



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF / MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent or utilities and compensation for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Preliminary and Procedural Matters – Service of Landlord’s application to Respondent T.C.

At the outset of the hearing, tenant T.C. submitted that he was not served with the landlord’s application. The landlord acknowledged that only tenant L.G. had been served. As per Residential Policy Guideline #12, section 3, each party named on an

application for dispute resolution must be served separately. Therefore any monetary order issued in favour of the landlord will be issued naming only tenant L.G. as liable.

Issues

Is the landlord entitled to a monetary award for unpaid rent and/or utilities and compensation for damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to return of all or a portion of the security deposit pursuant to section 38?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on September 1, 2012 and as of August 1, 2016 the monthly rent was \$1106.17 payable on the 1st day of each month. A security deposit of \$537.50 was paid at the start of the tenancy which the landlord continues to retain.

On May 30, 2017, the parties entered into a mutual agreement to end tenancy with an effective date of July 15, 2017. The tenants did not vacate the rental unit on this date and in a Supreme Court order dated July 31, 2017, the landlord obtained an order of possession requiring the tenants to vacate by 5:00 p.m. on August 1, 2017. The tenants vacated the rental unit on August 1, 2017. A forwarding address was provided to the landlord via an e-mail dated August 1, 2017 after the tenants had vacated. A move-out condition inspection was not completed with the tenants as they had vacated prior to the landlord arriving at the rental unit on August 1, 2017. On August 15, 2017 the landlord attempted to have someone deliver the security deposit cheque to the tenant L.G. at his place of work but the cheque was refused.

The landlord is claiming unpaid rent for the month of July 2018 in the amount of \$1,106.00. The landlord testified the tenants did not pay rent for this month and were over holding the rental unit after the agreed upon mutual end date.

The landlord is claiming \$400.00 in moving and storage costs incurred on behalf of the buyer as a result of the delay caused by the tenant's actions in providing vacant possession. The landlord submitted e-mail correspondence with the buyer's legal counsel confirming the landlord agreeing to cover this expense for the buyer in order to keep the sale from collapsing.

The landlord is also claiming \$197.03 in costs incurred to change the locks of the rental unit. The landlord testified that the new buyer requested the locks be changed in light of the fact the tenants had been a problem. An invoice was submitted.

The landlord is claiming \$1,260.00 in costs associated with partial re-painting of the interior. The landlord testified the condition of the paint was beyond normal wear and tear. The landlord submitted a letter/report provided by a 3rd party contractor who conducted a move-out inspection at the end of the lease. The inspection was carried out in the absence of the tenants who had already vacated. The report indicated the overall painting to be in fair condition with notable exceptions in a few areas which were badly scratched and smudged. An invoice was submitted.

The landlord is claiming \$367.50 and \$330.75 for cleaning costs incurred. The first professional clean was performed on July 3, 2017 when the tenants were still in the rental unit. The landlord testified they were having troubles with showings as the rental unit was not cleaned adequately by the tenants. The second professional cleaning was done on August 7, 2017 after the tenants vacated. The landlord submitted a report from the cleaning company detailing the clean-up work required. Invoices were submitted.

The landlord is claiming \$6,441.86 in legal fees incurred by the landlord in dealing with the tenants over holding the rental unit.

The tenants testified the landlord verbally agreed that they would not be required to pay July 2017 rent in exchange for signing the mutual agreement to end tenancy. The tenants submit that the landlord never once asked for the rent. The tenants submit that they would normally be entitled to 60 days' notice and 1 month free rent if the landlord sold the property which is why the landlord agreed they were not required to pay July rent.

The tenants submit the moving and storage fees were legal fees incurred by the buyer and seller.

The tenants do not agree to the expense incurred to change the locks. The tenants submit the landlord had changed the locks numerous times over the years with a box of old locks he had and did not have to incur this expense.

The tenants testified there was no problems with the paint and submitted various photos reflecting the condition of the rental unit at the end of the tenancy.

