



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM MNR MNSD

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession based on a mutual agreement to end tenancy pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; and authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants did not attend this hearing, although I waited until 1:58 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlords testified that the tenants had vacated the rental unit and therefore they withdrew their application for an Order of Possession.

The landlords testified that they served the tenants with their Application for Dispute Resolution ("ADR") including the notice of this hearing on July 28, 2017 by registered mail to the address provided by the tenants at the end of their tenancy. The landlords provided Canada Post tracking information that recorded the package as "unclaimed". In accordance with section 89 and 90 of the Act, I find that the tenants were deemed served at their forwarding address as provided to the landlords on August 2, 2017.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

This tenancy began on December 1, 2014 and the tenancy ended on June 30, 2017. The landlords testified that, at the outset of this tenancy, the tenants paid \$2500.00 in rent on the first of each month. The landlords confirmed that they continue to hold a \$1250.00 security deposit paid by the tenants at the outset of the tenancy.

The landlords testified that, at the end of this tenancy (June 30, 2017), one of the tenants (Tenant NL) participated in a move-out condition inspection and that Tenant NL signed the condition inspection report. The landlords testified that they received the tenants' forwarding address prior to their move-out and again on the condition inspection report dated June 30, 2017.

The landlords sought a monetary order of \$3250.00. The landlords testified that the tenants did not pay rent for the months of March 2017 and May 2017. The landlords testified that the tenants paid April 2017 rent. The landlords testified that they intended to sell the rental unit home and advised the tenants in March 2017 however they had not issued any formal notice to end tenancy to the tenants prior to the date that the tenants vacated the rental unit.

The landlords testified that, after a variety of discussions about the sale of the property (some documented and submitted as evidence for this hearing in the form of digital messages), the tenants signed a mutual agreement to end tenancy on May 12, 2017. The landlords testified that the failure of the tenants to vacate, move out their belongings and to agree to a move-out date all impacted the landlords' ability to sell their property as well as impacting the amount that they were able to sell their property for. The landlords testified that the tenants refused to allow them to take photographs of the unit and wouldn't allow the landlords to put a lockbox for realtors on their property.

The landlords testified that, prior to renting out the rental unit they lived in the rental unit for approximately 12 years. The landlords testified that the rental property was new when they purchased it and they were intimately aware of the condition of the unit prior to these tenants' move-in. The landlords testified that, at the start of the tenancy, the unit was in excellent condition. They testified that, at the end of this tenancy, the following items of damage were discovered;

- Wax on the carpet;
- Crack in the freezer and shelves in the refrigerator;
- Hole in the wall from main room to garage;
- Broken vent;

- Tenants' belongings and refuse left in home; and
- House dirty.

The landlords provided a copy of the condition inspection report documenting the condition of the unit at the start and the end of the tenancy. The landlords testified, referring to the report that the tenant signed the report and agreed, in principle to deductions for the items listed throughout the report. However, the landlords testified that they told the tenant they would provide an amount at a later date after they acquired estimates for the work to be done to the unit.

The landlords provided an estimate from one company dated June 12, 2017. That estimate indicated that supplies and installation of a new window would total \$1307.00 plus tax. Another receipt from the same construction services for doors and windows was submitted by the landlords. The \$98.12 receipt was dated June 12, 2017.

On the monetary worksheet provided by the landlords, they listed both the receipt amount and the estimate amount as their costs. The total amount that the landlords sought in their application was \$3250.00. During, the course of the hearing, I attempted to clarify the details of the landlords' application for this amount. The total breakdown of amounts sought by the landlords was provided verbally at the hearing,

Item	Amount
Door and window contractor temporary repair	\$98.12
Door and window contractor estimate new window	1307.00
Unpaid Rent x 2 Months (March and May 2017)	5000.00
Less Security Deposit	-1250.00
Total Monetary Amount sought by Landlords	\$5155.12

The landlords did not provide any other invoices than the 1 repair receipt and 1 estimate for window replacement described above. The landlords did not apply to recover their filing fee. During the hearing, the landlords mentioned that there was wax on the carpet; a crack in the freezer; a hole in the wall; a broken vent; a lot of cleanup and junk removal to do. They submitted photographs to support their testimony. However, the landlords did not provide documentation of the costs related to these items or suggest the appropriate amount for these items.

