



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords as against 3 tenants, and by two of the tenants as against both landlords. The landlords have applied 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 landlords 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 tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

Both landlords and 2 of the named tenants attended the hearing and the tenants called one witness. Both landlords, one of the tenants and the witness each gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of evidence were raised.

No evidence was lead with respect to the named tenant, TE, and I dismiss the landlords' application with respect to that person.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?

- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlords for return of all or part of the pet damage deposit or security deposit?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of power and loss of use of the rental unit prior to the end of the tenancy?

Background and Evidence

The tenant testified that this tenancy began on March 15, 2014 as a 1 year fixed-term which was to revert to a month-to-month tenancy after the expiry of the fixed term. The tenancy ended on October 31, 2015. Rent in the amount of \$1,725.00 per month including utilities was payable on the 1st day of each month and the tenants paid a pro-rated amount for the first partial month. There are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$862.50, as well as a pet damage deposit in the amount of \$500.00 which was paid in 2 installments on April 1 and April 15, 2014. A move-in condition inspection report was completed by the parties at the beginning of the tenancy and a copy has been provided.

The tenant also testified that the copy of the tenancy agreement provided as evidence by the landlords is not the tenancy agreement signed by the tenants, but no copy has been provided by the tenants. The one provided by the landlords states that it is a month-to-month tenancy and states that it is a 6-page agreement, but only contains pages 1 and 2 of 6 pages, and contains 2 other pages which are printed in a different font and style than that of the first 2 pages. The tenant also testified that all pages were initialled by the tenants on the original agreement, and some of the pages in the evidence are not initialled.

The tenant also testified that the landlords claim that the pet damage deposit was \$431.40, however the tenant disagrees and believes \$500.00 was paid. No evidence of the amount received by the landlords has been provided by either party.

The tenant further testified that when the landlord arrived at the rental unit on October 1, 2015 to collect rent, the tenant paid the rent and gave the landlord notice of the tenants' intention to vacate the rental unit effective October 31, 2015, a copy of which has been

provided. The letter is dated October 1, 2015 and states that the tenants enjoyed living there, besides the flood and the rats. It states that the rental unit was infested with rodents and the tenants could not continue to reside there. The letter also suggests meeting at the rental unit on November 1, 2015 to exchange keys and deal with the deposits. The landlord said she'd talk to the other landlord, then gave the tenant a letter stating that commencing November 1, 2015 the tenants would have to pay for hydro and rent would be decreased. The tenant also followed up with a voice message to the landlords' telephone on October 9, 2015, a copy which has been transcribed and provided by the landlords. The message also states that the tenants, "... are giving our notice. We will be out at the end of the month," and states, "...and I just can't handle being overwhelmed by the rats anymore."

Also during the tenancy, a flood occurred in the rental unit. There was a lot of mud and the basement was covered in mold. The smell was bad and the tenant put plastic on the back door and taped it shut. The tenants used a bedroom door to access the back yard for months. The landlords brought a dehumidifier and told the tenants to leave the back door open to dry out the basement, which only created mold and allowed rats in.

On October 27, 2015 everything had been moved out of the rental unit and the tenant went there to clean but the power had been cut off, so the tenant finished without any power. The tenant returned to do more cleaning on October 28, 2015 and the locks to the rental unit had been changed. The tenant called the landlords but couldn't reach them, so the tenant assumed the landlords would meet the tenant for the move-out condition inspection on November 1, 2015 but they didn't show up. The tenants did not receive any notice from the landlords about when the inspection would be scheduled.

The tenants also provided the landlords with a forwarding address in writing on November 1, 2015 in a letter, a copy of which has been provided. The letter requests return of the damage deposit of \$862.50 and \$500.00 pet damage deposit, plus interest, by November 15, 2015. It is signed by one of the tenants and contains a street address and phone number.

The tenants have provided a monetary order worksheet wherein the tenants claim: recovery of the \$862.50 security deposit, \$500.00 pet damage deposit, \$550.00 for loss of food that spoiled when the power was shut off; \$180.64 for recovery of 4 days rent at \$46.16 per day, and recovery of the \$50.00 filing fee. During the hearing, the tenant stated that she just wants the deposits back.

With respect to the landlords' claim, the tenant testified that the photographs provided by the landlords contain furniture and items in the yard that do not belong to the tenants and were there at the beginning of the tenancy. Items left behind by the tenant were

only a car door, a recreational vehicle awning, and an organ which had been damaged by the flood in the rental unit, and the landlord said he'd remove it for the tenant 7 months ago. It was too heavy for the tenants to move. The tenant intended to return for the other 2 items. The fridge and stove were not pulled out when the move-in condition inspection report was completed, so the tenant does not feel responsible for the debris in the photographs. The tenant does, however, agree that some wall damage occurred during the tenancy and that re-painting was required at the end of the tenancy. One wall in the kitchen had wallpaper on it which started to peel. The tenants showed it to the landlord who said that it was old and not to worry about it.

