



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF

Introduction

On July 28, 2020, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession based on issuance of a One Month Notice to End Tenancy for Landlord Use of Property (“the Two Month Notice”). The Landlords also applied for a monetary order for money owed or compensation for damage or loss under the Act.

The matter was set for a conference call hearing. The Landlords and Tenants attended the conference call hearing.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

The parties confirmed that they have 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 are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Tenants testified that they vacated the rental unit on July 16, 2020, and on July 28, 2020 they informed the Landlords that they had moved out. The Tenants had received a One Month Notice to End Tenancy for Cause dated July 16, 2020. The Landlord provided a copy of the One Month Notice which provides an effective date of August 31, 2020.

The Landlords provided testimony acknowledging that the Tenants have moved out of the rental unit. The Landlords are no longer seeking an order of possession for the rental unit.

The hearing proceeded on the Landlords' claim for compensation as provided in the Notice of Dispute Resolution Proceeding that was served to the Tenants. The Landlords' monetary claim is restricted to the amount of \$2,926.67.

Issue to be Decided

- Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Landlords and Tenants testified that the tenancy began on April 1, 2019, on a month to month basis. Rent in the amount of \$1,800.00 was to be paid to the Landlords by the last day of each month. The Tenants paid the Landlord a security deposit in the amount of \$900.00. The Tenants are responsible to pay 40% of hydro and gas costs.

Picket Fence \$523.65

The Landlords and Tenants provided testimony that there was a disagreement between the Tenants and other occupants living on the residential property. The Landlord erected a fence to divide the yard.

The Landlord testified that the Tenants agreed to have the yard separated but there was no agreement that the Tenants would pay for the cost of the fence.

In reply, the Tenants testified that they have not breached the Act or tenancy agreement and they are not in agreement that they are responsible to compensate the Landlord for the fence.

August 2020 Rent \$1,800.00

The Landlords testified that they did not receive the rent owing under the tenancy agreement for the month of August 2020.

In reply, the Tenants testified that they sent August 2020 rent to the Landlord; however, the Landlord refused to deposit the payment. The Tenants testified that the Landlords

changed the locks to the rental unit on August 3, 2020. The Tenants stated that they had been wrongfully issued a notice to end tenancy.

In reply, the Landlords provided testimony confirming that they changed the locks to the unit on August 3, 2020. The Landlords testified that they re-rented the unit starting October 1, 2020. The Landlord testified that they did not receive any rent for the rental unit from anyone for the month of August 2020.

Unpaid Utility Bills

The Landlords are seeking the amount of \$69.60 for the Tenants share of gas costs for July and August 2020. The Landlords acknowledged that the Tenants were not in the unit for August 2020; however, they feel that the Tenants are responsible to pay for August 2020.

In reply, the Tenants testified that they should only be responsible for paying for July 2020. The Tenants testified that they have the July bill.

The Landlords are seeking the amount of \$133.42 for the Tenants share of hydro costs for July and August 2020. The Landlord testified that they estimated the hydro cost for August 2020 to be \$52.00.

In reply, the Tenants testified that they should only be responsible for pay hydro for July 2020.

Yard Maintenance \$90.00

The Landlord is seeking compensation for the cost to cut the lawn on three occasions. The Landlord testified that it took him 15 minutes to cut the lawn each time and he is seeking \$30.00 for each occasion.

In reply, the Tenants testified that the lawn was cut by the Tenants as of July 30, 2020. The Tenants point out that the Landlord changed the locks to the rental unit on August 3, 2020.

Copying Costs \$23.32

The Landlords are seeking to recover their costs for copying in preparation for their application and the hearing.

Security Deposit

On July 28, 2020 the Landlords applied for dispute resolution and included a claim to keep the security deposit in partial satisfaction of their claims. I find that the Landlords are holding a security deposit of \$900.00.

The Landlord testified that they offered the Tenants three opportunities to participate in a move out inspection and the Tenants declined the offers.

In reply, the Tenants testified that the Landlords did not provide an opportunity to participate in a move out inspection. The Tenants testified that the Landlord proposed one date by posting a notice on their door and they responded that the date did not work. The Tenants testified that the Landlord did not offer an alternate date.

