



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, OLC
OPUM-DR, MNDCL-S, MNDL-S, OPR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking to dispute a Notice of Rent Increase, cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and an order for the Landlord to comply with the Act, regulation or tenancy agreement and recovery of the filing fee.

This hearing also dealt with two cross-applications and an Amendment to an Application for Dispute Resolution (the “Amendment”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession, monetary compensation for damage to the rental unit, money owed or damage or loss under the Act, regulation or tenancy agreement, and authorization to withhold the Tenants’ security deposit, as well as recovery of the filing fees.

The hearing was convened by telephone conference call and was attended by the Landlord and the Landlord’s agent (the “Agent”), both of whom provided affirmed testimony. The Tenants did not attend. The Landlord and the Agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as outlined below.

The Agent testified that the Application dated April 9, 2018, and the Notice of Hearing were sent to the Tenants by registered mail at the dispute address on April 10, 2018, and provided me with the registered mail tracking numbers. As a result, I find that the

Tenants were deemed served with the Application dated April 9, 2018, and the Notice of Hearing on April 15, 2018; five days after they were sent by registered mail.

The Agent testified that the Application dated April 10, 2018, was sent to the Tenants by registered mail at the dispute address on April 12, 2018, and provided me with the registered mail tracking numbers. As a result, I find that the Tenants were deemed served with the Application dated April 10, 2018, on April 17, 2018; five days after they were sent by registered mail.

In any event, as the Tenant's filed their own Application on March 12, 2018, and the Landlord's Applications were set to be heard alongside the Tenants' Application, I find that the Tenants were aware of the date and time of the hearing both from the filing of their own Application and through service of the Notice of Hearing by the Landlord.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address listed in their online Application.

Preliminary Matters

Preliminary Matter #1

Although the Tenants sought to dispute a Notice of Rent Increase, cancellation of a 10 Day Notice, an order for the Landlord to comply with the *Act*, regulation or tenancy agreement and recovery of the filing fee, they did not appear at the hearing to provide any evidence or testimony for consideration. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply.

As the Landlord and their Agent both attended the hearing on time and ready to proceed and the Tenants failed to attend the hearing, I therefore dismiss the Tenants' Application in it's entirety without leave to reapply. As a result, the hearing proceeded based only on the Landlord's Applications and Amendment.

Preliminary Matter #2

On May 4, 2018, the Landlord filed an Amendment with the Residential Tenancy Branch (the "Branch") seeking an Order of Possession based on a 10 Day Notice and to increase his monetary claim to \$3,629.53. The Agent testified that the Amendment was sent to the Tenants by registered mail on May 6, 2018, at the return address listed on the envelope of evidence they received from the Tenants and provided me with the registered mail tracking numbers. As a result, I find that the Tenants were deemed served with the Amendment on May 11, 2018; five days after it was sent by registered mail.

As a result, I accepted the Amendment for consideration and the Application was amended accordingly.

Preliminary Matter #3

The Agent also withdrew the Landlord's Application seeking an Order of Possession as the Tenants have vacated the property. As a result, the hearing proceeded based only on the Landlord's monetary claims.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, money owed or damage or loss under the *Act*, regulation or tenancy agreement, and authorization to withhold the Tenants' security deposit against the amount owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

Although the tenancy agreement in the documentary evidence before me lists the Tenants, and two other occupants, as co-tenants under one tenancy agreement, in a previous decision I found that the occupants of the rental property are actually tenants in common under three separate tenancy agreements and not co-tenants under one tenancy agreement. In the hearing the Agent and Landlord acknowledged that the Tenants rented one bedroom in the basement of the single-family dwelling while two other tenants rented one bedroom each upstairs. The Agent and Landlord also acknowledged that several areas of the property including the kitchen, the living room, the decks, and the yard were common areas shared between all four tenants.

The Agent testified that the tenancy ended on April 20, 2018, when the Tenants vacated the rental unit as the result of an Order of Possession obtained through a separate hearing. The Agent stated that a security deposit in the amount of \$225.00 was paid by the Tenants at the start of the tenancy, and that the Landlord seeks to withhold this amount to offset money owed by the Tenants to the Landlord.

The Agent and Landlord testified that the Tenants owe \$344.88 in outstanding utilities. In support of this testimony they provided copies of the utility bills, a breakdown of the amounts owed and a copy of the tenancy agreement which states that the Tenants are each responsible for 25% of the total utility costs.

The Agent and Landlord testified that the Tenants failed to maintain the hot tub and the property as required in the tenancy agreement and sought \$521.73 for the cost of yard, snow and hot-tub cleaning. In support of this testimony they submitted a copy of the tenancy agreement, photographs of the hot tub and the property as well as receipts for hot tub supplies, snow removal, and yard cleaning.

The Agent and Landlord testified that the Tenants failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy except for reasonable wear and tear and sought \$563.09 for the Tenants' share of the cost of light bulbs, a kitchen blind, a broken handle for the door to the Tenants' bedroom, house cleaning, painting, and general repairs as well as landscaping for lawn damage caused by driving and parking vehicles on the lawn. In support of this testimony the Landlord submitted a condition inspection report, photographs, invoices for snow removal, house cleaning and yard cleaning that he himself completed, and receipts for the purchase of a new door handle and the kitchen blind.

