Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNR, MNDC, MNSD, FF

For the landlord – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; for a Monetary Order to recover the security deposit; and to recover the filing fee from the landlords for the cost of this application. The landlord RA applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The landlord RA testified that he does not recall how or when he served the tenants with his hearing package. The tenants testified that the hearing package was served by jamming it into the door. I refer the parties to s. 89 of the *Act* which states:

> ***89*** *(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*
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> *(a) by leaving a copy with the person;*
> *(b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
> *(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
> *(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
> *(e) as ordered by the director under section 71 (1)* [director's orders: delivery and service of documents]*.*

Accordingly I find the landlord RA did not serve the tenants in accordance to s. 89 of the *Act* and the landlord's application is dismissed with leave to reapply.

Issue(s) to be Decided

- Are the tenants entitled to cancel the 10 Day Notice to End Tenancy for unpaid rent or utilities?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to recover their security deposit

Background and Evidence

The parties agreed that this month to month tenancy started in September, 2006 and was a verbal agreement. At the end of the tenancy rent was $1,675.00 per month due on the first

of each month. The parties did not recall the exact amount paid for the security deposit but agreed it was around $750.00. The parties agreed that the landlords did not complete an inspection report at the start of the tenancy and that the tenants have not yet provided a forwarding address to the landlords. The tenancy ended on June 30, 2016.

The tenants testified that they were served with a Two Month Notice to End Tenancy on May 29, 2016 in person for landlord's use of the property. This Notice was effective on July 31, 2016. The tenants agreed that they did not dispute the Notice and they started to look for a new place to live. They found a potential place and advised the landlords that they would confirm this on June 06, 2016. The tenants testified that they asked the landlord who was going to pay the tenants their free months' rent if they ended their tenancy early and who was going to pay back the security deposit. The landlords were splitting up and the tenants had concerns about getting their money back, Due to this the tenants decided to withhold rent for June, 2016 until they knew which landlord was going to return money to them at the end of their tenancy. The tenants seek to recover I months' rent in compensation equal to $1,675.00 and to cancel the 10 Day Notice to End Tenancy for unpaid rent.

The tenants testified that they started to move out and got a moving truck on June 18, 2016. They vacated the unit on June 30, 2016 but left some items in the units on that date which they attempted to get later but the landlord DT had changed the locks. The tenants testified that they had purchased a dishwasher for the unit which they let behind. They seek to recover the cost of the dishwasher of $400.00 because the landlord locked them out.

The tenants testified that they had to do some repairs in the unit over the 10 years of their tenancy. This included the following items for which the tenants now seek reimbursement:
Window locks – over 20 window locks were replaced over 10 years. The tenants seek to recover $500.00.
Repainting the unit – The tenant TD repainted the unit two years ago. The landlord did not agree the tenant could repaint but it needed to be done so the tenant painted it himself. The tenants seek to recover $2,000.00 for paint and labour costs.

Plumbing maintenance – Over the 10 year tenancy the tenant TD had to snake the drains and had a professional plumber in to clear the lines. TD spent many hours over dealing with plumbing issues and had spoken verbally about this to the landlord. This included putting Draino down the drains. The tenants seek to recover $500.00 for their time and labour.
Toilet repairs –There were three older toilets in the unit. The unit was built in the 1970's and the fixtures were all old. TD replaced the mechanisms with modern fixtures without the landlord's written agreement. The tenants seek to recover $120.00 for parts and labour.
Shower repairs – TD testified that the landlord claimed the tenants had caused damage to a wall in the hallway. This damaged was actually caused from a leaking shower. The tenants got a plumber out to do a repair in 2014 and the tenants paid for the fixtures for the shower. The tenants seek to recover $400.00 for these costs.

CO2 poisoning – TD testified that as they were moving out there was something not right with the house. The tenants brought in Fortis to turn of the furnace and the man from Fortis said there were high CO2 levels in the house. TD testified they had been suffering for the last six months with symptoms caused from high CO 2 levels and the tenants now realize they were being poisoned by CO2. The Fortis man said they should go to the hospital to get checked out. The tenants testified that the landlord had never had the furnace serviced during their 10 year tenancy. The tenants seek compensation of $5,000.00.
Weight machine – TD testified that when he was moving out he had sold a weight machine and left it on the drive for the buyer to pick up. The man never came to get it and TD testified the landlord prevented this so the tenant lost his sale. The tenants seek to recover $300.00.

Washers and dryers – TD testified that they went through six appliances during the course of their tenancy. Each time one broke down the landlord asked the tenant to pick up a new one and dispose of the old one. The tenant now seeks to recover $600.00 for six trips taken for this work.

Mover – The tenants testified that they had to use a mover to move their belongings from the unit. Had the landlord not served them with the 10 Day Notice to End Tenancy the

tenants would have been able to move themselves had they had more time. The tenants seek to recover $500.00 for the moving costs.

