



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, MNDC, O (Landlords)
CNR, MNDC, MNSD, RR, O (Tenants)

Introduction

These hearings took place in response to an Application for Dispute Resolution (the “Application”) made by both the Landlords and the Tenants.

The Landlords applied for an Order of Possession for unpaid rent and utilities and for a breach of an agreement. The Landlords also applied for a Monetary Order, which was subsequently amended and served to the Tenants prior to the original hearing. The Landlord’s monetary claim was for: unpaid rent and utilities; to retain the Tenants’ pet damage and security deposit (the “Deposits”), and to recover the filing fee for the cost of making the Application.

The Tenants applied to cancel the notice to end tenancy for unpaid rent, for the return of their Deposits and to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties also applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement, and for ‘Other’ issues.

One of the Landlords named on the Applications and both Tenants appeared for all the hearings and provided affirmed testimony. Both Tenants provided and confirmed each other’s testimony during the hearings and no witnesses were called by the parties.

Both parties were given a full opportunity to be heard, to present their evidence, to make submissions and to cross-examine one another. While I have turned my mind to the extensive evidence submitted and presented by both parties prior to the hearings, it is not possible to detail all of the respective submissions and arguments made during the hearings. Therefore, I have only recorded that evidence which was relevant to me making findings in this case.

Preliminary Issues

The original hearing was convened by conference call on September 5, 2014 by a different Arbitrator. At the start of the hearing the Arbitrator determined that there were issues with the service of documentary evidence between the parties. As a result, the Arbitrator adjourned the original hearing to allow service of evidence by the parties to each other and to the Residential Tenancy Branch. The Arbitrator did not hear any evidence relating to either Application. Therefore the Arbitrator for the original hearing was not seized with hearing these files.

As a result, the first adjourned hearing took place with me on October 31, 2014. The parties confirmed service of each others' documentary and photographic evidence but the Landlord denied being able to access the Tenants' digital evidence.

The parties also confirmed that the Tenants were no longer residing in the rental suite. As a result, I dismissed the Landlords' Application for an Order of Possession and the Tenants' Application to cancel the notice to end the tenancy and allow the Tenants to pay reduced rent, as these are now moot issues.

The first adjourned hearing focused on hearing the Tenants' monetary claim for compensation and the Landlords' monetary claim for unpaid rent and utilities. After the first adjourned hearing, the parties were issued with an Interim Decision dated October 31, 2014, which required the Tenants to serve the Landlords with another copy of their digital evidence because the copy served was not viewable by the Landlords.

The second adjourned hearing heard the Landlord's Application for damages to the rental unit. In this hearing, the Tenants confirmed that they had not provided a copy of their digital evidence to the Landlord as they only intended to rely on their photographic evidence during the hearing. As a result, I did not consider the Tenants' digital evidence in these hearings. I also explained to the parties that monetary claims for costs associated with preparation for dispute resolution proceedings such as registered mail and printing costs are not awarded as these costs must be borne by each party.

Issue(s) to be Decided

- Are the Landlords entitled to unpaid rent and utilities and loss of rent?
- Are the Landlords entitled for damages to the rental unit?
- What is to happen with the Tenants' Deposits?
- Are the Tenants entitled to utility costs, moving costs and punitive damages?

Background and Evidence

Both parties agreed that this tenancy started on March 15, 2012 for a fixed term of two years due to expire on February 28, 2014; after this fixed term period, the tenancy continued on a month to month basis.

Rent under the written agreement was payable by the Tenants in the amount of \$1,400.00 per month. The Tenants paid \$700.00 as a security deposit and \$700.00 as a pet damage deposit in June, 2012 which the Landlords still retain.

Application for Utility Costs

The residential tenancy agreement signed by both parties did not include utilities in the monthly rent payment. The Tenants and the Landlords made a number of conflicting submissions during the first adjourned hearing regarding the agreement in relation to the utilities for this tenancy.