The tenants' witness testified that he resides next door to the rental unit, and on October 28, 2015 the tenant asked the witness to attend the rental unit to verify its condition. The witness went over the whole rental unit with the tenant and it was spotless. The tenant was still mopping floors and walls, and told the witness that the marks on the floor were there when the tenant moved in. The tenant asked the witness not to go down into the basement because it was a disaster and full of mold, and the witness could see that it was due to a flood.

Later, the witness saw someone go to the rental unit and take the door knobs off the doors and new ones were installed.

The first landlord testified that the copy of the tenancy agreement provided for this hearing is a true copy of the agreement signed by the parties at the commencement of the tenancy. He further testified that the security deposit was half a month's rent, or \$862.50 and the pet damage deposit was one quarter of a month's rent, or \$431.25, which is consistent with the tenancy agreement.

The landlord denies receiving any written notice to end the tenancy from the tenants.

On October 29, 2015 the landlords drove by the rental unit and saw the door ajar. They went to knock on the door and nothing was inside the house. The landlords tried to call the tenants and received no response, but did not leave a message. The landlord went inside, and assuming it was abandoned, changed the locks.

The landlords left a Notice of Final Opportunity to Conduct a Condition Inspection in the mail box on November 1, 2015 scheduling the inspection for November 4, 2015. No one showed up on November 4 so the landlords did the inspection themselves and started doing repairs and cleaning. A second opportunity to conduct the inspection was not provided to the tenants.

During the tenancy the tenants had a lot of people staying there and the landlords told the tenants they would have to put the hydro in their name. The tenants agreed in a voice mail. The agreement was for that to commence on November 1, 2015, as well as a rent reduction to \$1,560.00 per month, however not in the voice mail. The arrangement with the power company to that effect was supposed to be effective November 1, however the power company cut it off early.

The rental unit was re-rented for December 1, 2015 and the landlords claim one month's rent from the tenants for not giving sufficient notice to vacate.

The landlord further testified that the landlords have a janitorial contracting company, and charge \$50.00 per hour for labor. The landlords have provided an Invoice setting out the following claims as against the tenants for labor:

- \$400.00 for 8 hours repairing and preparing walls for a new piece of drywall;
- \$100.00 for 2 hours of taping and mudding walls;
- \$100.00 for 2 hours of mudding after 24 hours;
- \$100.00 for 2 hours of mudding again after 24 hours;
- \$100.00 for 2 hours of sanding;
- \$100.00 for 2 hours to repair a bedroom door crack;
- \$100.00 for 2 hours to repair a kitchen cupboard door; and
- \$1,000.00 for 20 hours to cut all corners and roll all the walls with primer and paint in order to bring the rental unit back to renting or move in condition;
- \$100.00 GST.

The drywall was not cracked prior to this tenancy and the move-in condition inspection report shows that at move-in the rental unit was freshly painted. The claim also includes garbage removal.

The second landlord testified that the tenancy agreement specifies that 3 people will live in the rental unit, and the tenant didn't know at that time that she would be getting custody of more children, and soon there were a lot of people living there. Extension cords were plugged into the house going to 2 recreational vehicles and the tenants were running a laundromat in the rental unit.

The landlord also denies receiving a written notice from the tenants to vacate the rental unit when rent was collected on October 1, 2015.

Analysis

I have read the evidentiary material of the parties, and considering the testimony, I find that neither party has complied with the *Residential Tenancy Act*.

Firstly, a tenant must give notice to vacate a rental unit in writing before the date rent is payable under the tenancy agreement, and the parties agree rent was payable on the 1st day of each month. The notice must be effective on the last day of the month. Therefore, in order to vacate the rental unit at the end of October, the tenant must give notice to the landlord by September 30.

The landlords claim unpaid rent for the month of November, 2015 and one of the landlords testified that the rental unit was re-rented for December 1, 2015. The *Act* requires a party who makes a claim against another party to do whatever is reasonable to mitigate any loss suffered. In this case, there is no evidence before me to establish that the landlords did what was reasonable to mitigate the loss of rent, such as when or how the rental unit was advertised. The landlords disagree that the tenant gave written notice on October 1, 2015, and I find that the tenant has failed to prove otherwise. However I find that the landlords were aware by October 9, 2015 at the latest of the tenants' intention to vacate the rental unit on October 31, 2015 as evidenced by the phone message transcribed and provided by the landlords. I see no reason that the rental unit could not have been advertised for rent in time to secure a new tenant for November 1, 2015. The landlords also had the power disconnected on October 28, 2015 and testified that the parties had a verbal agreement to reduce rent to \$1,560.00 per month in exchange for the tenants paying the utility, yet the landlords claim unpaid rent for that month in the original amount of \$1,725.00.

The landlords also testified that the locks were changed on October 29, 2015, clearly before the tenancy ended, and testified that the tenants had abandoned the rental unit. Having found that the landlords were aware by October 9, 2015 at the latest that the tenants intended to vacate the rental unit, I don't accept abandonment.

In the circumstances, I find that the landlords have failed to establish that they mitigated any loss of rental revenue.

