



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPL, MND, MNSD, MNDC, FF
Tenants: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order and the tenants sought a monetary order.

The hearing was conducted via teleconference and was attended by both landlord's; the tenant's agent and the tenants. I note that the tenants themselves only attended the hearing to provide testimony. I also note that the tenants' agent had arranged for three witnesses, including both tenants, however the agent only called two of his witnesses.

At the outset of the hearing the parties confirmed that the tenants vacated the rental unit on July 10, 2014. As such, the landlords are not in need of an order of possession and I amend the landlords' Application for Dispute Resolution to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to and cleaning of the rental unit; 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 37, 38, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenants are entitled to a monetary order for returned rent; for return of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 50, 51, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on December 18, 2011 for a month to month tenancy beginning on January 1, 2012 for the monthly rent of \$1,350.00 due on the 1st of each month with a security deposit of \$675.00 paid;
- A copy of a Condition Inspection Report recording condition of the rental unit at the start and end of the tenancy. I note that the start date of the tenancy; the date of the move in inspection; the date of the move out inspection; and the names of the tenants are not listed on the Report.

The parties agree that the tenancy ended in July 2014. However, the parties disagree with how and when the tenancy ended. The landlord submits the tenancy ended on or before July 6, 2014 and the tenants submit the tenancy ended when the landlord changed the locks to the rental unit on July 10, 2014. The parties agree the tenants did not pay any amount of rent for the month of July 2014.

The landlords submit they discussed with the tenants, in mid June 2014, whether or not the tenants intended to continue the tenancy or if they were thinking about moving out at any time. The landlords testified they informed the tenants they would like to move back into the rental unit.

The landlords submit that towards the end of the June 2014 the tenants contacted them and told them they had found a place that would be available for July 1, 2014. However the tenants were not able to move out right away and so they agreed the tenants would vacate on or before July 6, 2014. The landlord submits that they did not issue the tenants a notice to end tenancy or complete a mutual agreement to end tenancy – all agreements were verbal.

The tenants submit that by indicating to the tenants on June 14, 2014 that the landlord intended to move into the rental unit they were entitled to 2 months' notice to end the tenancy and compensation equivalent to 1 month's rent for receiving such a notice. The tenants submit that they had not agreed upon a move out date but rather the landlord, unilaterally, changed the locks to the rental unit on July 10, 2014.

The tenants confirm that they received no 2 Month Notice to End Tenancy for Landlord's Use of Property and that they did not issue to the landlord a tenant's 1 Month Notice to End Tenancy. The tenants seek compensation in the amount of 1 month's

rent less a per diem amount for the days the tenants still had possession of the rental unit (\$1350.00 - \$391.95 = \$958.05).

The female landlord submits that on July 15, 2014 she attended the rental unit with the male tenant and completed an inspection of the rental unit but that the tenant refused to sign the Condition Inspection Report.

The male tenant testified that he had not met with the female landlord on July 15, 2014 and that he had not seen any copy of the Condition Inspection Report until he received the landlords' evidence for this hearing. The tenants did not dispute that the Condition Inspection Report recorded the condition of the rental unit at the start of the tenancy, but do dispute the condition as outlined at the end of the tenancy in the Report.

In support of their claim the landlords submitted photographic evidence that they submit also records the condition at the end of the tenancy. The tenants submit that some of the photographs submitted were taken before he had completed some work on the walls and cleaning.

The landlord seeks the following compensation:

Description	Amount
Stove and toilet replacement (including installation)	\$239.80
Replace bathroom floor (including labour)	\$216.63
Blinds and installation	\$196.91
Paint (2 bedrooms)	\$214.65
Bedroom Door (including installation)	\$126.76
Kitchen Counter replacement	\$1,226.25
Missing door knob replacement (including labour)	\$35.00
Chime repair and replace	\$35.15
Paint living room hall and dining room (including labour)	\$191.64
Clean sundeck	\$15.00
Total	\$2,497.79

I note the landlords' original submission requested \$44.69 to replace a bathroom sink, however, during the course of the hearing the landlords amended their Application to exclude this portion of their claim.

