



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR OPR MND MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied to cancel a notice to end tenancy, as well as a monetary order and recovery of the security deposit. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants had vacated the rental unit, and I therefore dismiss the portion of both applications regarding the notice to end tenancy and order of possession.

One of the two tenants, an advocate for the tenants, two witnesses for the tenants and an agent for the landlord all participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to the monetary amounts claimed?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts are as follows. On June 29, 2006 the tenants signed the tenancy agreement and paid a security deposit of \$350 for a tenancy to commence on July 1, 2006. The tenants paid the full rent of \$700 for July 2006. The tenants did not move in until July 19, 2006. The tenants and the building manager at the time, IA, carried out a move-in inspection and signed the report. The report notes that at the outset of the

tenancy the entry, living room, dining area and bedrooms had all been painted, there were new drapes in the living and dining areas, and the carpets had been steam cleaned. On or about June 11, 2007, the tenants wrote a letter to the landlord and requested compensation for the portion of their rent paid for July 1 to 18, 2006. The landlord never responded to the tenants' letter. On February 15, 2009 one of the tenants' daughters, SB, gave written notice that her parents intended to vacate the rental unit by March 13, 2009. The tenants moved out on March 3, 2009. The landlord and representatives of the tenant carried out a move-out inspection on March 13, 2009. The landlord re-rented the unit on April 1, 2009.

The relevant evidence of the tenants was as follows. The tenants did not move in until July 19, 2006 because the unit had not been cleaned and was not ready. At move-in, the carpets were old and badly stained and the only room that had new paint was the bathroom.

On February 16, 2009, the tenant informed the current building manager, OO, and his wife, that they had just recently steam-cleaned the carpets, and the building manager's wife responded that the tenants shouldn't worry about the carpets because they were old and getting ripped out.

The tenants moved out on March 3, 2009, and did cleaning of the unit on March 3 and 4, 2009 as per the move-out cleaning instructions that the landlord provided, with the exception of the drapes, which the tenants acknowledged they did not clean. One of the tenants' daughters, SB, tried on three occasions to arrange a move-out inspection with the building manager, but he refused to do the move-out inspection because SB could not verify that she had power of attorney to act for her parents. The move-out inspection was completed on March 13, 2009, but the tenants did not agree with the deductions the landlord claimed.

The tenants have claimed \$361.29 for reimbursement of the rent paid for July 1 – 19, 2008, minus the rent for March 1 – 3, 2009; return of their security deposit; and waiver of their \$50 filing fee for the cost of their application.

The relevant evidence of the landlord was as follows. OO, the current building manager, began managing the building in mid-August 2006. As he did not manage the building and was not present in July 2006, OO had no knowledge or information regarding the tenants' move-in. OO did have a copy of the move-in inspection report, which indicated that the tenants did not move in until July 19, 2006, but he did not know the reason why they moved in late. OO could not provide the age of the carpets, and he could only accept what was noted on the report regarding which rooms had been painted.

On or about June 11, 2007 OO received the tenants' letter asking for compensation for July 2006, and he forwarded the letter to head office. He was not aware of any response sent by the landlord to the tenants' compensation request, and he assumed that the landlord did not intend to pay the refund.

When the tenants gave their notice to vacate, on or about February 15, 2009, OO explained to the tenants that they must give a full month's notice to vacate at the end of the following month, that is, March 31, 2009, and they would be responsible for the full rent for March. The tenants did not pay rent for March.

The tenants' daughter SB provided OO with a letter from a bank, not an official letter of power of attorney, and OO therefore refused to allow SB to represent the tenants for a move-out inspection. The move-out inspection was not carried out until March 13, 2009. The landlord had to repaint the unit because of stains and odour from cigarette smoke, and they had to replace the carpets because of cigarette burns. OO did not provide any testimony regarding the tenants' allegations that OO or his wife told the tenants that the carpet was old and would be replaced. The landlord was not able to re-rent the unit until April 1, 2009 because the tenants had not provided adequate proof of power of attorney for SB to represent the tenants in the move-out inspection, and the move-out inspection was not done until March 13, 2009.

The landlord has claimed \$750 for unpaid rent for March 2009 and \$25 for a late fee as

per the tenancy agreement; \$132 for cleaning of drapes; \$700 for partial costs of replacing the carpet; and \$250 for painting the suite. The landlord originally applied for compensation for bathroom repairs, but in the hearing the landlord withdrew that portion of their application.

Analysis

In regard to the tenants' application for compensation for overpayment of rent in July 2006, I find that the tenants delayed too long to establish entitlement to this amount. The tenants ought to have brought this matter to the attention of the landlord much sooner than June 2007, and then made an application for dispute resolution for the overpayment. The tenants' delay in addressing this matter hindered the landlord's ability to verify the situation regarding the move-in, so that the landlord could not effectively respond to the tenants' request. I therefore dismiss that portion of the tenants' application.

I will address the issue of the security deposit below. In regard to the tenants' application for waiver of the filing fee, the tenants ought to have requested the waiver of the fee at the time of filing their application but did not do so. When an applicant pays a filing fee, they may be entitled to recover that fee from the respondent when the applicant is successful in their application. I will address the issue of the filing fees below.

In regard to the landlord's application for unpaid rent for March 2009, I find that the landlord's agent did not act reasonably in refusing to allow SB to represent the tenants for the move-out inspection. The testimony of the landlord's agent, OO, was that the landlord was unable to mitigate their loss and attempt to re-rent the unit because the move-out inspection was not done until March 13, 2009. The tenants were prepared to do the move-out inspection by March 3 or 4, 2009, but for OO's refusal to allow SB to represent the tenants for the move-out. I therefore find that the landlord failed to mitigate their loss. The tenants' testimony was that they completed cleaning on March 4, 2009, and I therefore find that the landlord is only entitled to unpaid rent for March 1 to 4, 2009 in the amount of \$96.77. The landlord is entitled to the \$25 late payment fee

for March 2009 rent, as per the tenancy agreement.

In regard to the remainder of the landlord's claim, I find as follows. The average life of carpets is 10 years. The landlord did not provide any evidence of the age of the carpet. I accept the testimony of the tenants and their witnesses that the carpet was old and in poor condition at the outset of the tenancy, and the intention of the landlord at the end of the tenancy was to replace the carpet because it was old. I therefore dismiss that portion of the landlord's application.

The tenants acknowledged that the landlord was entitled to the amount claimed for cleaning the drapes, and I therefore grant the landlord \$132 for cleaning of drapes.

In regard to the landlord's claim for painting, I find as follows. The tenants signed the move-in inspection report that indicated the entry, living room, dining area and bedrooms had all been painted. I accept the evidence of the landlord that painting was required due to smoke damage and odour. The landlord's evidence was that the painting costs were \$72.28 for paint and \$140 for labour, for a total of \$212.28. The average life of interior paint is 4 years. As the paint would have had approximately 30% of its remaining useful life before repainting occurred, I therefore find that the landlord is entitled to 30% of the painting cost, in the amount of \$63.68, for a total claim of \$217.45.

As neither party was fully successful in their application, I decline to award recovery of either filing fee.

Conclusion

The applicable interest on the \$350 security deposit is \$11.50, for a total of \$361.50. I order that the landlord retain \$217.45 from the deposit in full satisfaction of their claim, and I grant the tenants an order under section 67 for the balance due of \$144.05. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 6, 2009.