



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, MNR, MND, FF
Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and the female tenant.

At the outset of the hearing I clarified with the parties that the tenants were no longer living in the rental unit. As such, I find the landlords no longer require an order of possession and I amend their Application to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for damage to and cleaning of the rental unit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in April 2015 as a month to month tenancy for the monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. The tenants vacated the rental unit on December 8, 2015 and a move out inspection was completed on December 10, 2015.

The tenant submitted that she tried to give the landlords her forwarding address during the move out inspection but that the landlords refused to accept it. The landlord submitted that the tenant did not provide their forwarding address until the landlords received the tenant's Application for Dispute Resolution package on January 6, 2016. The landlords submitted their own Application to claim against the deposit on January 7, 2016.

The landlords submitted that on November 30, 2015 they were contacted by a friend of the tenant's mother who advised the landlords that the tenants would not be paying any rent for December 2015 because of a mould problem in the rental unit. The landlord stated that this was the first time they were made aware of such a problem. The tenant acknowledges that they did withhold rent for a mould issue and were later advised by the Residential Tenancy Branch that they could not withhold any rent monies.

In the meantime the landlords had issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants move out in accordance with the Notice and did not pay any rent for the month of December 2015. The landlords seek rent for the month of December 2015 and lost revenue for the month of January 2016 because the tenants did not give any notice that they were leaving the unit.

The landlords submit that the rental unit required extensive cleaning at the end of the tenancy and one room required painting. The landlords acknowledge allowing the tenant to paint the room but that the job was not completed and required repainting. The landlords seek \$325.00 for cleaning and \$125.00 for painting and provided receipts in support of these claims.

The tenant submitted a series of electronic communication with the landlord including one note from the female tenant to the landlord dated December 12, 2015 in which she states, in part: "...I know what condition I left the house in it was dirty yes, there was no damage other than the room that needed to be painted." [Reproduced as written]

The landlords also submit that the tenant had removed 2 doors from interior rooms and left them outside. The landlords testified that as a result the doors were damaged and required replacement. They stated they replaced 3 doors because they could not find any to match the one undamaged door. The landlord claim \$700.00 for the replacement doors. The landlords did not submit any receipts for the door replacements.

The tenant testified that she had removed the doors because they had been damaged and did not work. She stated that she had removed one of the doors in June and one in

October but that she never did report the problems with the doors to the landlord. She stated that she had left them inside the shed.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find based on the landlord's testimony of both parties that the tenants did not pay rent for the month of December 2015. As such, I find the landlords are entitled to receive payment of rent for that month as the tenants had possession of the rental unit on the day that rent was due.

In regard to the landlords' claim for compensation for lost revenue for the month of January 2016 because the tenants did not give notice to move out I find that because the landlords had issued a 10 Day Notice to End Tenancy for Unpaid Rent and the tenants vacated the rental unit in accordance with that Notice the tenants were not obligated to provide the landlord with any notice of their own to vacate the rental unit.

Therefore, I dismiss the portion of the landlords' Application seeking compensation for lost of revenue for the month of January 2016.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and 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.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

From the tenant's own submissions, including her electronic communication I accept that the landlords had to clean the rental unit and paint one room and that the tenants take responsibility for these issues. I am satisfied the landlords have established the value of these costs through their submission of receipts. I grant the landlords the amounts claim for cleaning and painting.

As to the landlord's claim for damage to two interior doors I find that the parties have presented different versions of events in regard to where the doors were put after they were removed from the interior of the rental unit. The landlords submit that they were damaged because they were outside but the tenant submits that they were left in the storage room.

As the burden to prove their claim rests with the landlords and the tenants dispute the claim for damage to the doors it is incumbent upon the landlords to provide additional evidence to support their position that the doors were damaged and due to the causes they claim.

While the landlords have submitted some photographic evidence there are only two photographs submitted of either the doors or the door jambs. I find neither one of these photographs provide any evidence of damage caused by exposure to the elements as suggested by the landlords.

As a result, I find the landlords have failed to establish any damage cause to the doors during the tenancy. I therefore, dismiss this portion of the landlord's claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord disputes the tenant's submission that she attempted to provide her forwarding address on December 10, 2015 and the tenant has provided no additional evidence to corroborate this assertion, I find the tenants cannot establish they provided the landlord with their forwarding address on December 10, 2015.

As such, I find the landlords received the tenant's forwarding address on January 6, 2016 and they filed their Application for Dispute Resolution seeking to retain the deposit one day later, well within the 15 days required under Section 38(1). As such, I find the tenants are not entitled to double the amount of the deposit.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,400.00** comprised of \$900.00 rent owed; \$325.00 cleaning; \$125.00 painting; and \$50.00 of the \$100.00 fee paid by the landlords for this application as they were only partially successful in their claim.

I order the landlords may deduct the security deposit and interest held in the amount of \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$950.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

Furthermore, I dismiss the tenants' Application for Dispute Resolution in its entirety without leave to reapply.

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: August 11, 2016

Residential Tenancy Branch