



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF (Landlords' Application)
 CNR (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlords and the Tenant. The Landlords applied for an Order of Possession for unpaid rent and a Monetary Order for: damage to the rental unit; unpaid rent; to keep all of the Tenant's security and pet damage deposit; and to recover the filing fee. The Tenant applied to cancel the notice to end tenancy for unpaid rent.

The Tenant appeared with her son who acted as the Tenant's agent. One of the Landlords appeared for the hearing. The parties provided affirmed testimony.

At the start of the hearing, the Landlord and Tenant confirmed that the tenancy had ended at the end of May 2015 and the Landlord had received vacant possession of the rental unit. As a result, I dismissed the Tenant's Application and the Landlords' Application for an Order of Possession. The hearing continued to hear the Landlords' monetary claim.

The Tenant confirmed receipt of the Landlords' Application by personal service pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act"). The Landlord explained that he had submitted documentary evidence to his file prior to the hearing but could not give a copy to the Tenant as she had not provided a service address she vacated the rental unit.

The Tenant's agent confirmed that they were happy to proceed with the hearing and have this evidence considered as described in this Decision. The hearing process was explained pursuant to the Rules of Procedure and the parties had no questions. The Landlord explained at the start of the hearing that his claim related to \$950.00 for unpaid rent and that the remainder of his monetary claim related to costs associated with damages to the rental unit curb. The Tenant fully understood the nature of the claim against her.

Issue(s) to be Decided

- Are the Landlords entitled to loss of rent for May 2014?
- Have the Landlords provided sufficient evidence to show the Tenant is responsible for damages to the rental unit?
- Are the Landlords entitled to keep all of the Tenant's security and pet damage deposit in partial satisfaction of the monetary claim?

Background and Evidence

Both parties agreed that this tenancy started on December 1, 2014 for a fixed period of six months after which the Tenant vacated on May 30, 2015. Rent in the amount of \$950.00 was payable on the first day of each month. The Tenant provided the Landlords with a \$425.00 security deposit and a \$425.00 pet damage deposit (the "Deposits") at the start of the tenancy which the Landlords still retain.

The Landlord testified that on May 8, 2015 the Tenant's rent cheque of \$950.00 bounced. The Tenant's agent acknowledged that the Tenant had not paid rent but explained that they had informed the Landlord that he could use the Tenant's deposits to pay for the last month of the tenancy. The Landlord had not consented to this and as a result, the Landlords served the Tenant with a notice to end tenancy for unpaid rent on May 8, 2015.

The Tenant was informed during the hearing that the Landlord's consent must be obtained in writing before she was allowed to use the Deposits in lieu of rent. The Tenant acknowledged and did not dispute the provisions of the Act as they appear detailed below.

In relation to the Landlord's monetary claim for damages in the amount of \$1,521.00 as evidenced by a cost estimate, the Landlord testified that during a heavy snow event at the start of January 2015 when the local schools were closed, the Tenant of her own volition decided to hire a company to perform snow removal of the rental unit driveway. The Landlord submits that the company used a bobcat machine to remove the snow and in the process caused damage to the driveway curb. The Landlord provided one black and white photograph of the driveway indicating no damage to the driveway curb and then two photographs indicated damage which the Landlord submitted was from after the snow removal.

The Tenant's agent submitted that the rental unit drive is very steep and when the Tenant took up occupancy she worried about the access to the rental unit during snow

events. As a result, the parties signed an addendum to the tenancy agreement which stated that the driveway at the residence would be kept in good condition during the winter months to enable the Tenant to drive in and out as need and, if the Tenant is to get help for snow removal, the Landlord will be responsible for the associated fees. Although the addendum was not provided into evidence prior to the hearing, the parties agreed to the contents of this agreement as described in this Decision.

The Tenant's agent explained that during the snow event of January 2015, the Tenant needed to get in and out of the rental unit as she was a senior. The Tenant attempted to call the Landlord several times and left messages for the snow to be removed. However, after failed returned calls and a deadline for getting the snow removed, the Tenant called a company to remove it.

The Tenant's agent explained that as per the addendum to the tenancy agreement, the Landlord paid the Tenant \$200.00 for her having to call out for snow removal. The Tenant's agent submitted that the driveway was cleared and there was no evidence of any damage caused by the snow removal company hired by the Tenant.

The Tenant's agent pointed out that no move in Condition Inspection Report (the "CIR") had been completed by the Landlord and this damage was only brought to the attention of the Tenant when she provided the Landlord with written notice to end the tenancy.

The Landlord responded by confirming that he had not completed a move in CIR at the start of the tenancy. However, the photographic evidence shows no damage before it snowed and damage after the Tenant had the snow removed.

The Landlord was unable to determine the exact date the damage was discovered by him as he said that it was his son that discovered it. The Landlord testified that the snow melted a month later and they would not have seen the damage when it occurred. The Landlord was unable to say whether they had addressed the issue of the damage with the Tenant in writing. The Tenant confirmed that she was not informed of the damage at any point, verbally or in writing, until after she had provided notice to end the tenancy.

Analysis

In relation to the Landlord's claim for unpaid rent for May 2015, Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. Section 21 of the Act states that a tenant must not apply a security or pet damage deposit as rent unless the landlord gives written consent.

Based on the foregoing, I find the Tenant had no authority from the Landlord to use the Deposits for the last month's rent of the tenancy. The Tenant acknowledged that she did not pay rent for May 2015 and I find the Landlord is entitled to **\$950.00** for this amount.

In relation to the Landlord's claim for damages to the rental unit, when a party makes a claim for monetary compensation for damage or loss under the Act, the burden of proof is on the applicant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the applicant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have carefully considered the evidence of both parties in relation to the above test on the balance of probabilities. The Landlord relies heavily on three photographs as evidence of damage caused to the rental unit. While I agree to the existence of damage to the curb, which was not disputed, I find the Landlord failed to provide sufficient evidence to show that it was the snow removal company that were the cause of this damage.

There is no independent or corroborative evidence that points to the snow removal company being the cause of damage to the curb. The Landlord's testimony in relation to when this damage had become known to him could not be confirmed but I noted the Landlord stated that the snow melted a month later. If this had been the case, then the damage to the curb should have been apparent at that time and therefore, damage of this serious nature would have likely been addressed with the Tenant at that point.

However, I find the fact that the Landlord chose to bring up an issue of damages going into the thousands of dollars, after the Tenant had given notice to end the tenancy casts doubt on the Landlord's submission that it was the Tenant's snow removal company that caused the damage. I also find that it is also plausible that the heavy nature of the snow event and the extended period of time it lay on the ground could have also caused this damage.

Based on the foregoing reasons, I am not satisfied that the Landlord has provided sufficient evidence to show that the damage to the curb stemmed from a breach of the Act by the Tenant. Therefore, the Landlords' claim must fail and is hereby dismissed without leave to re-apply.

As I have determined that the Tenant breached the Act by not paying rent, I find the Landlords are entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlords is **\$1,000.00** (\$950.00 + \$50.00).

As the Landlords already hold \$950.00 in the Tenant's Deposits, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$50.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

Conclusion

The Tenant has failed to pay rent under the tenancy agreement. Therefore, the Landlord can keep the Tenant's Deposits of \$950.00 and is issued with a Monetary Order for the \$50.00 filing fee. The Landlord's monetary claim for damages to the rental property and the request for an Order of Possession is dismissed without leave to re-apply.

The Tenant's Application is dismissed.

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 02, 2015

Residential Tenancy Branch

