Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

One of the landlords attended the hearing and represented the other landlord. Similarly, one of the tenants attended and also represented the other tenant. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

The landlords' evidentiary material was provided to the Residential Tenancy Branch on January 10, 2020, which is later than set out in the Rules of Procedure. However, the tenant agreed that he received copies of the landlords' evidence on the same date and raised no issues. Therefore, all evidence provided is considered in this Decision. The tenants have not provided any evidence.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for unpaid utilities?

- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that the parties entered into a month-to-month tenancy to begin on May 15, 2019, but the tenants didn't actually move in. A copy of the tenancy agreement has been provided as evidence for this hearing, signed by one landlord and one tenant on March 21, 2019. It provides for rent in the amount of $2,600.00 payable on the 1st day of each month. The landlords collected a security deposit from the tenants in the amount of $1,300.00 as well as a pet damage deposit in the amount of $700.00 on March 21, 2019, both of which are still held in trust by the landlords. The landlords collected post-dated cheques for rent from the tenants, and the first month was pro-rated at $1,300.00. The cheques were returned to the tenants.

The landlord further testified that because the rental unit became vacant on May 10, 2019 the tenants were permitted to move in a few days earlier. The tenants' family attended on May 12, 2019 but the daughter and son-in-law didn't like the house so they decided not to move in.

The parties had been to Arbitration on September 13, 2019 concerning an application made by the tenants seeking return of the security deposit and pet damage deposit, as well as other monetary relief. The tenants' forwarding address was deemed to have been received by the landlords on that date by the Arbitrator.

The landlords have provided a Monetary Order Worksheet setting out the following claims as against the tenants:

- $43.51 for a BC Hydro bill;
- $51.60 for a Fortis Utility bill; and
- $6,500.00 for unpaid rent.

The claim for unpaid rent is for 2 and ½ months, which includes the first partial month. There was a huge demand for the house and had the tenants not signed the tenancy agreement, it would have been rented. Every effort was made to re-rent, by advertising on May 12, as soon as the landlord was told the tenants weren't moving in. The

advertisements specified rent of $2,600.00 per month on Craigslist, Kijiji and Facebook, and some responses by prospective tenants have been provided as evidence for this hearing. The landlord does not know why it didn't re-rent, but agrees that it required painting, which the landlord did. No other work was needed. It was re-rented effective September 1, 2019 for $2,600.00 per month, and a letter from the current tenants has also been provided for this hearing.

The tenant testified that when the tenancy agreement was signed in March the rental unit was occupied. There were lots of people there upstairs and downstairs and was fully furnished. When the tenants got access again with some furniture to move in, black mold was growing on walls and there was noticeable structural damage downstairs. One of the tenant's daughters has asthma and just walking from the front to the back door she started throwing up due to the condition of the home. The landlord said the tenant could paint and the landlord would provide the paint. The tenant told the landlord that there was food in the fridge from the previous tenants. The microwave was filthy and black mold where the bed had been against the wall. There were holes in a wall under where a flag and poster had been, and another hole from the doorknob. The garage window was replaced with Styrofoam, and the landlord said he'd cover it with plywood, which was not acceptable to the tenant. Live electrical wires were protruding from under the drywall into the dining area of the basement. An extension cord from the washer ran down the hall and into the back of a closet where someone put in an electrical outlet, contrary to the code. The tenant pointed it out to the landlord, and all had been hidden from when the tenant first saw the rental unit.

The tenant told the landlord that the family could not move in. The rental unit was in need of repair and the landlord said he was unwilling to make further repairs. The tenant went home and made a letter asking for repairs, then returned and gave it to the landlord. The landlord crumpled it up and said that the tenants didn't take the house so the landlord wasn't making repairs.

The tenant gave the landlord a forwarding address when the tenant applied for Arbitration on June 1, 2019.

