



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING NON PROFIT RENTAL ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL – S, MNDR- S, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an a monetary order for unpaid rent and for damages and repairs to the rental unit, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The Landlord was represented by an Agent (the “Landlord”), and the Tenants were represented by one of the Tenants. The second Tenant was served by registered mail, and is deemed served under section 90 of the Act. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Tenant acknowledged receipt of the Landlord’s written evidence. The Tenants did not submit any written evidence, although they testified to the Landlord’s evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

During the course of the hearing the Tenant had to be cautioned for repeatedly interrupting the Agent for the Landlord. The Tenant eventually complied and the hearing was concluded.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Is the Landlord entitled to retain the security deposit in partial satisfaction for the claims made?

Background and Evidence

According to the written tenancy agreement, this tenancy began on March 1, 2012, and the Tenant was allowed to move into the rental unit on or about February 15, 2012. There is a note on the tenancy agreement that rent was adjusted for this half month.

At the end of the tenancy the monthly rent was \$940.00 per month. A security deposit of \$450.00 was paid on or about January 27, 2012. I note that no interest is payable on deposits held since 2009.

The Landlord has made claims for one half month of rent for December 2017, and alleges the Tenants failed to pay all the rent for that month.

The Landlord also claims for costs of cleaning, and making repairs to items that they allege the Tenants damaged or removed, and did not repair or replace.

In this decision I refer to the Landlord's claims being made and the Tenants' reply to the claims, following the list set out in the Landlord's monetary worksheet.

An incoming condition inspection report was performed, although the Tenants did not attend for the outgoing condition inspection report.

Item #1 – rent

The written tenancy agreement sets out in section 6 that rent was payable on the first day of each month.

The Landlord testified and provided evidence that the Tenants wrote a letter to the Landlord stating they would be ending the tenancy on December 15, 2017.

The Landlord wrote back to the Tenants on November 21, 2017, and explained that they had not given the proper end date in their notice to end tenancy, as they were ending the tenancy at the wrong time of the month, and warned the Tenants they would be responsible for all of the rent for December 2017.

The Landlord issued a 10 day Notice to End Tenancy for the balance of the December rent due, although the Tenants vacated the rental unit as per their own notice.

During the hearing the Landlord testified that the Tenants had only paid \$470.00, or half of the rent due, for December 2017. The Landlord claims for the balance due of \$470.00.

The Tenant testified that she thought they did not have to pay all the rent for December, since she moved into the rental unit in mid-month when the tenancy began. She said she had to move in at the middle of the month or risk losing the rental unit she had waited so long for.

Item #2 – door fob

The Landlord claims \$50.00 for the replacement of a remote control fob to operate the garage door. The Landlord testified that the Tenant had lost the fob and had made a few payments to repay the cost of replacing the fob which actually cost \$75.00 to replace.

The Tenant testified that the fob was taped up and did not function well. She asked the Landlord's property manager at that time for repairs to the fob. The Tenant testified that the fob did not work for weeks so she had to park on the street. She stated her car was broken into and the fob was taken. She alleges the Landlord is responsible for the damages to her car. She testified she had made some payments for the replacement fob then decided not to pay anymore as this was below her.

Items #3 and #4 – closet doors

The Landlord claims the Tenants damaged the closet doors.

The Tenants agreed to pay the Landlord the cost of repairing the doors and for their installation.

The Landlord claims \$269.40 for the doors and installation.

Item #5 – cleaning rental unit

The Landlord claims \$150.00 for cleaning the rental unit.

The Tenants agreed to this amount for cleaning the rental unit.

Item #6 – nail holes in the wall

The Landlord submitted photographs of nail holes in the wall. The Landlord testified that there were many holes in the walls and some were quite large. The Landlord was unsure of what the Tenants had installed, but submitted these were larger than the usual holes for hanging pictures.

The Landlord claims \$94.50 for the repair and repair of the holes.

The Tenant testified that some of the holes were anchor holes for the curtain rods. She testified that she had installed large heavy duty shelves in the master bedroom. She agreed they did not try to repair these holes when they moved out. She alleged that when she moved in there were patches on the walls already there. The Tenant testified that since the Landlord did not care about the patches when she moved in, why would they care about these holes now.

Item #7 – removal of washer/dryer

The Landlord claimed for \$40.00 to remove a washer and dryer left behind by the Tenants.

The Tenants agreed to pay this amount.

Item #8 – replace bathtub surround

The Landlord claims \$569.63 for replacing the tub surround. The Landlord alleges the walls of the tub surround were cut through in two different places. The Landlord alleged that one cut appeared to be from a dent from the shower head. The Landlord explained these surrounds are hardly ever replaced, and this surround was original to the building which is over 20 years old. The Landlord testified that in this instance they had to prevent water from getting in behind the tub surround.

The Landlord further alleged that the tub surround looked like it had been punched through or cut.

