



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL-S, MNDL, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. on December 1, 2020 by way of conference call concerning an amended application made by the landlords seeking an Order of Possession for unpaid rent or utilities; an Order of Possession for cause; a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; 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, gave affirmed testimony and represented the other landlord. Both tenants attended the hearing, however not until 11:26 a.m. after the landlord had commenced the affirmed testimony. One of the tenants also gave affirmed testimony, and the parties were given the opportunity to question each other and give submissions.

During the course of the hearing the landlord advised that the tenants have vacated the rental unit and the landlords' applications seeking an Order of Possession are withdrawn.

Also, during the course of the hearing the landlord indicated that none of the tenants' evidence has been provided to the landlords. The tenant testified that the evidence was served on November 26, 2020 by registered mail, but has provided no evidence to support that.

The Rules of Procedure and the Residential Tenancy Policy Guidelines specify that any evidence that a party wishes to rely on must be provided to the Residential Tenancy Branch and to the other party, and that each party must be able to demonstrate at the hearing how and when the evidence was served. The tenants have not done so, and therefore, I am not satisfied that the tenants have provided any evidence to the landlords, and I decline to consider any of the tenants' evidence.

All evidence of the landlords has been reviewed and is considered in this Decision.

Issues to be Decided

The issues remaining to be decided are:

- 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 money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for cleaning and damages?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2020 and ended on October 21, 2020. The tenancy agreement, a copy of which has been provided as evidence for this hearing specifies that rent in the amount of \$1,500.00 per month is payable on the 1st, 30th or 31st of each month, and the landlord testified that it's due by the 1st of each month or sooner. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is the upper level of a house.

The landlord further testified that the tenants did not pay rent for the month of October, 2020 and the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 10, 2020.

The tenants have not provided a forwarding address but kept returning to the rental unit to check the mail. The tenants said they'd be moving out on October 10, 2020 and the landlord called the utility companies who confirmed that gas and electricity had been cancelled.

The landlords claim \$1,500.00 for October's rent as well as \$1,500.00 for November, 2020 due to the condition of the rental unit at the end of the tenancy. No move-in or move-out condition inspection reports were completed.

The landlords have provided a Monetary Order Worksheet setting out the following additional claims which totals \$5,186.12:

- \$1,030.00 for cleaning, and a quote has been provided for this hearing;

- \$400.00 for carpet cleaning, and a quote has been provided for this hearing;
- \$1,452.65 for replacing the washer and dryer;
- \$300.00 to repair the front and back doors inside and outside;
- \$350.00 to repair the bedroom door;
- \$900.00 to repair wall damage throughout;
- \$653.47 for missing items; and
- \$100.00 for lawn damage and to clean dog feces.

The landlords have provided a receipt from Rona for the washer and dryer purchased prior to the tenancy, and the landlord testified that the lid won't open and it's incredibly loud. The landlords are trying to get warranty covered, and the appliances are still on the property. A copy of the Invoice for the purchase has been provided for this hearing and it is dated April 3, 2020 in the amount of \$1,451.64.

The landlords' claim for door repair is to the front and back doors inside the rental unit as well as the outside of the back door. Sanding and painting and replacing weather stripping was required at the end of the tenancy. The landlord was not able to get quotes for all of the little repairs, however the landlord testified it will cost \$300.00 to complete the repairs.

The bedroom door was a custom size, so the frame will have to be removed in order fit a standard door or replace the door with another custom sized door.

Wall damage exists throughout the rental unit, and photographs have been provided for this hearing. The landlord claims \$900.00 for his time sanding and painting. The landlord testified that he won't be able to match the colors.

The landlord also testified that LED light bulbs in the hallway and bathroom are missing, as well as a stove element, fire alarm, door-bell cover, fire extinguisher and weed eater. The toilet seat lid also needs to be replaced, and estimates have been provided as evidence for this hearing.

The landlord also testified that he would have to dig up some of the lawn, put down new soil and re-seed, due to the damage left by the tenants and dog feces to clean.

The landlord's photographs were taken on October 26, 2020.

The landlord further testified that he served a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated September 9, 2020 and contains an effective date of vacancy of October 15, 2020. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:

- put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property.

The landlord also served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the tenants, and a copy has been provided for this hearing. It is dated October 2, 2020 and contains an effective date of vacancy of October 13, 2020 for unpaid rent in the amount of \$1,500.00 that was due on October 1, 2020. The tenants have vacated the rental unit, however the tenants have not paid the rent.

The landlord has not re-rented but moved into the rental unit effective October 21, 2020.

The tenant testified that the tenants have not provided the landlord with a forwarding address in writing, but told the landlord's father what it was on November 21, 2020 when the tenant went to retrieve mail. The tenant does not know if the landlord's father wrote it down.

The tenant further testified that the landlord gave a notice to end the tenancy effective in October, but the tenant's family consists of 5 people, and the tenants couldn't afford to pay rent at another place unless the security deposit was returned to the tenants. The landlord said not to worry about rent for October and to use it to find another place to live. The tenant does not believe the tenants owe any money for rent.

A dispute resolution hearing was held on November 12, 2020 and the tenants received a Decision, and the tenants vacated the rental unit on November 13, 2020. However, on October 20, 2020 the landlord locked the tenants out of the house, police were called, and the tenants were told they had to be moved out by midnight. Hydro, heat and water were turned off and the tenants could not clean anything. The landlord put all of the tenants' belongings out of the rental unit and put it on the lawn. The landlord was inside the rental unit so police could not go in, so the tenants agreed to leave by midnight, and the tenants were allowed back in, but were locked out for 4 or 5 hours. The next morning, the tenant called the Residential Tenancy Branch and were told that the tenants did not have to move out.