Both parties had made claims from each other for utility costs that were paid and unpaid during the tenancy. After a lengthy discussion, it was agreed between the parties that the Tenants were responsible for paying the city utilities under the written tenancy agreement and that this amounted to \$80.66 payable by the Tenants for each month of the tenancy.

The parties acknowledged that the Tenants had already paid \$1,911.47 to the Landlord for a period up until the end of March, 2014 under the tenancy agreement. The parties then agreed that the remainder amount outstanding was **\$347.01** which the Tenants agreed to pay to the Landlord.

Tenant's Application for Moving Costs and Punitive Damages

The Tenants remaining monetary claim from the Landlord consisted of \$2,000.00 in moving costs and \$5,000.00 in punitive damages.

The Tenants claimed that their moving costs included fuel costs, labour costs, truck hire and loss of income for the time in moving their belongings as a result of being forced to leave the tenancy. The Tenants confirmed that while they did have evidence to verify these losses, they did not provide receipts or invoices relating to these costs.

The Tenants testified that after receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated July 2, 2014, they disputed the Notice by making their Application to dispute the Notice on July 3, 2014. As a result, the original hearing was scheduled to take place on September 5, 2014 to hear the Tenants' Application.

The Tenants testified that in the interim time period they decided that it was best to move out of the rental suite and began to look for a new place to move to. The Tenant testified that during July, 2014 they started to pack their belongings in an attempt to be proactive so that when they had found a place, they would not be in a rush to move out.

The Tenants testified that they had no intention in ending the tenancy until they were fully moved out and had cleaned and repaired the unit, which would have required some time due to the amount of personal belongings they had. Since the Tenants wanted to have plenty of time to complete their move out from the rental suite, they did not want to give premature notice to the Landlord to end the tenancy.

The Tenants testified that on August 6, 2014, the locks to the door of their rental suite had been changed and they could no longer gain access. The Tenants contacted the Residential Tenancy Branch and explained their situation.

The Landlord was contacted by the Residential Tenancy Branch and was informed of the Tenants' situation. The Landlord responded by explaining that she had determined that the rental suite had been abandoned by the Tenants. The Residential Tenancy Branch explained the Landlord's reasoning to the Tenants for changing of the rental unit locks to which the Tenants replied that they had not abandoned the rental unit.

The Residential Tenancy Branch facilitated an agreement for the parties to meet the next day to allow the Tenants to remove the remainder of their belongings.

On August 7, 2014, the Landlord and Tenant met at the rental suite with peace officers and the Tenants removed the remainder of their belongings.

The Landlord was asked about how the tenancy had ended and explained that after serving the Tenants with the July 2, 2014 Notice, she issued the Tenants with a written notice on July 12, 2014 for entry into the unit on July 21, 2014. The Landlord testified that she attended the rental unit on July 21, 2014 with a general contractor and a police officer in order to assess the condition of the unit as she had become aware that the Tenants were making preparations to leave the rental suite. During this inspection she could see that the Tenants were in the process of moving out their belongings.

The Landlord made her Application for an Order of Possession on July 25, 2014. The Landlord explained that on August 1, 2014 the Tenants again failed to pay rent and as a result, the next day she attached another Notice to the Tenants' rental unit door.

The Landlord testified that on August 6, 2014 she attended the Tenants' rental unit and saw that the Notice was still posted to the door. She looked through the windows of the rental suite and could see that no one was there and all of the Tenants' possessions she had seen during her previous inspection of the unit, such as packing boxes, had

been removed. The Landlord tried to use her key to get inside the rental suite fearing that it had been abandoned by them. However, the key she had been given by the Tenants when they had changed the locks in 2013 did not work. As a result, the Landlord called a locksmith to change the locks and affected entry into the rental unit. The Landlord testified that there was a small amount of personal belongings left by the Tenants and there were no food items, toilet paper or beds. On this basis, the Landlord presumed that the Tenants had abandoned the rental unit.

The Landlord confirmed the events of the following day when the Tenants came back to the unit and testified that she allowed the Tenants three hours to remove the remainder of their belongings with the peace officers. The Landlord explained that the Tenants however only took 20 minutes to remove their belongings due to the small amount of items that were left behind.

