



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenant did not attend this hearing, although I waited until 1131 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Dispute Resolution Package

The landlord NN testified that the landlords served the tenant with the dispute resolution package on 6 May 2015 by registered mail. The landlords provided me with a Canada Post customer receipt that showed the same. The landlord NN testified that the mailing was sent to the rental unit. The landlord NN testified that the tenant vacated the rental unit on 11 May 2015. The landlord NN testified that on or about 10 May 2015 the tenant informed the landlords by text message that notice of the registered mailing had arrived. The landlord NN testified that the tenant did not retrieve the mailing and that it was returned to the landlords.

Residential Tenancy Policy Guideline, “12. Service Provisions” sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the tenant was deemed served with the dispute resolution package on 11 May 2015, the fifth day after its mailing.

Preliminary Issue – Scope of Hearing

At the hearing the landlord NN testified that the tenant vacated the rental unit on 11 May 2015. As the tenant had vacated the rental unit, the landlords asked to amend their application to withdraw their request for an order of possession as the issue was resolved.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As there is no prejudice to the tenant in allowing the landlords to amend their application to withdrawn the request for an order of possession, I allowed it.

At the hearing, I inquired about the different values for the monetary order sought (\$2,750.00) and the items set out in the monetary order worksheet (\$4,579.25). The landlord EN clarified that the landlords were electing to cap the compensation sought for damages to \$550.00, the amount of the security deposit.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlords, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began 1 January 2015. On or about 31 December 2014, the parties entered into a written tenancy agreement. The tenancy agreement was entered into by the landlords, the tenant and a co-tenant. Monthly rent was \$1,100.00. The landlord NN testified that the landlords continue to hold the tenant's security deposit in the amount of \$550.00, which was collected 15 January 2015.

At some point in the tenancy, the co-tenant vacated the rental unit.

The written tenancy agreement included an addendum with one clause: smoking was not permitted on the residential property.

On 20 March 2015, the landlords prepared a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The 1 Month Notice set out an effective date of 30 April 2015. The 1 Month Notice set out that it was being served as the tenant was repeatedly late paying rent. The 1 Month Notice was served personally to the tenant on 21 March 2015.

The landlord NN testified that the landlords did not receive rent for either April or May. The landlord NN testified that the landlords have yet to find new tenants.

The landlord NN testified that the tenant smoked on the residential property. The landlord EN testified that the landlords confronted the tenant about the smoking on or about 1 February 2015. The landlord NN testified that when the landlords entered the rental unit after it had been vacated, they found that it smelled like cigarette smoke. The landlords found two ashtrays in the rental unit with cigarette debris: one by a window sill and one under the kitchen sink. The landlord NN testified that the landlords found cigarette debris under one window.

The landlord NN testified that it was necessary to repaint the entire unit in order to ameliorate the smoke smell. The landlord NN testified that a heavy-duty primer was used in order to block the smoke odor that had permeated the walls.

The landlord EN testified that the invoices provided in respect of painting was an estimate for the services. This estimate set out a labour cost of \$1,570.00. The landlord EN testified that the landlords ended up using a different service provider who charged the landlords \$900.00 for painting. The landlord EN testified that the cost of materials was at least as much as the estimate provided: \$280.00 for paint and \$60.00 for the heavy-duty primer.

The landlord NN testified that the landlords purchased the residential property in 2013. The landlord NN testified that the condition of the paint at the time of purchase was good. The landlord NN testified that the landlords believed that the rental unit had been newly painted at that time, but that they were not sure.

The landlord NN testified that the carpets were professionally cleaned at the beginning of the tenancy, but the tenant did not clean the carpets at the end of the tenancy. The landlord NN testified that it appeared that the tenant had not vacuumed the rental unit the entire duration of the tenancy.

The landlord EN testified that there was mould in the bathroom and that the tenant left two or three truckloads of garbage in the rental unit. The landlord NN testified that among the debris left behind were eleven HDTV receivers and three or four high-speed modems. The landlord EN estimated that it took approximately forty hours to clean the rental unit.

The landlord NN testified that there are no prior orders of the Residential Tenancy Branch in respect of this tenancy. The landlord NN testified that the tenant did not remit any receipts for emergency repairs.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Monthly rent under the tenancy agreement was due on the first. The tenant continued to occupy the rental unit until 11 May 2015. As such rent was payable on 1 May 2015. The landlords provided sworn and uncontested testimony that the tenant did not pay rent for either of April or May. There is no evidence before me that indicates the tenant was entitled to withhold any amount from rent. On the basis of this evidence, I find that the landlords have proven their entitlement to the rent arrears for April and May in the amount of \$2,200.00.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that by smoking in the rental unit in contravention of the tenancy agreement, the tenant caused damage to the rental unit. The damage was a persistent cigarette smoke odor. I find that the tenant did not repair this damage to the rental unit before vacating it. In failing to repair the smoke damage the tenant has breached subsection 34(3) of the Act.

The landlord EN provided evidence that the actual cost of labour for repainting was \$900.00. The quote provided indicates an estimated cost of \$1,570.00. I accept the landlords' valuation of the cost and find that the landlords have proven that the labour cost of repainting was \$900.00. The landlord EN testified that the supplies cost for the paint and primer was \$280.00 for paint and \$60.00 for the primer. The landlord NN testified that a more costly primer was required because of the cigarette odor. I accept the landlords' valuation of the supplies cost of painting and find that the paint cost was \$280.00 and the primer cost was \$60.00.

Residential Tenancy Policy Guideline "40. Useful Life of Building Elements" provides me with guidance in determining compensation payable in respect of damage to capital property. The useful life of interior paint is four years. The landlord NN testified that, to the best of his knowledge, the rental unit was last painted in 2013. The purpose of damage is to return the claimant to his or her original position. As the value of the interior paint had depreciated by one half, the tenant is responsible for one half of the labour and supply cost of painting, that is, \$590.00.

I do not apply the same devaluation to the cost of the specialty primer. That cost of that primer was incurred specifically as a result of the tenant's damage to the rental unit. The cost would have not otherwise been incurred. As such, the landlords have proven an entitlement to the entire cost of the primer, that is \$60.00.

As the landlords have elected to cap their claim for damages at \$550.00, the amount of the security deposit it is not necessary that I consider the landlords' other claims as the

landlords' entitlement to this amount has been proven. The landlords are entitled to \$550.00 in compensation for the damage caused by the tenant to the rental unit.

The landlords applied to keep the tenant's security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$2,200.00 under the following terms:

Item	Amount
Unpaid April Rent	\$1,100.00
Unpaid May Rent	1,100.00
Damage to Rental Unit	550.00
Less Retained SEcurity Deposit	-550.00
Total Monetary Order	\$2,200.00

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: June 17, 2015

Residential Tenancy Branch

