



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, MND, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 24, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenants and the Landlord in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Are there damages and if so how much?
5. Is the Landlord entitled to compensation for damages or loss and if so how much?
6. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on January 15, 2010 as a 1 year fixed term tenancy. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 on December 17, 2009 and a pet deposit of \$700.00 on January 15, 2010. The Tenants moved out of the rental unit on August 7, 2010.

The Landlord said that the Tenant did not pay \$300.00 of rent for July, 2010 when it was due and as a result, on July 24, 2010 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 24, 2010 on the table in the Tenants' rental unit. The Landlord said the Tenants have unpaid rent for August, 2010 of \$1,400.00.

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The Landlord said that there is a move in and move out inspection report that is signed by both the Landlord and Tenant that shows the damage or loss to the Landlord. The Landlord said the reports shows that cleaning was required and she is claiming \$120.00 for the time she spent cleaning the unit. As well she has included a receipt for carpet cleaning of \$33.81 and she said the carpet was new when the Tenants moved in. In addition the Landlord said she is claiming for a re-rent levy that is written into the lease of \$700.00, painting for \$280.00, a door repair of \$75.00 and yard clean up of \$160.00. The Landlord said her total claim is for \$3,068.81.

The Landlord also said that she is withdrawing her application for an Order of Possession as the Tenants have moved out and she has rented the unit to new tenants as of September 1, 2010.

The Tenant started his testimony by saying the 10 day Notice to End Tenancy dated July 24, 2010 was invalid as it has the wrong amount on it (\$1,400.00 when it should be \$300.00) and the second page was not included. As well, the Tenants said they paid the \$300.00 of July rent to the Landlord on August 7, 2010 when they moved out. The Landlord said the Tenants did not pay her the July rent of \$300.00 on August 7, 2010. The Tenant said they paid in cash and the Landlord did not give them a receipt and they did not ask for one. The Tenant said he did not believe he was responsible for the August, 2010 rent of \$1,400.00 as they were evicted and they moved out August 7, 2010.

The Tenant continued to say the house and yard were in the same or better condition when they left than when they moved in. He said the lawn had been mowed and the house was clean except for the floors when they moved out. The Tenant continued to say that the patio door was old and the damage to it was normal wear and tear. The Tenant submitted a letter from his father who had replaced the locks on the door and he indicated there was damage to the door.

The Landlord said she did make a mistake on the amount of the 10 Day Notice to End Tenancy, but she did include the second page when she served it. As well she said she talked to the Tenants about the dollar amount mistake on the notice and they said to her that it didn't matter as they were moving out. The Tenants said that they did not agree with the 10 Day Notice to End Tenancy and they believe it is invalid.

Analysis

As the tenancy has ended and both the Tenant and the Landlord agreed to end the tenancy, I find that it is immaterial whether the 10 Day Notice to End Tenancy is valid or not. The Parties agreed to end the tenancy on August 7, 2010.

Section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There was contradictory testimony in regard to the payment of the July, 2010 rent of \$300.00. As the Tenant had no evidence to prove the payment was made and the Landlord and Tenant agreed that the Notice to End Tenancy was a result of the unpaid \$300.00 for July, 2010 rent, I find in favour of the Landlord. I find the Tenant is responsible for the rent for July, 2010 of \$300.00.

The Tenant did have possession of the rental unit until August 7, 2010 and as the Tenants did not given the Landlord notice of their move out date the Landlord could not prepare the unit for a new tenancy. Section 7 (2) of the Act says that a landlord or tenant claiming compensation for damage or loss must do whatever is reasonable to minimize or mitigate the damage or loss. The Landlord did rent the unit on September 1, 2010 therefore I find the Landlord is not entitled to the full month of August rent as she had part of the month to prepare for the new tenancy. I find the Tenant is responsible for the time they were in the unit until August 7, 2010, as well the Tenants did not move out on the effective date of the Notice to End Tenancy August 3, 2010 and did not dispute the Notice therefore the Landlord did not know when the Tenants' were moving out. I find the Tenant's are responsible for rent for the rental unit up to August 15, 2010 in the amount of \$700.00.

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Section 37 says when a tenant leaves a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In comparing the move in condition inspection report to the move out condition inspection report, I find following damages or claims. I find in favour of the Landlord for the following damages:

Cleaning	\$	120.00	
Repairs to the door	\$	75.00	
Carpet Cleaning	\$	33.81	
Subtotal			\$ 228.81

The claims by the Landlord for painting and for yard clean up are not supported by the condition inspection reports therefore; I dismiss these claims without leave to reapply.

As well the Landlord has requested a re-rent levy that is written into the tenancy agreement for \$700.00. This is not a fee that is identified as a fee that a landlord can charge a tenant in the Residential Tenancy Act therefore: I dismiss it without leave to reapply.

As the Landlord has been partially successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep a portion of the Tenants' deposits in the amount of \$1,278.81 as full payment of the unpaid rent and damages or loss. As well the Landlord is ordered to return the balance of the Tenants' deposits in the amount of (\$1,400.00 - \$1,278.81 = \$121.19) \$121.19 forthwith. The Landlord's claim is as follows:

Rent arrears for July	\$	300.00
Loss of Rent and Rental Income for August:	\$	700.00
Damages(cleaning and repairs)	\$	228.81
Recover filing fee	\$	50.00
Total	\$	1,278.81



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Conclusion

I order the Landlord to retain \$1,278.81 of the Tenants' security and pet deposits as full settlement of unpaid rent and damages or loss.

I order the Landlord to return \$121.19 of the Tenants' security and pet deposit forthwith.

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*.