The Landlord provided one photograph, which was taken after the Tenants had removed their belongings to the car port area, showing the Tenants belongings which they had moved from the rental unit. However, the Landlord was unable to provide any photographic evidence of these items in the rental unit or any photographs which were taken at the time she affected entry into the rental suite on August 6, 2014 when she determined that it was abandoned.

The Tenants disputed the Landlord's submission, stating that there was more property than what was shown in the photograph in the rental unit and this included a television and other miscellaneous furniture like dog beds which were required for their pets. The Tenants also explained that they had not abandoned the rental suite and had not given any written notice or indication that they were ending their tenancy. The Tenant explained that they had found another rental suite but they were allowing sufficient time to move out all of their belongings over a longer period rather than have to do it in a few days. The Tenants testified that they were going back and forth to the rental suite to remove their belongings but did not leave the rental suite unoccupied for long periods of time.

The Tenants denied being served with the Notice dated August 2, 2014 and seeing this posted to their door. They testified that while they were in the process of moving their belongings out they still had other items such as a barbeque and television and that the Landlord's one photograph did not show all of the items that were removed from the rental unit on August 7, 2014.

The Landlord confirmed that the Tenants had not provided any formal written notice to end the tenancy but referred to a Facebook message in July, 2014 which indicated that the Tenants had found a new place to move to.

In addition to their moving costs the Tenants claimed \$5,000.00 in punitive damages. The Tenants testified that this was a very stressful tenancy where the Landlord failed to communicate effectively with them and was not being transparent in the agreement about the utilities and her general overall communication.

The Tenants explained that they had a good relationship with the Landlord at the start of the tenancy but in July, 2014 the relationship began to sour and resulted in a massive personality clash between the parties. The Tenants explained that they wrote several e-mails to the Landlord asking for clarification on issues associated with the tenancy which the Landlord failed to respond to.

The Tenants testified that this led to them having to take time off work and resulted in medical health problems. The Tenants explained that this could be verified by medical reports; however, none were provided in written evidence prior to this hearing.

The Tenants testified that the Landlord served them with an excessive amount of notices to end tenancy for unpaid rent when it was the Landlord that made it difficult for them to pay the rent. The Tenants referred to an incident whereby they were unable to pay their rent on time because the electronic system for payment was not working on the day the rent was due. As a result, the Tenants attended the business address of the Landlord to make attempts to pay the rent only to discover that the address was not related to the business.

The Tenants testified that subsequent to this they were served with a Notice in June, 2014 which was taped to the door when the Landlord could have simply knocked on the door, made the request for the rent payment which they would have given to her. The Tenants continued to testify that they feared that the Landlord would not accept rent from them for their future rent payments. The Tenants used this as an example of how the relationship had become strained that caused stress to them.

The Tenants acknowledged that during their conversations with the Landlord they were rude to her but explained that this was due to their frustration of not being able to communicate clearly with the Landlord.

The Tenants explained that the Landlord would text them late at night and that her text messages would disturb their sleep. The Tenants also testified that they had told the Landlord to cease communication with her by Facebook but the Landlord had continued to communicate with them through this platform.

The Landlord disputed the Tenants' testimony regarding the moving and punitive damage costs claimed by them. The Landlord explained that she did attempt to communicate with the Tenants about the payment for the city utility bills and had

explained to the Tenants in writing that the city utility bills came to her every six months and she attempted to work with the Tenants on a payment plan.

The Landlord submitted that she did text message the Tenants but this was in relation to requests for rent payments when they were made late. The Landlord explained that the Tenants were habitually late paying their rent and this was the reason why she would issue a Notice each time. The Landlord explained that she posted the Notices on the door because she did not want to disturb the Tenants and embarrass them by discussing an issue of non-payment of rent in front of their children and wanted to avoid any confrontation.

The Landlord explained that because the tenancy had become strained she wanted to ensure that she recorded everything in writing as opposed to having non-productive verbal conversations and discussions.

