the explicit consent of the landlord.

On balance I find that the tenants have failed to meet the burden of proving entitlement to the costs claimed, and the main aspects of their application are therefore dismissed.

Order instructing the landlord to return personal property (mail)

I consider that this matter has been resolved subsequent to the end of tenancy.

\$50.00: *filing fee*

As the tenants have not succeeded with the main aspects of their application, their application to recover the filing fee is also hereby dismissed.

Conclusion

The tenants’ application is hereby dismissed.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$349.68**. Should it be necessary, this order may be served on the tenants, 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: October 09, 2014

Residential Tenancy Branch

