



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPB; OPN; MNR, MNDC, MNSD, FF
Tenants: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders. The landlord also sought an order of possession.

The hearing was conducted via teleconference and was attended by the landlord and one of the tenants. Both parties requested two witnesses each to be called into the hearing.

One of the landlord's witnesses was successfully called into the hearing and did provide testimony both parties were given an opportunity to ask the witness any questions they wanted. Despite calling the landlord's second witness twice at one phone number and a third time to a different number she did not respond, as such the landlord's second witness did not provide any testimony.

One the tenant's witnesses was successfully reach by phone, however, both he and his partner were busy with other commitments and could not participate in the hearing. The tenant's second witness was called twice and both calls went directly to hear voicemail, she did not provide any testimony.

At the outset of the hearing the landlord confirmed the tenants had vacated the rental unit and as such she did not require an order of possession. I amended the landlord's Application for Dispute Resolution to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for cleaning of the residential property; 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 return of double the amount of the security deposit and to recover the filing fee from the landlord

for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on August 22, 2014 for a 10 month and 11 day fixed term tenancy beginning on August 20, 2014 for a monthly rent of \$950.00 due on the last day of each month with a security deposit of \$475.00 paid.

The parties agreed the tenancy ended at the end of March 2015 after the tenants provided the landlord with a written notice to end the tenancy dated March 12, 2015 stating they would be vacating the rental unit by March 31, 2015.

The tenant submitted that he had met with the landlord in mid-March 2015 at which time, he stated, they verbally agreed the tenant would vacate the rental unit at the end of March 2015 and that the landlord could keep the security deposit in lieu of any rent owing. He stated he was later contacted by the landlord and asked to provide a written notice to end tenancy.

The landlord submitted that she was able to re-rent the rental unit to new tenants effective April 15, 2015 and she sought compensation for this period as the tenant had failed to provide 1 month notice to end the tenancy.

The tenant testified that the landlord wrote his forwarding address down on the Condition Inspection Report that was completed on March 28, 2015 during the move out inspection. When it was pointed out that there is no recording of a forwarding address on the Report the tenant submitted the landlord must have written it down on another paper on her clipboard.

The landlord submitted she did not receive the tenants' forwarding address during the move out inspection rather it was provided by the other tenant when he called her on April 30, 2015.

The landlord had submitted into evidence a copy of a Condition Inspection Report signed by both parties at both the start and end of the tenancy. The Report records that absolutely everything in the rental unit was in good condition. The only comment made on the document was in response to the specific section "Damage to rental unit or residential property for which the tenant is responsible" where it is handwritten "None".

The landlord submitted that she had had previous altercations with the younger tenant during the tenancy and she could not find anyone who would attend the move out inspection with her. She stated that as a result she was scared to be alone with the tenants and so she just said everything was ok when she completed the move out inspection and report.

The tenant submitted that the only altercation the landlord had with the younger tenant was on April 30, 2015 when he had called to find out about the return of the security deposit, after the tenancy was over. The landlord testified that they had also had an altercation previously when painting a part of the rental unit.

The landlord submitted that a few days later she and one of her witnesses (the one who could not be reached during the hearing) attended the property and took photographs of the condition of the unit. The landlord has submitted copies of these photographs into evidence. The landlord has provided a written statement from her witness.

The landlord claims the following:

Description	Amount
Cleaning supplies and shower curtain	\$86.77
Yard (mowed)	\$40.00
Cleaning mould & re-paint	\$120.00
Cleaning house only	\$281.25
Cleaning garage	\$100.00
Total	\$628.02

In support of her claim the landlord has provided receipts for mowing the lawn; cleaning supplies and shower curtain; house cleaning and garage cleaning; and for mould removal and painting.

The tenant provided testimony regarding several of the photographs. In his written submission he suggests that several of the photographs are to be "staged". He submitted, for example, that in one of the photographs the landlord has already started cleaning the toilet and in another the landlord had removed the stove in a manner that required a licence gas technician to be involved.

