Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to the Landlords' application for Dispute Resolution which was filed on April 13, 2015. The Landlords sought a Monetary Order for the following: to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted in person and was attended by both Landlords and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other.

The Tenants raised no issues regarding service or receipt of the Landlords documentary evidence.

The Landlords submitted that they did not receive the Tenants evidence until October 16, 2015. They stated they have not had time to view the documents or review the electronic evidence.

The Tenants affirmed that they personally delivered their evidence to the Landlords' mailbox on October 9, 2015 at 10:40 a.m., ten days prior to this October 19, 2015 hearing. They asserted that they attempted to reach the Landlords by calling different telephone numbers (their home phone, and cell phone numbers) to confirm that the Landlords were able to view the electronic evidence. The Tenants argued that they left voice messages on each number; however, the Landlords never returned their calls.

The Landlords acknowledged receipt of the Tenants' voice messages sometime after they returned home late into the evening of October 15, 2015. They argued that they had been out of the country for six weeks and decided not to return the Tenants' calls as they felt they would deal with the matter at the hearing.

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

Rule of Procedure 3.10 states, in part, that before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence. If a party asks another party about their ability to gain access to a particular format, device or platform, the other party ***must*** reply as soon as possible. [My emphasis added by bold text].

Rule of Procedure 3.17 stipulates that the Arbitrator has the discretion to determine whether to accept evidence that does not meet the requirements set out in the Rules of Procedure.

This hearing was convened to hear matters pertaining to the Landlords' application; therefore, the Landlords ought to have expected evidence would be served by the respondent Tenants. Therefore, if the Landlords planned to be out of the country for six weeks immediately prior to the scheduled hearing, they ought to have arranged to have an agent receive and review the respondents' evidence on their behalf or they should have made the time to review the evidence upon their return.

In addition, the Landlords acknowledged receipt of the evidence and voice mail messages sometime after their late arrival on October 15, 2015 which provided upwards of four days to review that evidence. Refusing to respond to a party's calls to verify another's ability to view digital evidence is a breach of Rule of Procedure 3.10.

The Tenants submitted documentary evidence that was not relevant to the Landlords' application. Rather, that evidence would relate to a claim brought forward by the Tenants if they decided to file a claim. Accordingly, that evidence was not presented or considered in this matter.

After consideration of the foregoing, I determined that I would consider all relevant documentary and digital evidence that was submitted from both the Landlords and the Tenants and which was presented during the hearing.

During the hearing each party was given a full and fair opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was the parties entered into a month to month tenancy that began on February 1, 2012. Rent of $1,600.00 was due on or before the first of each month and on or before February 1, 2012 the Tenants paid $800.00 as the security deposit.

No condition inspection report form was completed at move in. A move out condition inspection report form was signed by each party on April 30, 2015. The Tenant(s) did not agree with the information listed on the condition report form and wrote the following in section "Z" of the form:

> *failure to do walk through before moving in. and refusing to do walk through on move out*
>
> [Reproduced as written]

On February 28, 2015 the Tenants contacted the Landlords via telephone and gave oral notice that they would be ending their tenancy effective March 31, 2015. A written notice to end tenancy dated March 11, 2015 was received by the Landlords on March 18, 2015.

On the morning of March 1, 2015 the Landlords placed advertisements on the internet for the purpose of re-renting the rental unit effective April 1, 2015. The Landlords submitted they were not able to re-rent the unit until April 15, 2015.

The Landlords sought $500.00 lost rent for the period of April 1 – 14, 2015 and argued that they were entitled to the half month's rent because the Tenants failed to give them proper written notice to end their tenancy.

The Landlords argued they did not receive possession of the rental unit until approximately 3:00 p.m. on March 31, 2015. They asserted that the *Act* stipulated the Tenants were required to return possession by 12 noon and as such they had arranged for a contractor to attend the rental unit at noon.

The Landlords sought $50.00 for stand by costs for their contractor who had to wait until the Tenants fully vacated the unit. No invoice or proof of payment was submitted in the Landlords' evidence for this claim.

The Landlords submitted that the Tenants were required to pay all utilities. As such, they sought to recover payment for the final municipal utility bill in the amount of $387.83. A copy of the bill was submitted into evidence listing a billing period of November 25, 2014 to March 25, 2015.

In addition to the above amounts claimed, the Landlords sought $500.00 for "exit management costs". They stated the amount was for ten hours of management fees to

arrange for people to go inside and for cleaning. They argued that the carpets had to be cleaned; the home needed to be repainted; the carpet had to be replaced; and the dog excrement had to be removed from the yard.

The Landlords testified that they estimated that the carpet was about 12 years old. They could not remember when the interior of the house had been painted last. The work was performed by the contractor and the Landlord. No invoices or proof of payment receipts were submitted to support what work had been performed or the actual cost. The Landlords relied solely on the condition inspection report form submitted into evidence.

The Tenants testified that they returned possession of the rental unit to the Landlord at 1:45 p.m. on March 31, 2015. They argued the Landlord did not have a condition inspection form with him on that date. The Landlord called them and requested they come back to the rental unit on April 3, 2015 to complete the inspection and condition form. When they arrived the Landlord refused to conduct the walk through and requested that they sign the condition form that had been completed prior to their arrival.

The Tenants confirmed that they initially gave their notice verbally and the Landlords accepted that notice. They later found out from the RTB that they were required to give their notice in writing which is why the written notice was not issued until March 11, 2015. They argued that they should not have to pay the $500.00 lost rent because they submitted audio evidence that the Landlord refused to show the unit.

The Tenants disputed the claim of $50.00 for the contractor's stand by costs. They argued that they offered the contractor access to the rental unit when he first arrived and the contractor refused to go inside without the Landlord. They asserted that the Landlord went off to the RTB office which is why his contractor remained outside waiting for the Landlord's return. They noted that there was no proof or receipts submitted to support the claim.