Submissions of the landlord:

Everything that the tenant said is all make-believe other than paint. One hole existed, but electrical wires all made up by the tenant. The landlord also disputes receiving a letter that the tenant claims he wrote. There was never a letter about repairs. Current tenants have no issues or concerns. There's no extension cord or holes going from room-to-room, and no live electrical wires.

Submissions of the tenant:

The landlord would not allow the tenant to go back in, so the tenant has no photographs of the interior. The landlords' photographs show a hole in the concrete wall where a fireplace was supposed to be. The landlord said it doesn't function, but the tenant didn't know there was a fireplace due to a bookshelf that was in front of it when the tenants first saw the home.

Analysis

The landlords claim 2 ½ months rent from the tenants for failure to carry out the terms of the tenancy agreement by moving into the rental unit. The tenancy was to begin on May 15, 2019 on a month-to-month basis, but prior to that, on May 12, 2019 the tenants advised the landlords that they were not moving in. There is no question that the landlords' inability to re-rent prior to September 1, 2019 was not the fault of the tenants, and the duty lies with the landlord to do whatever is reasonable to mitigate any loss suffered by advertising the rental unit for rent at a reasonable amount, generally the same amount. The landlord testified that it was advertised on Craigslist, Kijiji and Facebook on May 12, 2019, and has provided evidence of responses from prospective renters.

There is no question that a contract was entered into by the parties, however the tenants' position is that the rental unit was not safe, not healthy and not as it appeared to be when the tenants signed the tenancy agreement because there were lots of people and furniture and items in it which were covering up some of the tenants' concerns.

Once a contract is entered into it is binding on both parties to satisfy the terms, which include repairs made by a landlord. The landlord disagrees that the rental unit required such repairs but agrees that it needed painting. That is not a sufficient reason for a tenant to refuse to move in.

Where a tenant ends a month-to-month tenancy the tenant must give the landlord notice in writing the day before the day rent is payable under the tenancy agreement and must be effective on the last day of the rental period. In this case, rent was payable on the 1st day of the month, and I find that any notice that the tenants could legally have given would be effective on June 30, 2019. Although I have no reason to disbelieve the

tenant's testimony that it was not what he thought he was getting, I am not satisfied that black mold and live electrical wires were visible on May 12, 2019. I must consider the photographs and letter from the current tenant provided by the landlords. In the circumstances, I find that the landlords are entitled to 1 ½ months rent, or $3,900.00.

With respect to utilities, I have reviewed the bills provided by the landlords and the tenancy agreement, which clearly specifies that the tenants are responsible for utilities. The bills both cover the period of May 15 to May 31, 2019 at a cost of $51.60 and $43.51, and I find that the landlords have established a claim of $95.11.

With respect to the security deposit and pet damage deposit, the *Residential Tenancy Act* requires a landlord to return such deposits to a tenant or apply for dispute resolution claiming against them within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay double the amounts to the tenant.

Further, Section 38 (7) of the *Act* states that

> "38 (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise."

In this case, a previous Decision of the director made a finding that the landlords received the tenants' forwarding address in writing on September 13, 2019 and the record shows that the landlords made this Application for Dispute Resolution on September 23, 2019, which is within 15 days. Given that the landlords have no claim for damage caused by a pet, and the tenants have not agreed, I find that the landlords must repay double the pet damage deposit, or $1,400.00.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the $100.00 filing fee.

The landlords hold the $1,400.00 double pet damage deposit and $1,300.00 security deposit. Having found that the landlords are entitled to monetary compensation from the tenants of $3,900.00 for rent and $95.11 for utilities, and $100.00 for recovery of the filing fee, I set off those amounts, and I grant a monetary order in favour of the landlords for the difference totalling $1,395.11 ($3,900.00 + $51.60 + $43.51 + $100.00 = $4,095.11 - $1,400.00 - $1,300.00 = $1,395.11).

Conclusion

For the reasons set out above, I hereby order the landlords to keep the security deposit and pet damage deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $1,395.11.

This order is final and binding and may be enforced.

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: January 28, 2020

Residential Tenancy Branch