



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application

The landlord and both tenants attended the hearing and each gave affirmed testimony.—The parties provided evidentiary material in advance of the hearing, however the landlord stated she had not received the tenant's evidence package. The tenants stated that it was sent by Express mail to the Residential Tenancy Branch and to the landlord on November 24, 2015, and I received the copy on November 25, 2015. The landlord did not oppose the inclusion of the tenants' evidence, and all evidence provided by the parties has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the applications for a monetary order for damage to the unit, site or property and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 1, 2010. Rent in the amount of \$750.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$350.00 as well as a pet damage deposit in the amount of \$300.00, both of which are still held in trust by the landlord. The rental unit is a basement suite, and the upper level was also tenanted during this tenancy. A copy of the tenancy agreement has been provided.

The landlord decided to sell the rental property and listed it with a realtor in February, 2015. The realtor was not having success selling, and the landlord intended to make some upgrades. At the time the landlord made the Application for Dispute Resolution, the house hadn't sold and the landlord intended to replace some carpet. The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property (hereafter referred to as "the notice"), a copy of which has been provided. The notice is dated June 9, 2015 and contains an effective date of vacancy of August 31, 2015. The reason for issuing it is: "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant." The landlord had conversations with the tenants and believed the tenants were in agreement and said they were looking for a place to buy. However, the landlord's realtor advised that showings were challenging because the realtor was having difficulty getting cooperation from the tenants to get into the rental unit. After the Landlord's Application for Dispute Resolution was filed, the landlord got an offer on the house and didn't have to replace carpet.

The effective date of vacancy of the notice was August 31, 2015, however the landlord discovered in mid-July, 2015 that the tenants had vacated without any notice to the landlord. They moved out sometime between the issuance of the notice and mid-July, but the landlord is not sure when. The landlord discovered the low hydro usage on the hydro bill and the landlord's husband went to the rental unit finding it vacant.

The landlord claims rent for July and August, 2015. The tenants left without paying any rent for either of those months. The landlord agrees that once a 2 Month Notice to End Tenancy for Landlord's Use of Property is issued, the landlord is obligated to provide the equivalent of one of those months to the tenants, but not both. The landlord claims unpaid rent in the amount of \$750.00.

The landlord further testified that hydro was not included in the rent and the hydro account had been in the tenant's name which covered both rental units. The tenants in the upper level of the rental building paid the tenants their portion. However, while the landlord was out of the country, the tenants in the upper level emailed the landlord stating that the hydro was going to be cancelled because the tenants didn't pay the bill. The landlord had it put

in her name and collected from the tenants in the upper level until they moved out at the end of January, 2015. The landlord has provided a copy of a hydro bill showing that \$3.16 is outstanding from the previous bill, and \$258.62 is the amount of the bill covering the period of May 12, 105 to July 10, 2015. No other tenants resided in the upper level after the end of January, 2015. The landlord claims unpaid hydro from the tenants in the amount of \$261.78. The landlord also testified that the payments shown on the bill in June, 2015 were made by the tenants, who paid \$430.00, and \$75.00 by the landlord

The landlord received a request from the tenants for return of the security deposit and pet damage deposit on August 13, 2015 which contained a forwarding address of the tenants.

The rental home sold in August, 2015 and possession date was October 2, 2015. The rental unit was not re-rented in the meantime.

The first tenant testified that they sent the landlord an email on June 30, 2015 giving the landlord 30 days notice of their intention to vacate after the landlord gave the 2 Month Notice to End Tenancy for Landlord's Use of Property. A copy of a portion of the email has been provided and the tenant testified that the person who did the photocopying for the tenants cut off a portion in order to put 2 letters on one page. The email does not have any intended recipients in the evidence copy, and the tenant stated that the landlord did not reply to it. The tenants actually moved out of the rental unit on July 30, 2015.

The tenant also testified that her husband and the landlord's husband had a conversation wherein they agreed that if the tenants moved out in July, 2015 they would not have to pay rent for July. They also agreed that since the electricity in the upper unit was still on, the landlord would pay 25% of the hydro bill. The tenant agrees that the tenants owe the landlord 75% of the bill, or \$196.34.

The second tenant testified that evidentiary material provided by the landlord contradicts the facts. The material shows that the landlord replaced carpet, but the tenant has seen inside the rental unit since moving out, and no new carpet exists. Also, the landlord was trying to claim \$150.00 to remove the tenants' utility trailer, but the landlord's realtor listed it for free on Craigslist. The landlord never got rid of it; it was still there after the house sold.

The landlord would not do a move-out condition inspection but the landlord's husband said it looked good and there was just abit of garbage to remove from the yard, which the tenant disposed of.

The tenant didn't feel it was necessary to give the landlord notice to vacate after the landlord had given the tenants notice to vacate.

Analysis

Firstly, neither party has complied with the *Residential Tenancy Act*. A landlord may not issue a notice to end a tenancy stating that the rental unit needs to be vacant for upgrades unless serious upgrades are being done, such as walls and floors and windows being removed. Installing a carpet is not sufficient reason to end a tenancy. Secondly, a landlord must use the property for the purpose set out in the notice, which in this case did not happen.

Once a landlord gives a tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant may give a landlord 10 days written notice of a tenant's intention to vacate a rental unit sooner and must pay rent to the effective date of the written notice. In this case, there is no evidence to suggest that the landlord ever received the email that the tenant claims was sent advising that they would be moving out by the end of July, 2015. Therefore, I find that the tenants did not give the landlord the appropriate notice and the tenants were obligated to pay rent to the effective date of the landlord's notice, being August 31, 2015.

The landlord is obligated to provide the tenants the equivalent of one month's rent only. The parties agree that no rent was paid for July or August, 2015, and therefore I find that the landlord is owed \$750.00.

The landlord testified that the tenants' forwarding address in writing was received by the landlord on August 13, 2015, and the tenants did not dispute that. The Landlord's Application for Dispute Resolution was filed on August 24, 2015, and I find that the landlord has made the application within 15 days of that date as required by Section 38 of the *Residential Tenancy Act*.

With respect to the hydro bill, I have reviewed the bill and the tenancy agreement, and it is clear that hydro was not included in the rent. The hydro bill is dated July 14, 2015 and shows that the balance payable from the previous bill was \$508.16. The landlord testified that the tenants made the \$430.00 payment in June and the landlord paid the other \$75.00 shown on the bill, which left a balance due of \$3.16. The tenants did not dispute that. The bill shows current readings from May 12 to July 10, 2015 for an additional \$258.62, and the tenants were resident in the rental unit for that entire period. The tenant testified that the parties agreed that the tenants would pay 75%, but my arithmetic shows that the tenants paid 85% of the previous bill, and there is no evidence to the contrary or any evidence to satisfy me that the parties agreed to 75% or that the landlord is entitled to recovery of the entire bill. In the circumstances, I find that the tenants were liable for 85%, being \$222.51 and the landlord has established that claim.

In the circumstances, I find that the tenants are owed \$750.00 for the security deposit and the pet damage deposit, and the landlord is owed \$750.00 for rent and \$222.51 for hydro. I set off those amounts, and I find that the landlord is owed \$222.51 for the difference.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed as withdrawn.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn.

I hereby order the landlord to keep the \$350.00 security deposit and the \$300.00 pet damage deposit in partial satisfaction of the landlord's claim, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$272.51.

This order is final and binding and may be enforced.

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 01, 2015


V.
Re

Residential Tenancy Branch

