



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CALEDONIA REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”), for a monetary order to recover unpaid rent, for compensation for damages due to the tenancy, permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

Both the Landlord and Tenants attended the hearing and were each affirmed to be truthful in their testimony. Each party was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2017, as a month to month tenancy. Rent in the amount of \$1,100.00 was to be paid by the first day of each month and the Landlord had been given a \$550.00 security deposit. A copy of the tenancy agreement was submitted into documentary evidence by the Landlord.

The Landlord testified that the Tenants had been \$350.00 short on their rent for January 2018, and had not paid the rent for February and March 2018, for a total outstanding rent balance of \$2,550.00. The Tenants agreed that they that they owed \$2,550.00 in outstanding rent for January, February, and March 2018.

The Landlord testified that the Tenants moved out of the rental unit on March 18, 2018, without giving notice. The Tenants agreed that they moved out on March 18, 2018, and had not provided written notice, to the Landlord, of their intent to end their tenancy.

The Landlord testified that sometime between March 18-19, 2018, he contacted the Tenants to conduct the move-out inspection. The Landlord testified that the Tenants were not available at the time he requested to do the move-out inspection, so he completed it on his own. The Landlord provided a copy of the move-out inspection he conducted and fourteen photos of the condition of the rental unit at the time of his inspection, into documentary evidence.

The Landlord is requesting \$420.00 for 12 hours of cleaning that he stated was required after the Tenants moved out, \$63.00 in garbage removal costs, \$145.00 for replacing missing window coverings and \$19.99 for the replacement of a dirty shower curtain.

Additionally, the Landlord is requesting rent in the amount of \$1,100.00 for April 2018, as the Tenants did not provide the required notice before ending their tenancy.

The Tenants testified that they had left garbage in the carport area at the end of their tenancy, and they agreed that they owed the \$63.00 cost to remove the garbage.

The Tenants testified that the Landlord had advised them that he had conducted the move-out inspection and that the rental unit was very dirty. The Tenants testified that, they had not finished moving out when the Landlord had done his move-out inspection and that they had gone back into the rental unit and finished moving their things out and fully cleaned the property. The Tenants dispute the Landlord's claim that the rental property was returned dirty. The Tenant also stated that they only took their own

property with them when they moved out and that there had been several rooms in the rental unit that did not have window coverings when they took possession of the rental property. The Tenants also testified that the shower curtain was their property, that the rental unit was not rented to them with a shower curtain.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I accept the testimony of both parties regarding the outstanding rent and find that the Landlord is entitled to an award of \$2,550.00 for the outstanding rent for January, February, and March 2018.

I also accept the agreed testimony of the parties regarding the cost of removing the garbage left behind at the rental unit by the Tenants. I find that the Landlord entitled to an award of \$63.00, for the recovery of the cost associated with removing the Tenants' garbage at the end of the tenancy.

Additionally, I accept the testimony of both parties that the Tenants move out of the rental unit on March 18, 2018, without providing written notice to the Landlord.

Section 45(2) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

Tenant's notice

45 (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

In this case, I find that the Landlord received the Tenants notice to end the tenancy on March 18, 2018, the day the Tenants moved out. Based on when the Landlord received the Tenants' notice, I find that this tenancy could have ended, in accordance with the *Act*, before April 30, 2018.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the Tenants were in breach of section 45 of the *Act* when they ended their tenancy without giving sufficient notice. However, I find that the Landlord failed to provide proof that he suffered a loss as of result of the Tenants’ breach or what steps he took to minimize any loss. Therefore, I dismiss the Landlord’s claim for \$1,100.00 in rent for the month of April 2018.

Section 35 of the *Act* requires a Landlord to offer at least two opportunities to conduct the move-out inspection with the tenant.

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit,
or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

I find that the Landlord only offered one opportunity too schedule the move-out inspection with the Tenants and that when the Tenants were unavailable for that time, the Landlord conducted the move-out inspection by himself. I find that the Landlord was in breach of section 35 of the *Act* when he only offered the Tenants one opportunity to schedule the move-out inspection. Therefore, I find that the move-in and move-out inspection report provided into documentary evidence by the Landlord to be unreliable, as it was not completed in accordance with the *Act*.

In the absence of that document, I must rely on verbal testimony given during this hearing and the remaining documentary evidence regarding the condition of the rental unit at the beginning and the end of the tenancy.

I find that the parties, in this case, offered conflicting verbal testimony regarding the cleanliness of the rental unit, and how many window coverings had been provided by the Landlord. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find that the only documentary evidence before me regarding the condition of the rental unit at the end of tenancy are the fourteen photos provided by the Landlord. However, I find this evidence to be unreliable. Throughout the hearing, the Landlord and the Tenants disputed when the photos had been taken and if the Landlord had conducted the move-out inspection before the Tenants had finished moving out. Additionally, Landlord was not able to testify as to the date that the pictures had been taken, during the hearing.

Therefore, I find there is an absence of physical evidence to prove that the Tenants had left the rental unit dirty or had taken the window covering provided by the Landlord. Therefore, I dismiss the Landlord's claim for the recovery of the costs associated with cleaning the rental unit, purchasing replacement window covering and replacing the shower curtain.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$2,063.00; consisting of \$2,550.00 in outstanding rent for January,

February, and March 2018, and \$63.00 in garbage removal, less the \$550.00 security deposit he holds for this tenancy.

As the Landlord has been partially successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application

Conclusion

I find for the Landlords under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$2,163.00**. 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: September 14, 2018

Residential Tenancy Branch