A landlord is required to provide a tenant with at least 2 opportunities to conduct the condition inspection and the regulations go into detail of how that is to happen. In this case, I find that the landlords had from October 9 to October 29, 2015 to schedule the inspection, but instead left a Notice of Final Opportunity to Schedule a Condition Inspection on November 1, 2015, 3 days after changing the locks, without providing a

second opportunity. That brings into question the weight to be placed on the move-out condition inspection report, in that it was completed in the absence of the tenants through no fault of their own.

I have reviewed the move-in and move-out condition inspection reports which show that the rental unit was in very good condition at the beginning of the tenancy and absolutely everything in the report is marked as dirty at move-out, yet the tenant's witness testified that he went through the rental unit on October 28 and it was spotless. A tenant is required to leave a rental unit reasonably clean and undamaged at the end of a tenancy except for normal wear and tear. In order to be successful in a claim for damages, the onus is on the landlords to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlords made to mitigate such damage or loss.

I have reviewed the photographs provided by the landlords, and considering the undisputed testimony of floods in the rental unit, mud, mold and rats, I am not satisfied that all of the cleaning required to bring the rental unit to a move-in condition was the responsibility of the tenants. Nor am I satisfied that all of the items that were in the yard after the tenancy ended were belongings of the tenants, however some were. The tenant testified that the fridge and stove were not pulled out when the move-in condition inspection was completed and the landlords didn't dispute that.

The tenant did not deny that some wall damage existed at the end of the tenancy, which was the tenants' responsibility. The tenant also acknowledged that the rental unit was newly painted at the beginning of the tenancy, and there is no dispute that there were multiple people residing there.

The landlords claim \$50.00 per hour for their time cleaning and repairing the rental unit after the tenancy ended and testified that their janitorial business charges that much. Regardless of what the janitorial business charges, the tenants did not have a contract with the janitorial business, but a tenancy agreement, and I find that amount to be excessive. The landlords provided their own invoice and claim the amount in addition to \$100.00 for GST. The tenant did not hire the landlord's company and therefore, the landlords may not claim GST. Further, there is nothing to justify how the landlords kept track of the time, and have obviously used hours as they would in their business. In the circumstances, I find that the landlords have established a claim for wall repair, repairs and painting of 20 hours as claimed in the invoice, but at \$25.00 per hour, or \$500.00.

Had the landlords provided evidence of the cost of paint and supplies, that amount would be added to the claim but there is no evidence to support that.

Having found that the landlords changed the locks and had the power cut off prior to the end of the tenancy without the written consent of the tenants, limiting or eliminating the tenants' ability to finish cleaning, I am not satisfied that the landlords have satisfied elements 1 or 2 in the test for damages for cleaning.

With respect to the tenants' claim, the application seeks \$2,739.12 compensation, however the break-down provided in the tenants' evidentiary material adds up to \$2,093.14 including recovery of the \$50.00 filing fee. I am not satisfied that the tenants have established the \$550.00 claim for spoiled food. The landlords admit to having the locks changed, but the parties disagree on the date. The landlord testified that it was on October 29 and the tenant as well as the tenant's witness testified it was on the 28th. The tenant and the witness were there on the 28th, and I find that the locks were changed sometime after that. Therefore, I find that the tenants have established a claim for recovery of 3 days rent, or \$166.92 ($\$1,725.00 / 31 = \55.64 per day X 3 days = \$166.92).

The landlords currently hold a security deposit in the amount of \$862.50, and the parties disagree as to the amount of the pet damage deposit held in trust. The parties disagree that the tenancy agreement provided for this hearing by the landlords is a true copy of the one signed by the tenants, and it's clear that it's taken from 2 different templates. The landlord testified that the security deposit was half a months' rent and the pet damage deposit was a quarter of one months' rent. The tenant has no evidence to dispute that, and I find that whether or not the tenancy agreement is a true copy, I find that the pet damage deposit amount is \$431.40. Therefore, the landlords hold a total of \$1,293.90. Having found that the tenants are indebted to the landlord the amount of \$500.00, and the landlords are indebted to the tenants the additional sum of \$166.92, I set off those amounts and I grant a monetary order in favour of the tenants for the difference in the amount of \$960.82. No interest on the deposits is payable under the regulations.

Since both parties have been partially successful, I decline to order that either party recover the filing fee.

In summary, I find that the landlords have failed to establish mitigation with respect to loss of rental revenue, and the application for monetary compensation for unpaid rent or utilities is dismissed. I further find that the landlords are entitled to monetary compensation in the amount of \$500.00 and the tenants are entitled to \$166.92 as well as recovery of the \$862.50 security deposit and the \$431.40 pet damage deposit. I set

off the awards and I grant a monetary order in favour of the tenants for the difference in the amount of \$960.82.

Conclusion

For the reasons set out above, the landlords' application as against tenant, TE is hereby dismissed without leave to reapply.

The landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed.

I hereby grant a monetary order in favour of the tenants, LMC and NS as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$960.82.

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: January 29, 2016

Residential Tenancy Branch