The landlords provided a letter from their realtor dated July 26, 2017 that stated the condition of the house was very dusty/grimy with the carpets covered in stains and a

very messy, weedy backyard. The letter also stated that the tenants had refused to allow the realtor to put a lockbox on the property and significantly limited the days when the property could be shown. The realtor also indicated that the garage door did not work during an inspection of the property. The garage door repair was a condition of the sale of the property, according to the landlord's realtor.

The landlords also submitted photographs at the rental unit as evidence of the condition of the unit at the end of the tenancy. The photographs illustrated;

- A significant number of noticeable stains on the carpet;
- Parts of the unit displaced (covers for heating vents, etc.)
- A broken door hinge;
- Damage to the garage door;
- Holes in the walls for pictures;
- Holes in the walls with wires going through to the garage;
- A dirty, food covered interior pan in the stove; and
- Items and dirt left in the cupboards.

The landlords testified that they were able to sell the residential property and the new owners/landlords moved in one day after the tenants vacated the rental unit. The landlords testified that they were required to spend all night cleaning the unit as much as possible and, ultimately had to make concessions to the buyer regarding the condition of the rental unit on change of possession.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage (in this case, the landlords) bears the burden of proof. The landlords must prove the existence of the damage/loss, and prove that the loss stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the landlord must prove the actual monetary amount of the loss or damage by providing evidence that can verify the amount claimed.

In this case, the landlords provided undisputed, sworn testimony, photographic evidence and documentary evidence to show that the garage door had been damaged during the course of the tenancy. They provided an initial invoice for a service call in the amount of \$98.12 and a second invoice dated June 12, 2017 in the amount of

\$1307.00. The Residential Tenancy Policy Guideline No. 40 provides the useful life of a garage door / door opener at 10 years. Given that the landlords' residential premises is approximately 20 years old, the garage door /door opener was 10 years beyond its useful life. Based on this, I find that the landlords are not entitled to the cost of the immediate repair in the amount of \$98.12 that they incurred as a result of the tenants' actions during the course of the tenancy. However, the cost for the replacement of the garage door/ door opener is beyond the obligation of the tenants. I find that the landlords are not entitled to the cost of the garage door / door opener.

The landlords provided undisputed sworn testimony along that the tenants did not pay the \$2500.00 rent for the months of March 2017 or May 2017. Given the evidence before me that the tenants continued to reside in the rental unit until the end of June 2017 and that they did not pay rent to the landlords, I find that the landlords are entitled to recover 2 months of rent for March 2017 and May 2017. I accept the plausible testimony of the landlords that the tenants withheld this rent in order to show their disagreement with the sale of the property. The landlords were candid in testifying that the tenants did not pay rent in June 2017 as compensation for the informal notice to end tenancy as a result of the sale of the property. I find that the tenants did not pay rent for 2 months when they should have paid rent. The result is rental arrears totaling \$5000.00.

The landlords cannot be awarded an amount greater than the amount that they have applied to recover in their application. The landlords had not amended their application prior to this hearing nor did they attempt to advise the tenants that they wanted to increase the monetary amount they sought against the tenants. Procedural fairness is a primary element of the dispute resolution process. The tenants would not have known that the landlords wished to recover over \$5000.00 and therefore were not given the opportunity to respond to that claim. Therefore, the landlords are only entitled to the amount of monetary award that they have sought in this matter (\$3250.00).

I find that the landlords are entitled to recover the unpaid rent for March 2017 and May 2017 as well as the cost of the initial window repair: \$98.12. The landlords are entitled to a total monetary award in the amount they have sought for the reasons described above.

Conclusion

The landlords withdrew their request for an Order of Possession.

I grant a monetary award to the landlords in the amount of \$3250.00.

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 22, 2018

Residential Tenancy Branch