The tenants seek to recover their security deposit from the landlord. The tenants agreed that they have not provided the landlord with a forwarding address in writing but testified that the address on their application is their forwarding address.

The landlords testified that the tenants are welcome to make an arrangement with the landlord DT to collect their abandoned belongings. DT has moved everything into the garage and there are tools in the back yard. The tenants' dishwasher will also be moved into the garage. DT testified that the police had to escort her to change the locks to the unit on June 30 after the tenants had moved out and advised TD to get a police escort to collect his belongings. TD has been once and removed some items.

TD agreed to call DT and arrange a mutually convenient time to collect their belongings before August 12, 2016.

DT testified that if the tenants were entitled to one free month's rent because of the Two Month Notice they did not pay rent for June so if they are entitled to the compensation for July that would be offset against the nonpayment of rent for June. DT therefore disputed the tenants' claim for compensation of $1,675.00.

DT testified that they had an arrangement with the tenants that if any work was needed in the unit that the tenants would do the work and provide a receipt for the landlord and then take it off their rent so the landlord could account for this in their taxes each year. No receipts have been provided for window locks, for painting, for shower fixings or toilet fittings. DT testified that the tenant did not ask if they could do any of these repairs and did not inform the landlord RA. DT testified that there are still three broken window locks. With regard to the painting DT testified that she had offered to paint the unit on several occasions; however, NP informed DT that TD liked to do the painting. TD did not provide any receipts for paint and his labour costs were never agreed upon.

DT testified that they were made aware of an issue with CO2 poisoning on June 29, 2016 by text message from TD. NP had got Fortis in to turn off the gas because they were moving out. Fortis found a problem and red stickered the furnace. The furnace has since been replaced. DT testified that the tenants' friend and roommate told DT that TD had been aware of the CO2 for the last six months but TD did not inform the landlord there was a problem. DT agreed that the furnace was not serviced annually and although they do not recall when it was last serviced it may have been done over two years ago. DT testified that the tenants removed the smoke detector and CO2 detector from the unit.

DT testified that if the tenant had sold his weight machine no one came to collect it and it is still on the driveway for the tenant to pick up.

TD asked the landlords if the tenants had sent pictures of the shower in 2014. RA responded, not that I can recall. DT asked RA if the tenants had recently asked the landlords to paint the exterior and interior of the unit and to pressure wash it. DT testified that NP did ask if she could borrow or rent a pressure washer and was told that RA had one they could borrow, however, DT or RA never heard back from the tenants. TD asked the landlords if the furnace has been serviced in the last 10 years. DT responded that she does not know without checking her tax receipts but knows it has not been serviced in at least two years.

RA asked the tenants if they had an understanding that RA would give the tenants a reduced rent if they looked after the place and that the tenants would provide any receipts and take it off the rent. TD responded that this is untrue. TD had replaced two stove tops after asking RA to do it but RA just asked them how many burners they had working and when they said two he said that was enough. DT responded that when NP called her and said the stove was not working that she was told to get another one.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenants' application to cancel the 10 Day Notice to End Tenancy for unpaid rent and utilities; as the tenants have vacated the rental unit the 10 Day Notice no longer has any force or effect and therefore the tenants' application to dispute this 10 Day Notice is dismissed.

With regard to the tenants' claim for one month's rent due to the landlord serving the tenants with a Two Month Notice to End Tenancy. The tenants have provided a copy of this Notice in documentary evidence. I refer the parties to s. 51 of the *Act* which states;

> *(1) A tenant who receives a notice to end a tenancy under section 49* [landlord's use of property] *is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

I have reviewed the Notice provided in evidence and find the Notice is a hand written Notice and does not comply with s. 52 of the *Act* which states:

Form and content of notice to end tenancy

> **52** In order to be effective, a notice to end a tenancy must be in writing and must
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> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
> (e) when given by a landlord, be in the approved form.

As no legal Notice was provided to the tenants then the Notice is not effective and the tenants are not entitled to compensation equivalent to one month's rent because no notice was issued to the tenants under s. 49 of the *Act.* A hand written Notice not on an approved

form is not considered to be a legal notice. Consequently, the tenants' could have disputed that Notice and failed to do so. The tenants claim for compensation of one month's rent is dismissed without leave to reapply.

With regard to the tenants' claim for the window locks, repainting, plumbing maintenance, toilet repairs, and shower repairs; in this matter the tenants have the burden of proof to show that prior to doing any repairs that they notified the landlord in writing and if the landlord then failed to do the required repairs the tenants followed section 32 and 33 of the *Act*. If the parties had some other arrangement in place as discussed that the tenants would do repairs and provide a receipt to the landlord then the tenants should have done as per their arrangement. I am not persuaded by the tenants arguments that they spent $2,000.00 painting as no receipts have been provided for paint or documentation showing the tenant's hours and labour costs; I am not persuaded that the tenants paid $500.00 to rectify plumbing issues as insufficient evidence has been provided to show the landlord was notified of emergency repairs required; I am also not persuaded that the tenant replaced the mechanisms in the toilet or incurred any costs for shower fixtures or repairs. The tenants have therefore failed to meet the burden of proof in this matter and therefore their claim for the items above are dismissed without leave to reapply.