The tenants argue the landlord took upon the cleaning expense himself when they were still living in the rental unit in order to help with the sale of the property. The tenants submit they cleaned the rental unit continuously and the second clean-up was only done for the new buyer. The tenants submitted various photos reflecting the condition of the rental unit at the end of the tenancy. The tenants further argue that no attempts were made by the landlord to contact them in order to schedule a move-out inspection.

The tenants argue the legal fees were dismissed in the Supreme Court case. The tenants submitted a copy of the Supreme Court order as well as transcripts from the hearing. The tenants further argue that legal fees are not recoverable under the Act.

In reply, the landlord denies entering into any agreement for the tenants to not pay rent for the month of July 2017. The landlord submits he asked many times for the outstanding rent but he also had bigger problems to deal with as he had a potential collapse of a sale.

Analysis

Section 26(1) of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenants have provided insufficient evidence of any agreement between the parties for a free month's rent. Even if I found the parties did have such an agreement, which I do not, I find this agreement would have been based upon the tenants vacating the rental unit on July 15, 2017, which the tenants clearly did not adhere to. I accept the landlord's claim for unpaid rent/over holding charge in the amount of **\$1106.00**.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

I accept the landlord's claim for moving and storage costs he had to pay for the buyer in order to keep the sale from collapsing. I find the landlord mitigated an even more significant loss by agreeing to cover this expense for the buyer. I find the tenants were directly responsible for this expense by over holding the rental unit. I do not accept the tenants' argument that this was a legal expense. The landlord is awarded **\$400.00**.

The landlord's claim for changing the locks is dismissed. There was no evidence that this was required due to the actions or neglect of the tenant's. I find that the landlord change the locks to appease the buyer which should be at the landlord's own expense.

The landlord's claim for costs associated with re-painting the rental unit is dismissed. Residential Tenancy Policy Guideline 40, Useful Life of Building Elements, provides that paint has a useful life of 4 years. The tenancy began on September 1, 2012 and ended almost 5 years later. The landlord is responsible under the Act to repaint the rental unit at reasonable intervals. There was no evidence that the rental unit had been re-painted since the beginning of the tenancy. I find the paint had exhausted its useful life and the tenants are not responsible for this charge. There was insufficient evidence that this expense was incurred for more than just repainting work such as repairing or filling holes in drywall.

Section 32 of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards during the tenancy and Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The tenants were still residing in the rental unit during the first clean undertaken by the landlord and there is insufficient evidence that the rental unit was in maintained to a reasonable cleanliness. I find the landlord undertook this initial cleaning for his own benefit to assist with the sale of the house. I also find that there is insufficient evidence to support the landlord's claim that rental unit was not left reasonably clean at the end of the tenancy. The landlord provided no evidence of attempting to schedule a move-out inspection with the tenants. The landlord also did not provide any photo evidence in support of the condition of the rental unit at the end of the tenancy. Based upon the picture evidence submitted by the tenants, I find that the rental unit was left reasonably clean with the exception of normal wear and tear after a five year tenancy. The landlord's claim for cleaning fees is dismissed.

As per the Supreme Court Order decision dated July 31, 2017, clause #4, I find the Supreme Court ordered that each party much bear their own costs in relation to that application. As such I find the landlord's Supreme Court application included a claim for costs which was subsequently dismissed. In either event, the Act does not allow for the recovery of costs associated with the filing of an application other than the filing fee of the application itself. This part of the landlord's application is dismissed.

As the landlord was only partly successful in his application, I find that the landlord is not entitled to recover the filing fee paid for his application.

The landlord is entitled to a total monetary award of \$1506.00.

I allow the landlord to retain the \$537.50 security deposit in partial satisfaction of the monetary award and grant the landlord a monetary order for the balance of \$968.50.

The tenants' application for return of the security deposit, including double the amount, is dismissed. The landlord filed this application within 15 days of being provided a forwarding address and did originally try to return the security deposit within 15 days which was rejected by the tenants.

As the tenants were not successful in their application, I find that the tenants are not entitled to recover the filing fee paid for their application.

Conclusion

Pursuant to section 67 of the *Act*, **I grant the landlord a Monetary Order in the amount of \$968.50.** Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 4, 2018

Residential Tenancy Branch