He provided substantial testimony providing explanations as to why the photographs depicted what they did but he did not dispute that the condition of the unit at the end of the tenancy was any different than what the photographs showed. For example, he explained seals had broken in the windows and that is what caused damage to window ledges.

The tenant also attributed damage in the skylight in the bathroom to a broken seal. The landlord's witness, who had recently replaced the roof, stated that there had been no evidence of damage caused by a deficiency in the skylight or the surrounding roofing. I also note the tenant did not testify that he had informed the landlord of any of the deficiencies during the tenancy. The landlord submitted the damage was caused by the failure of the tenants to properly turn on the fan when taking showers.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

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

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

As there is no evidence before me from either party that the landlord and the tenant agreed in writing to end the tenancy I find the tenancy ended as a result of the tenants' notice to end the tenancy pursuant to Section 45 of the *Act*.

Section 45(1) of the *Act* states a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me from either party that the landlord was in breach of a material term I find the only way the tenants could end this tenancy was by issued a notice that complied with Section 45(1).

As the tenants issued their notice on March 12, 2015 and rent was due on the last day of each month I find the earliest the tenancy could have ended as a result of the tenants' notice was April 29, 2015. As such, I find the tenants are responsible for the payment of rent for the month of April 2015 subject to the landlord's obligation to mitigate her losses.

As the landlord was able to re-rent the rental unit effective April 15, 2015 I am satisfied the landlord took reasonable steps to mitigate her losses. I note the landlord seeks only ½ month's rent because she obtained ½ month's rent from her new tenants. As such, I find the landlord is entitled to compensation for unpaid rent in the amount of \$475.00.

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 per the testimony of both parties and despite the landlord's Condition Inspection Report, I find the tenant has confirmed, at least in part, that photographs depicted the condition of the unit at the end of the tenancy.

While the tenant did suggest the landlord's photographs appeared staged I note that during the hearing he did not dispute the condition of that was depicted but rather he simply provided an explanation as to why various photographs depicted various conditions.

In addition, I find that the landlord's witness provided a professional opinion on how the damage was caused in the bathroom that contradicts the tenant's position that it was caused by a deficient product. As such, I find the tenant's testimony regarding other window seal deficiencies may not be reliable.

For these reasons, I find the landlord has established that the tenants failed to comply with their obligations under Section 37 to leave the rental unit reasonably clean and undamaged and she is entitled to compensation for her claim with the following exceptions:

1. Lawn mowing – I find the landlord has failed to provide any evidence at all that the lawn required mowing; and
2. Garage cleaning – the only photograph submitted by the landlord shows that the garage was reasonably clean. While both parties provided testimony regarding the floor I find neither provided any evidence that the condition depicted in the photograph submitted was anything more than reasonable wear and tear.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the

security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While the tenant submits that he provided the landlord verbally with his forwarding address on March 28, 2015 I find that he has provided no corroborating evidence to support this statement. Further, even if he provided his forwarding address verbally on March 28, 2015 the obligations under Section 38(1) do not commence until the landlord receives the address in writing.

Even though the landlord submits that she received the tenants' forwarding address verbally on April 30, 2015 I find that she was still not required to submit her Application for Dispute Resolution within 15 days of April 30, 2015 because as of that time she still had not received the tenant's forwarding address in writing.

In fact, I find the landlord was first provided the tenants' forwarding address in writing after the tenants served her with their Application for Dispute Resolution which was made on June 22, 2015. As the landlord had already applied to claim against the deposit on May 15, 2015 I find the landlord has fulfilled her obligations under Section 38(1) and the tenants are not entitled to double the amount of the security deposit.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,013.02** comprised of \$475.00 rent owed; \$86.77 cleaning supplies and shower curtain; \$120.00 mould removal and painting; \$281.25 house cleaning and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$475.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$538.02**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord 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: October 02, 2015