The Tenants submitted that the Landlords failed to comply with the requirements of the Act regarding a move out inspection, and they must return the security deposit.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Sections 23 and 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Each section also requires that the Landlord complete the condition inspection report; 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.

Section 36 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord does not comply with section 35 (2) [2 opportunities for inspection].

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

Picket Fence \$523.65

I find that there was no agreement by the parties that the Tenants would pay costs for the construction of a fence. I find the Tenants are not responsible to compensate the Landlords for the cost of the fence. The Landlords claim is dismissed.

August 2020 Rent \$1,800.00

I find that the earliest date that the Tenants could have legally ended the tenancy was August 31, 2020. The One Month Notice that the Tenants received from the Landlord provides an effective date of August 31, 2020.

The Tenants vacated the rental unit on July 16, 2020 and are responsible to pay the rent owing under the tenancy agreement for August 2020. I find it is reasonable for the Landlords to have changed the locks on August 3, 2020 to secure the rental unit after the Tenants had moved out.

I award the Landlords the amount of \$1,800.00 for unpaid August 2020 rent.

Unpaid Utility Bills

I find that the Tenants vacated the rental unit on July 16, 2020. I find that the Tenants did not occupy the rental unit for any part of August 2020 and therefore they are not responsible to pay any utility costs for August 2020.

I find that the Tenants owe the Landlords the amount of \$34.80 for July 2020 gas costs and \$81.39 for July 2020 hydro costs.

I award the Landlords the amount of \$116.19 for unpaid utility charges.

Yard Maintenance \$90.00

I have reviewed the tenancy agreement and find that the Tenant are responsible to cut the lawn before the lawn reaches four inches in height. I find that the Tenants did not occupy the rental unit for any part of August 2020 and the Landlords changed the locks to the unit on August 3, 2020. The earliest date that the Tenants could have legally ended the tenancy was August 31, 2020.

In the circumstances, I find it is reasonable to award the Landlord \$30.00 for the cost of cutting the lawn once in August 2020.

Copying Costs \$23.32

The Act does not specifically permit compensation to be awarded for the costs to prepare for a hearing. I find that these costs are part of doing business as a Landlord. The Landlords' claim for copying costs is dismissed.

Security Deposit

On July 28, 2020 the Landlords applied to dispute resolution and made a claim to keep the security deposit in partial satisfaction of their claims. I find that the Landlord is holding a security deposit of \$900.00.

Section 36 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is

extinguished if the Landlord does not comply with section 35 (2) [2 opportunities for inspection.

Section 17 (2)(b) of the Residential Tenancy Regulation provides that the Landlord must propose a second opportunity to the Tenant by providing the Tenant with a notice in the approved form. Upon review of the Landlords' documentary evidence, I find there is insufficient evidence from the Landlords that the Tenants were served a Notice of Final Opportunity to Schedule a Condition Inspection. I find that the Landlords right to claim against the security deposit is extinguished.

I find that the Landlords claimed against the security deposit for unpaid rent and other claims within 15 days of the tenancy ending. Section 72 of the Act provides that if I order a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted, in the case of payment from a Tenant to a Landlord, from any security deposit or pet damage deposit due to the Tenant. Even though I found that the Landlord has extinguished the right to apply against the security deposit, the Landlord may be permitted to retain the security deposit towards any awards granted.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords had some success with their application, I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlords have established a monetary claim in the amount of \$2,046.19.

I authorize the Landlords to retain the security deposit of \$900.00 in partial satisfaction of the monetary award. After setting off the security deposit of \$900.00 against the award of \$2,046.19, I find that the Tenants owe the Landlords the balance of \$1,146.19.

I award the Landlords a monetary order in the amount of \$1,146.19. The monetary order must be served on the Tenants and may be enforced in the Provincial Court.

Conclusion

The Landlords were successful with their claim for unpaid August 2020 rent and utility costs.

The Landlord established monetary awards in the amount of \$2,046.19. The Landlords are authorized to retain the security deposit of \$900.00 towards their award.

I find that the Tenants owe the Landlords the balance of \$1,146.19. I award the Landlords a monetary order in the amount of \$1,146.19.

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 23, 2020

Residential Tenancy Branch