The Tenants did not dispute the claim of $387.83 for municipal utilities. They confirmed utilities were their responsibility. The Tenants noted that they had not received a copy of the final bill until they received the Landlords' evidence in April 2015.

The Tenants disputed the Landlords' claim of $500.00 for management costs to repair or clean the rental unit. They argued that there was no evidence of the condition of the rental unit at the beginning of their tenancy and there was no photographic evidence to prove the condition at the end of the tenancy. Furthermore, there were no receipts to prove work was performed. The Tenants argued that the Landlords' testified that the carpets were over 12 years old and they did not have evidence as to when the unit was last painted.

The Tenants pointed to their documentary evidence which included an invoice from a junk removal company. They argued that invoice was proof that they removed their

excessive debris from the property. They also submitted a video of the condition of the rental unit.

In closing, the Landlords submitted that they were not informed when the Tenants taped their conversations. They submitted that although proper notice was not provided by the Tenants they attempted to mitigate their loss by acting on the verbal notice. They had trouble showing the rental unit given the condition of it so they went to the RTB for advice. They submitted that they spent three days cleaning the unit and argued their time and energy is money.

Analysis

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The party making the claim for damage or loss bears the burden to proof their claim on a balance of probabilities.

The Tenants submitted audio evidence and argued that they had a recording of the Landlords refusing to show the rental unit and refusing to conduct the walk through. I find these recordings to be unreliable as the Landlords were not informed their conversations were being taped. It is possible to manipulate conversations in an attempt to elicit responses that otherwise would not have been made. Furthermore, there is no way to determine if the recordings had been edited. Therefore, I have given the audio recordings no evidentiary weight. Instead, I considered the testimony and documentary evidence of each party.

Section 45 (1) of the Act stipulates that 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 52 of the *Act* stipulates, in part, that in order to be effective, a notice to end tenancy issued by a tenant must be in writing.

In this case the Tenants initially gave verbal notice to end their tenancy which was in breach of section 52 of the *Act.* That being said, the Landlords accepted that verbal notice and acted on it by placing their advertisements on the internet the next morning, April 1, 2015.

The Tenants' written notice was not received by the Landlords until March 18, 2015. Therefore, to comply with section 45 of the *Act* that written notice would not be effective until April 30, 2015.

Notwithstanding the Tenants' submission that the Landlords refused to show the rental unit, after consideration of the above, I find the Landlords submitted sufficient evidence that they did what was reasonable to mitigate their loss and they still suffered a loss of rental income from April 1 – 14, 2015. Accordingly, I grant the claim for loss of rent in the amount of **$500.00**, pursuant to section 67 of the *Act.*

Section 37(1) of the *Act* provides that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

As indicated above, this tenancy was scheduled to end April 30, 2015 in accordance with the Tenants' written notice. Therefore, the Landlords would not be entitled to access to the unit until 1:00 p.m. on April 30, 2015; unless the parties mutually agreed to another date and time in accordance with section 37 of the *Act.*

The evidence is undeniable that the Landlords acted upon the Tenants' verbal notice to end the tenancy effective March 31, 2015 as they had advertised the unit and scheduled a contractor to attend the unit on March 31, 2015. That being said, the Landlords were relying on the *Act* and proper legal notice when it was to their own benefit and they failed to enter into an agreement with the Tenants for an earlier possession time as required by section 37 of the *Act.* Therefore, I find the Landlords failed to prove their claim for stand by charges for their contractor and the $50.00 claim is dismissed, without leave to reapply.

The Tenants did not dispute the Landlords' claim for unpaid municipal utilities. Accordingly, I award the Landlords unpaid utilities in the amount of **$387.83**, pursuant to section 67 of the *Act.*

Section 35(1) of the *Act* stipulates that the landlord and tenant ***together*** must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. [My emphasis added with bold text]

In determining the Landlords' claims for management fees and for their time to clean and repair the rental unit I accept the Tenants' undisputed evidence that the Landlords did not complete the move out condition form in their presence which is a breach of section 35(1) of the *Act*. I further accept that the condition inspection form was already completed when the Tenants arrived on April 3, 2015. I further accept that the Tenants were refused access to the rental unit and were not allowed to conduct an inspection. Accordingly, I give the condition inspection report form no evidentiary weight.

After consideration of the foregoing, in absence of any other documentary evidence to prove the condition of the rental unit or the work that was performed, and in the presence of the Tenants' evidence disputing the claim, I find the Landlords submitted insufficient evidence to prove their claim for time spent to ready or clean the rental unit.

In addition, in response to the claim for the Landlords' management fees, I find that the Landlords have chosen to incur such costs as they chose to be in business as a landlord. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of *Act* and not for costs of doing business. Therefore, I find that the Landlord may not claim for costs incurred to conduct their business of hiring contractors or arranging access to the rental unit, as those are costs which are not denominated, or named, by the *Residential Tenancy Act.* Accordingly, I dismiss the claim for $500.00 labor to ready or clean the unit and for management fees, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **$25.00**, pursuant to section 72(1) of the Act.

Monetary Order –This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of Rent April 1-14, 2015	$500.00
Unpaid Utilities	387.83
Filing Fee	25.00
SUBTOTAL	$912.83
LESS: Security Deposit $800.00 + Interest 0.00	-800.00
Offset amount due to the Landlord	**$112.83**

Conclusion

The Landlords were partially successful with their application and were awarded $912.83 which was offset against the Tenants' $800.00 security deposit leaving a balance owed to the Landlords of $112.83.

The Landlords have been issued a Monetary Order in the amount of **$112.83**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 28, 2015

Residential Tenancy Branch