In reply the Tenant stated they had no idea how the tub surround was damaged. Initially the Tenant stated there had not been a walk through done at the start of the tenancy, although corrected that when the Landlord testified that there had been an incoming condition inspection report. The Tenant denied any such damage was done by them.

The parties discussed the installation of splash guards which were separate to the surround. The Tenant testified she did not notice the alleged cuts in the tub surround when they were moving out.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Item #1 – rent

I find the Tenants have breached section 26 of the Act by failing to pay all the rent to the Landlord for December 2017. I also find the Tenants breached section 45 of the Act, as they did not give the proper notice to end tenancy to the Landlord. The Tenants could not have ended the tenancy in the middle of the month, when their rent is due on the first day of the month.

The date the Tenants moved in is not relevant here, as the Act has very specific provisions on how a tenancy ends and when notice to end a tenancy should be given by a tenant. I also note the Tenant was allowed into the rental unit half a month early and rent was adjusted accordingly for this. This did not alter the start date of the tenancy agreement, which is set out in writing in section 5 of the written agreement.

Section 45 of the Act explains how a tenant may end a tenancy.

Section 45 of the Act reads as follows:

- (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy **effective on a date that**
 - (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) **is the day before the day in the month**, or in the other period on which the tenancy is based, **that rent is payable under the tenancy agreement**.

[**Emphasis** added.]

Therefore, under the Act and regardless of the date the Tenants moved into the rental unit, they could not have ended their tenancy by giving notice to be effective in the middle of a month.

Furthermore, under section 53(3) of the Act, the Tenants' notice to end tenancy automatically corrected to December 31, 2017, as they were required to provide the notice to be effective on the day before the day in the month that rent is due.

The Tenants were not entitled to pay only a half of a month of rent for December. Therefore, I find the Landlord is entitled to loss of rent for December 2017 in the amount of **\$470.00**.

Item #2 – door fob

Under the terms of the agreement with the Tenants they were required to return the door fob to the Landlord at the end of the tenancy. They failed to do so.

If there were issues with the fob not working, the Tenants should have dealt with that issue at that time. I do not find the Landlord is responsible for the cost of this fob because the Tenants' car was broken into and the fob went missing. I find the Tenants are liable for the replacement of the fob. The Tenants began to pay back the Landlord for the cost of the door fob, but ceased before it was paid in full.

I allow the Landlord's claim of **\$50.00** for the fob.

Items #3 and #4 – closet doors

The Tenants agreed to pay the Landlord the cost of repairing the closet doors and for their installation, and I award the Landlord **\$269.40** for the doors and installation.

Item #5 – cleaning rental unit

The Tenants agreed to paying the Landlord for cleaning, and I award the Landlord **\$150.00** for cleaning the rental unit.

Item #6 – nail holes in the wall

I have reviewed the photographs of nail holes in the wall submitted by the Landlord. Under Policy Guideline 1, tenants are usually not expected to repair holes made in order to hang pictures on the wall. However, in this instance I find the Tenants left several very large holes in the walls, much larger than a small nail hole to hang a picture. I find that these were large holes that the Tenants should have repaired.

Therefore, I award the Landlord **\$94.50** for the repair of the holes.

Item #7 – removal of washer/dryer

I award the Landlord **\$40.00** to remove a washer and dryer left behind by the Tenants, as the Tenants agreed to pay this amount.

Item #8 – replace bathtub surround

I do not allow the Landlord the claim for the bathtub surround for the following reasons.

I find the evidence of the Landlord was not sufficient to prove there were cuts or holes in the tub surround caused by the Tenants. The photographs submitted in evidence were not clear and it was not apparent there were any holes in the tub surround.

Furthermore, even if there were holes (which I do not find), the bathtub surround had passed its useful life expectancy, as set out in Policy Guideline 40. The Landlord testified the tub surround was original to the building which was over 20 years old. Under Policy Guideline 40 the useful life expectancy for a tub is 20 years. Therefore, the tub was likely due to be replaced in any event.

Therefore, I do not allow this claim by the Landlord.

In summary, section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established that the Tenants breached the Act and tenancy agreement, and the Landlord is entitled to monetary compensation for the breach.

I find the Landlord has established a total monetary claim of **\$1,173.90** comprised of the balance of rent due for December 2017, the above described damages and repairs, and for the \$100.00 fee paid for this application.

I order that the Landlord may retain the deposit of **\$450.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$723.90** (calculated as $\$1,173.90 - \$450.00 = \$723.90$).

This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has succeeded in showing the Tenants breached the Act and tenancy agreement for most of the Landlord's claims, and is awarded the sum of \$1,173.90 in compensation. The Landlord is allowed to keep the security deposit of \$450.00 in partial satisfaction of the claim and is granted a monetary award against the Tenants in the amount of **\$723.90**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 04, 2018

Residential Tenancy Branch