



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

In the first application the landlord seeks an order of possession and a monetary award for unpaid utilities and damages for repair and restoration of the rental unit.

In the second application the tenants seek compensation for having been forced to vacate the premises.

By the time of hearing the tenants had vacated the premises and an order of possession was no longer sought.

The tenants acknowledge and the landlord agrees there is presently owed a total of \$470.64 in outstanding utility bills.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either side is entitled to a monetary award?

Background and Evidence

The rental unit is a four bedroom home constructed in or about 1998. The landlord acquired it in 2005. She lived in it until 2013, when in May of that year she rented it to the tenants.

The original agreement was for a fixed term of one year and then month to month. The monthly rent was \$1500.00. The landlord did not receive any deposit money.

According to the tenants the landlord made verbal requests or demands for a rent increase during the summer of 2015 and that they could not afford a significant increase. There had accumulated about a year's worth of utility bills, over \$1000.00, that the tenants were attempting to address.

In August 2015 the landlord, through her recently retained property manager, issued and served a ten day Notice to End Tenancy dated August 14, 2015. The tenants neither applied to dispute the Notice or paid the \$1094.31 demanded in it.

The tenants vacated the premises and returned the keys to the property manager on August 29, 2015. A move out condition inspection was apparently done on August 29th. Neither side adduced a condition inspection report into evidence during the hearing.

The landlord testifies that the tenants painted the interior of the premises without consent and that the paint job was substandard.

The tenants say they had permission to paint with the only condition being that the colours must be reasonable. They say they would have fixed up the poorly painted areas, mostly trim, if they had had more time.

The landlord says the tenants burned a hole in a basement carpet. The tenants' evidence is non-committal about the burn mark. It is not specifically denied that it occurred during the tenancy.

The landlord says the tenants caused a burn in the kitchen countertop. The tenants say it is a chemical burn caused by a cleaning agent left in a bottle by the landlord.

The landlord says the tenants put two holes in the metal siding of the home. The tenants say they didn't.

The landlord says the tenants put more holes in the siding when they installed shelves for deck speakers that the landlord had left for their use. The tenants say they "siliconed" the screws into the siding and imply that is sufficient.

The landlord says the tenants installed hangers on an interior door to the garage, puncturing the metal door. The tenants say that the hangers were left screwed into the door and so there is no damage.

The landlord says the tenants damaged a closet door, leaving exposed hinge marks and holes. The tenants acknowledge the damage but say that they would have corrected the damage had they had more time.

The landlord says the tenants have deconstructed a treehouse in the yard. The tenants say the treehouse was in a poor state and falling apart. They took it down after notifying the landlord.

The landlord says the tenants did not return a king size mattress, left for their use. The tenants say the landlord had initially given them permission to either use it or dispose of it and that they had disposed of it.

The landlord claims for the cost of a lock change after the tenants left. The tenants say they returned all keys to the landlord's property manager.

The landlord presented an estimate for all the work alleged to be required to restore the premises. It is from a single contractor. None of the work has been done. The landlord says she is looking for new tenants but is also contemplating selling the home.

In support of their own claim the tenants says that they were forced out of the premises early, lost time at their jobs and had to pay for alternate accommodation for two nights while their new housing was being readied.

Analysis

The landlord is entitled to a monetary award for the outstanding utilities of \$470.64.

Generally speaking, a tenant is responsible for returning premises to a landlord to the same condition as when rented.

Residential Tenancy Policy Guideline 1 "Landlord & Tenant – Responsibility for Residential Premises" states:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

The tenants say they did have that consent. In all the circumstances I find that they most likely did. Extensive painting has been done to the inside of the home; an undertaking any tenant would not wish to have to reverse at the end of a tenancy. Most

indicative, the landlord attended to inspect the premises in July 2015, well before the end of the tenancy or even before the ten day Notice to End Tenancy had been given. The interior painting would have been obvious, yet the landlord said nothing about it either verbally or in writing to the tenants. Her failure to take issue with such an obvious and significant change to the interior of the home is indicative that she had authorized the painting.

At the same time, the landlord's evidence shows that in places the paint job was of a quality far below what would be expected. Trim has been painted over in many locations. Having regard to the evidence I consider that the landlord is entitled to recover damages for the cost of having to repaint the trim in a number of rooms.

There is no accurate measure for the damages, but having regard to the evidence I consider \$400.00 to be a reasonable award for the cost.

