



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, OPR, MNR, MNDC; MT, CNL, CNR, MNDC, OPT.

Introduction

This hearing was scheduled in response to 2 applications:

- i) by the landlords for an order of possession for landlord's use of property / an order of possession for unpaid rent / a monetary order as compensation for unpaid rent / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement; and
- ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for landlord's use of property / cancellation of a notice to end tenancy for unpaid rent / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and an order of possession for the unit.

Both parties attended and / or were represented and gave affirmed testimony.

By undated letter from the tenants which was faxed to the Residential Tenancy Branch on February 29, 2016, the tenants stated, in part, that "we would request that our own application be withdrawn...." At the outset of the hearing the tenants confirmed that they have withdrawn their application. In the result, I instructed the parties that the hearing now only concerns the application filed by the landlords.

Issue(s) to be Decided

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from February 01, 2015 to February 01, 2016. Monthly rent of \$1,200.00 was due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected. A move-in condition inspection report was not completed.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlords issued a 2 month notice to end tenancy dated September 27, 2015. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is January 31, 2016. The reason shown on the notice is support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Subsequently, pursuant to section 46 of the Act which addresses **Landlord's notice: non-payment of rent**, the landlords issued a 10 day notice to end tenancy for unpaid rent dated January 30, 2016. The notice was served by posting to the unit door on that same date. Later, in the absence of any direct contact with the landlords the tenants vacated the unit sometime between February 18 & 23, 2016. A forwarding address was not provided except by way of the tenants' application for dispute resolution which was first filed on February 01 and amended on February 05, 2016. After vacating, the tenants mailed the unit keys back to the landlords, and the landlords confirmed during the hearing that the unit keys were received by mail. A move-out condition inspection report was not completed.

The landlords' first application for dispute resolution was filed on February 12 and amended on February 25, 2016.

Analysis

As noted above, the tenants withdrew their application in its entirety. As the tenants have vacated the unit, I consider the landlords' application for an order of possession to be withdrawn. Based on the documentary evidence and testimony of the parties, the remaining aspects of the landlords' application and my findings are set out below.

\$250.00: *unpaid rent for October 2015*
\$600.00: *unpaid rent for December 2015*
\$1,050.00: *unpaid rent for January 2016*

I am satisfied the parties agreed that the tenants' security deposit of \$600.00, as well as their entitlement to \$1,200.00 (the "equivalent of one month's rent payable under the tenancy agreement") pursuant to section 51 of the Act, which addresses **Tenant's**

compensation: section 49 notice, would be variously credited toward rent due in the final quarter of 2015. Further to that, I am satisfied that the landlords have established entitlement to compensation for unpaid rent for October & December 2015, and January 2016 as claimed above, in the total amount of **\$1,900.00**.

\$1,200.00: unpaid rent for February 2016

Residential Tenancy Policy Guideline # 3 speaks to “Claims for Rent and Damages for Loss of Rent,” and provides in part:

Section 44 of the Residential Tenancy Act.....set[s] out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to [the above] provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

I find that no agreement was reached by the parties pursuant to which the tenants were permitted to occupy the unit after January 31, 2016 as shown on the 2 month notice, and as shown on the 10 day notice, or February 01, 2016 as shown on the written tenancy agreement. However, I also find that as the landlords initially undertook to end the tenancy for landlords’ use of property, they did not anticipate advertising for new renters and then collecting more rent. There is no documentary evidence before me in support of any particular costs incurred by the landlords as a result of the tenants’ overholding of the unit after January 31 or February 01, 2016, and no conclusive evidence of the actual date when the tenants vacated the unit. On balance, I find that the landlords have established entitlement to compensation in the limited amount of **\$600.00**, or ½ month’s rent for February 2016.

\$76.00: cost of rekeying the unit locks

Section 37 of the Act addresses **Leaving the rental unit at the end of tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the tenants returned the unit keys by mail after they had vacated the unit. However, I also find that the landlords had no reasonable expectation that the tenants would return the unit keys after such time as they determined that the tenants had vacated the unit. In the result, I find that the landlords proceeded reasonably to incur the costs of rekeying the unit locks. In the absence of a receipt in evidence before me, I find that the landlords have established entitlement limited to **\$50.00**.

\$450.00: cost of cleaning in the unit

The attention of the parties is drawn to section 23 of the Act which addresses **Condition inspection: start of tenancy or new pet**, and section 35 of the Act which addresses **Condition inspection: end of tenancy**. In the absence of the comparative results of move-in and move-out condition inspection reports, or a receipt in evidence before me, this aspect of the application is hereby dismissed.

\$2,000.00: legal fees

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$2,550.00**. Should it be necessary, this order may be served on the tenants, filed in the 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: March 22, 2016

Residential Tenancy Branch