With the exception of the requirement to paint one of the bedrooms; the door replacement; and cleaning of the sundeck, the tenants dispute all of the landlords' claims regarding the condition of the rental unit.

The landlords request to retain the security deposit in partial satisfaction of their claim. The tenants seek return of the security deposit.

The tenants also seek compensation in the amount of \$400.00 for costs to hire their father as their agent for this hearing.

Analysis

To be successful in claim for damage or loss resulting from a tenancy, the party making the claim has the burden to provide sufficient evidence to establish each of the following four points:

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

In relation to the tenant's claim for \$400.00 for the cost of hiring their father to represent them in these matters, I find the tenants have made a choice to hire someone to represent them. As this was choice on the part of the tenants and not a direct result of any potential breach of the landlords, I find these costs are not recoverable. I dismiss this portion of the tenant's Application.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As the tenants agree that they are responsible for the painting of one of the rooms; the door replacement and the cleaning of the deck I find the landlord is entitled to recover these costs.

Despite the tenant's assertions that the rental unit was not in the condition as claimed by the landlord I find the tenants have provided absolutely no evidence to corroborate

their position of the condition. While the tenants dispute the landlord's evidence I find that the landlords have provided the only evidence of the condition of the unit.

As such, I find the landlords have established through their evidence and on a balance of probabilities that the damage recorded resulted during the tenancy. As a result, I find the tenants have failed to comply with the requirements under Section 37 and the landlords are entitled to compensation.

In relation to the tenants' assertion that the landlords extinguished their right to claim the security deposit, I note from the male tenant's testimony that he had in fact completed a walk through with the landlord, prior to July 15, 2014. The tenant indicated in his testimony that during that walk through the landlord had requested he complete some additional work to the property.

The tenant testified that he had attended the property on July 12, 2014 and that while they were going through the property there was a disagreement and he left the property, the tenant also states that he did return to the property on July 15, 2014 to pick up a vacuum. I am not convinced by the male tenant's testimony that the inspection was not completed as described by the landlords.

From this, I find that the landlords had conducted a move out condition inspection in accordance with the requirements and that the male tenant attended the inspection. As such I find the landlords have not extinguished their right to claim against the deposit.

Section 51 of the *Act* states that a tenant who receives a notice to end a tenancy under Section 49 is entitled to receive from the landlord, on or before, the effective date of the landlord's notice an amount that is the equivalent of one month's rent.

Section 49 states that a landlord may end a tenancy for their personal use if they intend, in good faith, to occupy the rental unit. The section goes on to say that a notice given under this section must comply with Section 52.

Section 52 of the *Act* states that in order to be effective, a notice to end tenancy must be in writing and must:

- a) Be signed and dated by the landlord or tenant giving the notice;
- b) Give the address of the rental unit;
- c) State the effective date of the notice;
- d) Except for a notice under Section 45(1) or (2), state the grounds for ending the tenancy; and

e) When given by a landlord, be in the approved form.

From the testimony of both parties I find that the landlords did not provide the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property to end the tenancy under Section 49, specifically a written notice in the approved form was not issued.

As section 51 requires that the tenant "receives a notice to end tenancy under Section 49" in order to be entitled to compensation and I have found that no such notice was issued, I find the tenants are not entitled to any compensation from the landlord for ending the tenancy. I dismiss this portion of their claim.

As I have dismissed all of the components of the tenants' claim I also dismiss their claim to recover their filing fee.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,547.79** comprised of \$2,497.79 for damage and the \$50.00 fee paid by the landlords for this application.

I order the landlords may deduct the security deposit and interest held in the amount of \$675.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,872.79**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords 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: February 4, 2015

Residential Tenancy Branch