The tenants are responsible for the cost to repair or refinish the front entry closet. Their excuse that they did not have time is not a convincing one. The repair should have been conducted when they altered the closet doors and certainly before they vacated the premises. I award the landlord the amount of \$205.00 for this work, as per the estimate.

I find that the tenants are responsible for damage to the kitchen counter top. Their allegation that the damage occurred as the result of a leaking container left by the landlord is not a reasonable one. The photo submitted shows damage consonant with a hot pot having been left to sit on the counter surface.

At the same time, I find that the landlord's estimate of \$3700.00 to replace the kitchen countertop to be extraordinarily large without some reasonable explanation for it. In all the circumstances, and having regard to the fact that the countertop is likely the original and about seventeen years old and that its useful life is generally about 25 years (Residential Tenancy Policy Guideline 40 "Useful Life of Building Elements"), I grant the landlord the amount of \$500.00 for counter repair or replacement.

I find that the basement carpet was significantly damaged by a burn during this tenancy and that the tenants are responsible for it.

The burn mark is in a place that would be readily observable in the room. The landlord's contractor's estimate quotes \$3700.00 to replace this carpet. Policy Guideline 40, above, notes that the useful life of carpet to be ten years. This carpet is, I find, well past the age of ten years. It is likely seventeen years old. To award the

landlord anything more than nominal damages would be to put her in a better position than she is entitled. I award the landlord nominal damages of \$100.00 for the carpet burn.

The evidence regarding two small holes in the side of the garage is inconclusive. Such small holes in an out of the way location could easily have been there before this tenancy. The landlord has put herself in a difficult position by not having attended to conducting a move in condition inspection and preparation of the condition inspection report mandated by the *Residential Tenancy Act* (the “Act”). Such damage may well have been noted at such an inspection. I dismiss this item of the landlord’s claim. She has not proved on a balance of probabilities that the holes were made during this tenancy.

The tenants did make holes in the rear siding, underneath the covering of a deck, in order to mount two stands for outdoor speakers. The landlord’s estimate quotes \$1275.00 for “repairs/replacement” of siding in three different locations. It is not apparent whether the siding with the speaker stand holes needs “repair” or “replacement” of the siding. It is not apparent what either a repair or a replacement would cost.

I find that the tenants were wrong to put holes in the siding for speaker shelves but that the landlord has not proved her damages. As a result I award her only nominal damages of \$100.00 for the tenants’ breach.

I dismiss the landlord’s claim for reconstruction of a treehouse and for the cost of removal of debris left over from the old one. I accept the tenants’ evidence that the treehouse was in disrepair and falling down. It is not disputed that the tenants informed the landlord of their intention to deconstruct it. The landlord said nothing. She did not attend to inspect the state of the treehouse or comment on the tenants’ stated intention to take it down. The landlord’s action, or inaction, is consonant with the tenants’ version of the matter.

I dismiss the landlord’s claim regarding the hangers on the inside of the garage door. As per Policy Guideline 1, above, tenants are entitled to hang items such as pictures and the like as part of their use and occupation of the premises. I consider clothing hooks on the door to be in the same category. The hooks are still there and are not a disfigurement of either the room or the door itself.

I dismiss the landlord's claim regarding the mattress. The evidence of the landlord and of the tenants is equally credible. The landlord has failed to satisfy the burden of proof imposed on her as claimant.

I dismiss the landlord's claim for the cost of a lock change. The tenants returned the keys as they were required to do. There is no evidence that they retained any method of access to the home.

In regard to the tenants' claim, the basis for it is far from clear. They were the recipients of a ten day Notice to End Tenancy for unpaid utilities. They chose not to challenge that Notice by applying to cancel it. They chose not avoid the Notice by paying the outstanding utilities within five days after receipt of the Notice.

As a result of those decisions, by operation of s. 46 of the *Act*, the tenants were "conclusively deemed" to have accepted the end of the tenancy on the effective date in the Notice: August 25, 2015.

The tenants had no lawful right to stay in the premises after that time and any expense they might have incurred in vacating is an expense they must bear.

Conclusion

The landlord is entitled to a monetary award totalling \$1970.64 plus recovery of the \$50.00 filing fee.

The tenants' application is dismissed.

There will be a monetary order against the tenant in the amount of 2020.64

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 22, 2015

Residential Tenancy Branch