Landlords' Application for Unpaid Rent

The Landlord claims for unpaid rent for July, 2014 and August, 2014 in the amount of \$1,400.00 in relation to the Notices served to them. The Tenants did not dispute this amount and claimed that they had not paid the rent because they were waiting for the outcome of this hearing as indicated in the details section of their Application because the Landlord had failed to complete repairs to the rental unit.

In addition, the Landlord claims for unpaid rent for September and October, 2014 because the Landlord was unable to re-rent the unit for these months due to the damages caused by the Tenants and lack of cleaning of the rental suite.

The Tenants disputed the Landlord's monetary claim for loss of rent because they had been illegally evicted on August 6, 2014 and had not been given an opportunity to clean the rental suite and repair any damage to the suite. The Tenants explained that at best they would only be prepared to pay the Landlord the prorated amount of six days for the month of August, 2014.

Landlords' Application for Damages to the Rental Unit

The Landlord provided an extensive amount of oral testimony regarding damages which she claims were caused by the Tenants during the tenancy. The Landlord also referred to her photographic evidence, the move in Condition Inspection Report (the "CIR") signed by both parties, and her invoices to verify her losses. The Landlord claims a total amount of \$9,262.79 in repair and cleaning costs which comprises of repainting the entire suite and replacing the carpet and linoleum of the rental suite.

The Tenants disputed the Landlords' evidence and provided another version of the move in CIR which was completed by the Landlord but not signed by any of the parties. This version of the CIR contains discrepancies in the condition of the unit compared to the one signed by both parties.

In summary, the Tenants submitted that they had caused damage to the rental unit but this was minor and was caused during the removal of large pieces of furniture as they prepared to vacate the property. The Tenants referred to the Landlord's as well as their own photographic evidence which shows that the dents and nicks in the walls were in the process of being mudded and sanded down before they were illegally evicted.

The Landlord confirmed that the Tenants had filled in the holes but had not done a very good job of doing so. The Landlord confirmed that she had completed the unsigned copy of the move-in CIR provided by the Tenants, but could not explain how this came to be in existence.

Analysis

In determining this case, the first issue that must be decided is whether this tenancy ended in accordance with the Act. A finding on this matter will then allow me to determine the remainder of the issues on the parties' Applications.

Therefore, I first turn my mind to how this tenancy ended. Section 26(3) of the Act states that even if a Tenant fails to pay rent, a Landlord must not prevent or interfere with the Tenant's access to the Tenant's personal property. However, Section 44(1) (d) provides that a tenancy may end if the Tenant vacates or abandons a rental unit.

A Landlord must take great care in making a determination on whether a Tenant has abandoned a rental unit and, if this is disputed by the Tenant, then the Landlord bears the burden of proof. Sections 24(1) and (2) of the Residential Tenancy Regulation (the "Regulation") provides for the circumstances which allow the Landlord to determine if the rental suite has been abandoned as follows:

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

- (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment **only** if
 - (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
 - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

I have analysed the evidence provided by both parties during the hearing by using the two part test as stipulated above. As a result, I find that the Tenants had not paid rent for a continuous period of one month and the evidence does show that the Tenants had removed a substantial amount of their personal belongings from the rental unit at the time the Landlord determined that the Tenants had abandoned the rental unit.

However, Section 24(2) of the Regulation specifically states that the Landlord may only considered a rental unit is abandoned if the Landlord receives notice from the Tenant and the circumstances indicate that the Tenant is not likely to return to the rental unit.

As a result, I find that on the balance of probabilities, the Landlord failed to meet these conditions. At no point did the Tenants give any written or oral notice to the Landlords that they had left the rental suite. I do not accept the Landlord's submission that the Tenants' communication on their Facebook that they had found another rental suite to move to is sufficient evidence that they were not likely to return to the rental unit.

Furthermore, the Landlord failed to provide sufficient and conclusive proof that the Tenants were not ordinarily occupying the rental suite. I find that on the balance of probabilities, it was likely that the Tenants were coming back and forth to the rental suite to collect their belongings and therefore, the suite was still being ordinarily occupied.

