



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR, MND, MNDC, MNSD, FF

Introduction

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

- an order of possession based on the tenants' notice to end tenancy, pursuant to sections 45 and 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant, MB ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that she had authority to represent the other tenant named in this application, "tenant VB," as an agent at this hearing. This hearing lasted approximately 76 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's Application.

As advised to both parties during the hearing, the landlord was to provide a copy of the tenants' move-out notice and the tenancy agreement to me at the Residential Tenancy Branch ("RTB") after the hearing. These documents were provided to the tenants only, prior to the hearing. I received and considered these documents in my decision.

At the outset of the hearing, the landlord confirmed that the tenants had already vacated the rental unit. Accordingly, the landlord's application for an order of possession is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties confirmed that the landlord purchased the rental unit, a house, from the tenants, pursuant to a contract of purchase and sale, dated April 9, 2015. The landlord gained possession of the house effective on April 30, 2015. As per the addendum to the tenancy agreement, dated April 27, 2015, the tenants were permitted to reside in the rental unit after the sale, until the tenants found a new property. Both parties signed a tenancy agreement confirming that the parties agreed to a month-to-month tenancy, whereby the tenants would be required to provide 30 days' notice prior to vacating the rental unit. The tenants occupied the main floor of the house, while the landlord's mother occupied the basement suite of the same house. The landlord stated that she purchased this house for her mother and she did not personally live in the house.

Both parties confirmed that this tenancy began on May 1, 2015 and ended on May 31, 2015. Monthly rent of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord agreed that the monthly rent payment of \$1,300.00 for May 2015 and the security deposit of \$650.00 were both paid by the tenants through a credit adjustment on the sale price of the home to the landlord.

The landlord stated that an inspector's report as part of the house purchase disclosure was completed at the end of April 2015. The landlord maintained that she only partially completed a move-out condition inspection report, which the tenant refused to sign. The tenant stated that the landlord did not ask her to sign the move-out condition inspection report. Both parties agreed that a move-out inspection was completed on June 1, 2015, as the tenants believed they had until midnight on May 31, 2015, to vacate the rental unit. Both parties agreed that the tenants provided a written forwarding address to the landlord on June 1, 2015.

The landlord seeks \$1,300.00 in lost rental income for June 2015, because the tenants provided less than one month's notice to vacate the rental unit. Both parties agreed that the tenants provided written notice on May 4, 2015, to vacate the rental unit by May 31, 2015. The landlord provided a copy of this notice. The landlord stated that she was unable to re-rent the unit until July 1, 2015, when a new tenant moved in. The landlord stated that she had already arranged for her friend to move into the rental unit once the tenants gave notice to move out. She indicated that she had discussions with her friend and the intention was initially for him to move in April 2015 but then the tenants decided to occupy the unit. The landlord maintained that she could not let her friend know to move in until she received a notice to vacate from the tenants, which she received on May 4, 2015. The landlord explained that she advised her friend on May 4, 2015, but he had to provide at least one month's notice to his landlord to move out. She stated that he gave his notice on May 31, 2015 to his landlord, so that he could move in to the rental unit on July 1, 2015. The landlord maintained that she did not place any advertisements for the rental unit because she already had her friend ready to move in.

The tenants dispute the loss of rental income claim made by the landlord. The tenant testified that the landlord advised her that she could move at any time and that the 30 days' notice was a flexible provision. The tenant noted that the landlord had to fix the balcony and bathroom in the rental unit regardless, so no one could move in until those tasks were completed. The landlord confirmed that she had repair people available on June 1, 2015 to repair the bathroom walls but that two other bathrooms were available during this time. The landlord testified that she had the bathroom walls fixed the week after June 1, 2015 and that it was a quick 1-2 day fix. The landlord stated that the balcony stairs have not yet been fixed and that this will be done next summer, as the stairs are not hazardous to use. The tenant claimed that she saw people in the rental unit on June 15, 2015. The landlord confirmed that her friend put his belongings in the garage for storage and that he was performing yard work but not yet living in the rental unit.

Initially, the landlord sought \$147.50 for patching and sanding nail holes and removing 2 wall-mounted mirrors and a television wall mount with brackets. The landlord testified a number of times during the hearing that she wished to withdraw this claim. Accordingly, this portion of the landlord's claim is withdrawn.

The landlord seeks \$162.75 for cleaning the rental unit. The landlord confirmed that she had an invoice for \$310.25 total for the cleaning, patching, sanding and removing. The landlord stated that she did not submit the invoice for this hearing. The landlord maintained that her friend who moved into the rental unit had to scrape stickers off the small bedroom walls and windows and clean other parts of the rental unit. She stated that she reduced her friend's rent by \$200.00 or less per month for repairs done by him on an ongoing basis. The tenants dispute the cleaning charges claimed by the landlord. The tenant stated that she adequately cleaned the rental unit with her father-in-law prior to moving out.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show efforts to minimize this loss. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused damage beyond reasonable wear and tear that could be expected for a rental unit of this age. The landlord must also show that the tenant caused a rental loss for June 2015.

In summary, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 of the *Act* requires tenants to provide one month's written notice to the landlord to end a tenancy. The notice must be given on the day before the day in the month when rent is due. Both parties agreed that rent was due on first day of each month, as noted in the tenancy agreement. The tenants gave notice on May 4, 2015 to leave on May 31, 2015. The tenants' notice was due by April 30, 2015 and was therefore 4 days late.

I accept the landlord's evidence that she did not advertise this unit for rental because she had already arranged for her friend to occupy the rental unit, once the tenants gave notice to vacate. I accept the landlord's testimony that her friend had to provide one month's notice to his landlord to vacate his own unit, such that he could move into this rental unit. I accept that he was unable to give his notice until after he was notified by the landlord on May 4, 2015, that the tenants intended to vacate. As most tenancies begin on the first of the month and end on the last day of the month, I accept that he was unable to give notice until May 31, 2015 to vacate on June 30, 2015. I find that the tenants failed to prove that they did not have to give 30 days' notice to vacate, as the tenancy agreement and addendum both clearly state that this notice must be given. Accordingly, I find that the landlord is entitled to \$1,300.00 for a loss of June 2015 rent.

I dismiss the landlord's claim for \$162.75 for cleaning the rental unit, without leave to reapply. I find that the landlord did not provide sufficient evidence that the rental unit was not cleaned when the tenants vacated. The tenants confirmed that they adequately cleaned the rental unit when they vacated. The landlord did not provide any photographic or other documentary evidence to show that cleaning was required. The landlord did not provide an invoice to prove her loss. I find that the landlord had ample time to submit this invoice given that her application was made on June 12, 2015 and this hearing was held on November 18, 2015. I find that the landlord failed to meet the four-part damages test above.

The landlord continues to hold the tenants' security deposit of \$650.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain this deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was only partially successful in her Application, I find that she is not entitled to recover the \$50.00 filing fee paid for this Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$650.00 against the tenants as follows:

| Item | Amount |
|-----------------------------|-----------------|
| June 2015 rental loss | \$1,300.00 |
| Less Security Deposit | -650.00 |
| Total Monetary Award | \$650.00 |

The landlord is provided with a monetary order in the amount of \$650.00 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.

The landlord's application for an order of possession is dismissed without leave to reapply.

The landlord's application for \$147.50 in damages was withdrawn.

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: December 14, 2015

Residential Tenancy Branch