With regard to the tenants' claim for replacement costs for the dishwasher and the weights machine; the tenants are required to remove all their belongings from the property when they vacate a property. The tenants vacated on June 30, 2016; therefore any belongings left on the property after that time, without the landlord's written consent, are considered to be abandoned. Accordingly the landlord may deal with them under part 5 of the Residential Tenancy Branch Regulations. At the hearing the parties agreed that the tenant will contact the DT and arrange a mutually convenient time prior to August 12, 2016 to come and collect their belongings from the property preferable with a police escort. Any belongings left on the property after this date can be stored for a further 15 days and then dealt with by the landlord under part 5 of the regulations. Consequently,. this section of the tenants' claim is dismissed without leave to reapply.

With regard to the tenants' claim for CO2 poisoning; the tenants' claim they suffered symptoms of CO2 poisoning for six months prior to the end of the tenancy. The landlord testified that she was informed by the tenants' roommate that the tenants were aware of this yet did not inform the landlord. The parties agreed that the furnace had not been serviced at least for the last two years and possibly longer. If the tenants aware of a problem with the unit and took no action to notify the landlord and if the tenants potentially removed the early warning system installed of the CO2 detectors then without knowledge of a problem is it difficult for the landlord to take action. While I accept that the landlord is required to service a furnace every year and failed to do so I am not persuaded that the tenants suffered from CO2 poisoning. The tenants have provided insufficient corroborating evidence to support their claim that they were poisoned by CO2; there is no medical report from the hospital or a doctor and insufficient evidence to substantiate their claim that would allow me to award the tenants compensation. Consequently, this section of the tenants' claim for $5,000.00 is dismissed without leave to reapply.

With regard to the tenants' claim for costs incurred to replace and dispose of six washers and dryers throughout their tenancy; if an appliance breaks down during a tenancy then the onus is on the landlord to either make a repair or to replace and dispose of the failed appliance once notified in writing by the tenants. If the tenants choose to do this work for the landlord and fails to present the landlord with a receipt or invoice for reimbursement at the time the work is carried out then the tenants cannot come back later when the tenancy ends and expect reimbursement without evidence showing what actual costs they had incurred. I have no way to determine if at the time this was done for reimbursement or as a favour to the landlord. Consequently, this section of the tenants' claim is dismissed without leave to reapply.

With regard to the tenants' claim for moving costs of $500.00; the tenants were not issued with a legal Two Months' Notice to End Tenancy. Had the tenants confirmed that this was not a legal notice they would not have had to vacate the rental unit before July 31, 2016. The tenants choose not to pay the rent for June and were issued with a 10 Day Notice to End Tenancy for unpaid rent and utilities. The tenants did file an application to dispute that Notice but moved out of the rental unit of their own accord prior to the hearing and a

decision being made on the matter. Consequently, as it was the tenants who withheld their rent for June resulting in the 10 Day Notice and because they did not dispute the Two Month Notice then I find the tenants are not entitled to recover moving costs from the landlord. Consequently, this section of the tenants' claim is dismissed without leave to reapply.

With regard to the tenants claim to recover their security deposit, It was unclear from the testimony provided how much the tenants paid for a security deposit; however, the tenants are required under s. 38(1)(b) of the *Act* to provide a forwarding address in writing to the landlord. As the tenants have not done so their claim to recover the security deposit is premature.

At the hearing the tenants stated that the address on the application for Dispute Resolution is their present forwarding address; therefore the landlord is now considered to have received their forwarding address in writing as of today July 28, 2016. The landlord therefore has 15 days from today's date to either return the security deposit to the tenants or file an application for Dispute Resolution to keep all or part of the security deposit. If the landlord fails to do either of these things the tenants are at liberty to file a new application for Dispute Resolution after the 15 day deadline has passed.

As the tenants' claim has no merit the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application to cancel the 10 day Notice and for a Monetary Order for money owed or compensation for damage or loss is dismissed without leave to reapply.

The tenants' application to recover their security deposit is dismissed with leave to reapply in the event the landlord does not return it or file an application to keep it within 15 days.

The landlord's application is dismissed with leave to reapply.

From the evidence before me I have determined that DT was not a landlord during this tenancy and was the wife of the landlord RA. DT became the owner of the property on June 30, 2016 when the tenancy had ended. Therefore as DT was not a landlord any further claims must be made by the person who was the landlord during the course of the tenancy.

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: July 28, 2016

Residential Tenancy Branch