In addition, I find that Tenants had not returned the keys to the Landlord and there was also a pending hearing on September 5, 2014 where the Landlord's Application for an Order of Possession and the Tenants' request to cancel the Notice was going to be determined.

I accept that the Landlord did not determine abandonment of the rental suite as a result of malice or in an effort to bypass the Act. However, I find that when the Landlord became aware that the Tenants had indicated that they did not abandon the rental suite, it would have been a more appropriate course of action to allow the Tenants back into

the rental suite and for the Landlord to continue with her Application to obtain an Order of Possession in accordance with the Act.

Based on the foregoing, I find that the Landlord breached the Regulations and Act in making a determination that the Tenants had abandoned the rental suite and ended the tenancy prematurely on August 6, 2014.

As I have determined that the tenancy ended against the above provisions, I find that the Landlords are only entitled to recover from the Tenants the amount of rent unpaid for July, 2014 and the six days of prorated rent for August, 2014 for a total amount of **\$1,671.00** (\$1400 + \$271).

Based on the agreement between the parties at the first reconvened hearing as documented above, I find that the Landlords are also to be paid the agreed amount of **\$347.01** in unpaid utilities by the Tenants.

Section 37(2) of the Act provides that at the end of a tenancy, the Tenant must leave the rental suite clean and undamaged. I find that the portions of damage which were undisputed by the parties were damages the Tenants were in the process of repairing and could not have been completed by the Tenants because the tenancy was ended prematurely by the Landlord. I find that the Tenants were not given a sufficient opportunity to clean and repair the rental suite and therefore, I am unable to determine the Landlords' Application for cleaning and damages to the rental unit. Accordingly, the Landlord's Application for cleaning and damages is hereby dismissed.

In relation to the Tenants' Application for moving costs, I find that the Tenants failed to provide any invoices or receipts to verify the losses being claimed. Furthermore, I find that the Tenants had already decided to leave this tenancy prior to it being ended by the Landlord as they were in the process of moving out their belongings. Therefore, I dismiss this portion of the Tenants' Application.

In relation to the Tenants' claim for punitive damages, the Act does not provide for punitive damages. Therefore, an Arbitrator does not have the authority to award punitive damages in order or punish the respondent. However, an Arbitrator may consider aggravated damages.

As a result, I again turn my mind to the evidence provided by both parties for this claim. The Tenants did not provide sufficient evidence of any losses they incurred as a result of the Landlord ending the tenancy prematurely. The Tenants were able to recover all their property and have not been penalised for cleaning and damages to the rental unit for the lack of opportunity they were given to do this.

I find that the evidence provided by both parties show that the relationship between them was acrimonious and frustrated. However, there is not sufficient evidence to show that either party engaged in a continual and vexatious course of action that would give rise to monetary relief to the Tenants. The Landlord is at liberty to issue any written communication or notices to end a tenancy to a Tenant using a method of service under the Act, one of which includes posting it to the door. Therefore, a Landlord cannot be penalised for this reason. I find that a text message to the Tenant late at night asking for rent is again not sufficient reason for me to award damages to the Tenants. Based on the foregoing, I find that the Tenants Application for moving costs and punitive damages is not proven and is hereby dismissed.

As the Landlords have only proved a small portion of their claim, I am only prepared to award the Landlords half of the filing fee in the amount of **\$50.00**, pursuant to Section 72(1) of the Act. Therefore the total amount awarded to the Landlords is **\$2,068.01**.

As the Landlords already hold **\$1,400.00** of the Tenants' Deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. Therefore the Landlords are issued with a Monetary Order for the outstanding balance of **\$668.01**.

Conclusion

In relation to the Landlords' claim for unpaid rent and utilities, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$668.01**. This Order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The remainder of the Landlords' Application is dismissed without leave to re-apply. The Tenants' Application is dismissed without leave to re-apply.

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: December 12, 2014

Residential Tenancy Branch