The tenant further testified that the landlord's photographs were taken on October 26, 2020, which was during the second inspection. The first inspection was done on October 5, 2020.

With respect to the landlords' damage claim, the tenant testified that the washer was noisy when the tenants lived in the rental unit, and thought that's how it was supposed to run

considering it was new, so the landlords were not notified about it. The lid opened fine on October 20, 2020.

The tenant also disagrees that the rental unit was left unclean at the end of the tenancy, and disputes the landlords' \$1,030.00 claim for cleaning. Further, the carpet cleaning claim is absurd; the tenants cleaned the carpet at the end of the tenancy. However, it was not clean at the beginning of the tenancy but was old and damaged at that time. There was a piece on top of another carpet, and the tenants did their best to clean it. The landlord talked about replacing the carpet before the tenants moved in but decided to clean it instead.

There was no weather stripping on the back door to begin with. Damage caused by the tenants' dog was repaired during the tenancy. The tenants put compound on it, painted and fixed the scratches on or about November 12, 2020.

The bedroom door was locked when the tenants moved in, and the tenant bumped it to get it open, then put on new door handle and repaired the damage caused by bumping it open; it was split a bit and the tenant glued it and repaired it. It worked fine when the tenants vacated.

With respect to wall damage, the tenant testified that they went in and fixed holes from hanging pictures and sanded. The tenant asked the landlord for paint, but he said not to worry about it; the landlords would deal with it. A few rooms were newly painted at the beginning of the tenancy, but not all walls. Two of the bedrooms were 50% painted and the other bedroom was fully painted at the beginning of the tenancy, but the tenant is not sure about the rest of the house. The \$900.00 claim is not justifiable and seems atrocious.

The tenant also testified that he is not sure if the fire extinguisher was taken or what happened to it. The weed eater was a gift from the landlord due to the landlord's satisfaction of the tenants' lawn care. The tenant took off the door-bell cover and repaired it, but does not know what happened to it or the fire alarm. The toilet seat lid broke and the tenants replaced it.

The tenants also dispute the \$100.00 claim for lawn care and testified that the tenants filled holes and cleaned up the yard. No oil was spilled in the back yard.

Analysis

Firstly, with respect to the landlords' claim for unpaid rent, the tenant testified that the landlord said not to worry about October's rent, in order for the tenants to be able to pay for another rental and move out. Given that the landlord issued a notice to end the tenancy

for cause before rent was due for October, I accept that the landlord wanted the tenants to move out with or without paying the rent. That does not mean that rent isn't owed. The tenants do not dispute that no rent was paid for October, 2020 and I find that the landlords have established a claim of **\$1,500.00** for that month.

The landlords also claim rent for November, however the landlords did not attempt to re-rent and decided to occupy the rental unit effective October 21, 2020. Therefore, I do not accept that the landlords have established that any loss of rental revenue exists for November's rent.

With respect to the landlords' damage claims, in order to be successful, the onus is on the landlords to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenants' failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlords made to mitigate, or reduce any damage or loss suffered.

Further, the *Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. Since there are no reports, I find that the landlords' right to claim against the security deposit for damages is extinguished. However, the landlords' right to make a claim for damages is not extinguished.

I have reviewed all of the landlords' evidence, although the landlords did not cause the move-in or move-out condition inspections to be completed, the landlords have provided before and after photographs of the rental unit, and the tenants did not dispute any of the landlords' evidence. Considering the evidence, it is very clear that for this 6 month tenancy, the tenants took absolutely no care with the property, repairs or cleanliness throughout. I am satisfied that the landlords have established the claim of **\$1,030.00** for cleaning.

The landlords have provided evidence of the cost to replace the washer and dryer, as well as video evidence, and I am satisfied that the landlords have established the **\$1,452.65** claim for the washer/dryer.

The tenant testified that a door was locked so he "bumped" it open, however considering the damage in the photographs, I find it was more than a bump.

The landlord also claims \$653.47 to replace missing items, such as LED light bulbs in hall/bath, stove element, fire alarm, door-bell cover, fire extinguisher, and weed eater, and testified that the toilet seat lid needs to be replaced. The tenant did not have any testimony of what happened to the missing items, but testified that he replaced the toilet seat lid, and that the weed eater was a gift from the landlord.

The landlords have not provided any evidence to substantiate the cost of the doors or painting or missing items or lawn care. The *Residential Tenancy Act* does not permit me to make a monetary order for any punitive reasons, meaning I cannot make an order to punish the tenants for any wrong-doing. However, the *Act* does permit me to make an order for nominal damages, in situations where establishing the value of the damage or loss is not so straightforward. Nominal damages may be awarded where there has been no significant loss or none has been proven, but it has been proven that there has been an infraction of a legal right. A tenant is required to leave a rental unit undamaged at the end of a tenancy, and I find that the tenants have not done so, and I grant nominal damages in favour of the landlords in the amount of **\$500.00**.

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

Having found that the landlords have established claims of \$1,500.00 for unpaid rent and \$2,982.65 for damages, and recovery of the \$100.00 filing fee, I order the landlords to keep the \$750.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlords for the difference in the amount of \$3,832.65.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$750.00 security 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 **\$3,832.65**.

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: December 10, 2020

Residential Tenancy Branch