The Agent and the Landlord alleged that several tools and a fireplace blower were loaned to all the occupants, including the Tenants, and were never returned. As a result, the Landlord sought \$65.81 for half the costs of replacing these items. In support of the amounts sought, the Landlord submitted print outs from a hardware store showing the replacement costs for the missing items.

The Landlord also sought \$497.20 in hotel costs incurred by him as a result of mold allegations by the Tenants. In the hearing the Landlord testified that the Tenants had threatened to take him to arbitration regarding mold in the rental unit and as a result, he paid for a hotel for them. The Agent and the Landlord stated that this was a scare tactic used by the Tenants and that the mold in the home was actually a result of poor housekeeping and a lack of ventilation on the part of the Tenants. As a result, the

Landlord sought the return of the funds paid to the hotel for accommodation on the Tenants' behalf.

The Landlord stated that the Tenant's initially rented two rooms in the house but shortly thereafter changed their mind and an agreement was reached for them to rent only one. As a result, he stated that he was required to post advertisements in an effort to rent out the other room in the basement. The Landlord and the Agent therefore sought \$67.00 for these costs. Further to this the Landlord also sought \$27.21 in mailing costs.

The Tenants did not attend the hearing to provide any evidence or testimony for my consideration.

Analysis

I accept the Landlord's undisputed documentary evidence and testimony that the Tenants owe \$344.88 in outstanding utilities. I also accept the Landlord's undisputed documentary evidence and testimony that the Tenants owe \$306.80 for cleaning, light bulbs, and the replacement of their bedroom door handle. However, for the following reasons I dismiss the Landlord's remaining claims without leave to reapply.

Although the Landlord sought costs for hot tub maintenance and the tenancy agreement states that the Tenants are responsible to maintain the hot tub if they choose to use it, the Tenants are only two of the four occupants residing in the home under three separate tenancy agreements. Based on the documentary evidence and testimony before me, I find that I am unable to determine if the Tenants themselves ever used the hot tub. As a result, I therefore dismiss the Landlord's claim that they pay for half of the hot tub maintenance costs.

While Policy Guideline #1 states that generally a tenant who rents a single-family dwelling will be responsible for routine yard maintenance, it also states that a landlord is responsible for cutting grass, shoveling snow, and weeding flower beds and gardens of multi-unit residential complexes. Although the Tenants' rental unit was located in a single-family dwelling, it was actually one of four separate bedrooms for rent in the property. As the home actually contained four separate bedrooms, each rented individually; I find that the Tenants actually resided in a multi-unit residence. As a result, I therefore find that the Landlord was responsible for yard maintenance and snow removal and I dismiss his claim for these costs without leave to reapply.

I also dismiss the Landlord's claims for the cost of missing items, and damage to common areas of the property such as the kitchen blinds and the lawn as the Landlord failed to satisfy me, on a balance of probabilities, that the Tenants, and not the other occupants of the property, caused this damage or removed the missing items from the property.

Although the Landlord sought \$27.21 in mailing costs, the *Act* provides several free methods of service. As a result, I dismiss the Landlord's claim for this amount without leave to reapply. I also dismiss the Landlord's claim for \$67.00 in advertising costs as I am satisfied, based on the testimony provided in the hearing that the Landlord agreed that the Tenants could change the terms of their tenancy agreement thereby allowing them to rent only one room instead of two. As I am satisfied that the tenancy agreement was changed by mutual agreement, I do not find that the Landlord is entitled to any costs for advertising the other room for rent.

Lastly, I also dismiss the Landlord's claim for \$497.20 in hotel costs without leave to reapply. Although the Landlord stated that the Tenants forced him into paying for the hotel by threatening to take him to arbitration for mold, there is no evidence before me that the Landlord made any efforts to verify if mold was present or to ascertain the cause or the extent of any mold present prior to agreeing to pay for the hotel. Further to this, there is no evidence before me that the provision of the hotel accommodation was conditional or that the Tenants were advised that they could be responsible for this costs. As a result, I dismiss the Landlord's claim for this cost without leave to reapply.

Based on the above, I find that the Landlord is entitled to compensation for money owed or damage or loss under the *Act*, regulation or tenancy agreement in the amount of \$651.68. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to retain, in full, the \$225.00 damage deposit paid by the Tenants, in partial satisfaction of the above noted costs.

Although the Landlord filed two separate Applications and sought recovery of both filing fees, the *Act* provides Applicants with the ability to amend an already existing Application at no cost. As a result, I find that the Landlord's second Application was unnecessary and I therefore grant him recovery of only one filing fee in the amount of \$100.00 pursuant to section 72 of the *Act*.

As a result of the above, the Landlord is therefore entitled to a Monetary Order in the amount of \$526.68; \$751.68, less the \$225.00 security deposit.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$526.68. The Landlord is 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 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: July 3, 2018

Residential Tenancy Branch