



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MND, MNR, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent or utilities; a Monetary Order for damage to the unit, for unpaid rent or utilities, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions. At the outset, the landlord submitted that the tenants moved out of the rental unit on December 12th, 2010. Therefore the landlord's application for an Order of Possession is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a duplex. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting on July 1st, 2010 and ending on July 1st, 2011, at a rate of \$1475.00 payable on the first of each month.

Condition inspection reports were not completed at the start or the end of the tenancy.

The landlord testified that the tenants broke the lease and moved out on December 12th, 2010. She stated that she has found new tenants for March 1st, 2011, but that she had to drop the rent by \$75.00.

During the hearing, the landlord submitted an updated monetary claim, which is itemized as follows:

- Rekey locks:	\$ 106.96
- Degreaser:	\$ 24.17
- House cleaning:	\$ 125.00
- Floor refinisher:	\$ 80.54
- Carpet cleaning:	\$ 108.52
- Door & wall repair estimate:	\$ 2276.12
- Screen door:	\$ 84.99
- Garage floor & driveway:	\$ 599.92
- Refinish damaged floor estimate:	\$ 7728.00
- Exterior back door:	\$ 139.00
- Teresen Gas:	\$ 126.81
- Sub-Total:	\$11400.03
- Rent for January 2011:	\$ 1475.00
- Rent for February 2011:	\$ 1475.00
- Loss of rent (\$75.00 x 5mths):	\$ 375.00
- Sub-Total:	\$ 3325.00
- Grand total:	\$14725.03

Tenant S.H. confirmed that condition inspection reports were not completed. He alleged that the landlord made up the \$125.00 cleaning invoice, and questioned the landlord's credibility because she has altered documents, specifically: the receipt for cleaning was

in her handwriting, and the tenancy agreement was amended after the fact to reflect the proper end of the tenancy as being July 1st, 2011 and not 2010.

S.H. stated that they left the unit on December 11th, 2010 and they have no evidence that the landlord's submissions related to the repairs were completed. He said that he has 3 dogs but that while they damaged the door frame, they did not damage the floor.

Analysis

The parties presented conflicting on the majority of the issues. In order to claim for damage or loss under the Act or the Tenancy Agreement, the party making the claim bears the burden of proof. In this matter, the landlord must prove the existence of damage or loss, and that it stemmed directly from a violation of the tenancy agreement or the Act. When the parties' testimonies are opposed, condition inspection reports can establish crucial evidence to assist a Dispute Resolution Officer in making an informed decision. In their absence or in the absence of substantive independent evidence the burden of proof is not met.

Sections 23 and 35 of the Act place the onus to complete the condition inspection reports on the landlord. Since the landlord's evidence in this matter was not supported by these reports, I cannot support the claim that the damage or loss claimed by the landlord resulted in damage or loss beyond reasonable wear and tear.

For the reasons stated above, I find that the landlord's claim lacks sufficient evidence and that the burden of proof was not met. Notwithstanding, the landlord produced copies of receipts for the locks and key replacement. The tenant argued that the Act states that the landlord is responsible to change the locks. While Section 25 of the Act provides in part that at the tenant's request the landlord must change the locks, such was not the case in this matter. The tenant stated that he returned the keys sometime in January, which was well after moving out. Section 37(2) of the Act also provides that the tenant must return the keys when the tenant vacates the rental unit.

The landlord did not know whether she would recover her keys and I find it reasonable that she rekeyed the locks. Therefore I award the landlord that portion of her claim.

Turning to the tenancy agreement: the evidence established that the tenants left prior to the end of the fixed term. Section 45(2) of the Act states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Based on the available evidence, I am satisfied that the tenants ended the tenancy prematurely. The landlord suffered a loss of rent of \$1475.00 for each of the months of January and February 2011 respectively. I accept the landlord's testimony that she rented the unit again in March 2011 for a monthly rent of \$1400.00, and subsequently lost \$75.00 for 5 months for a loss totalling \$3325.00. I also find that the landlord incurred the cost of utilities during the two months the unit was empty when it should have been occupied by the tenants, and I award the landlord's claim for the utility charge of \$126.81.

Conclusion

The landlord established a claim of \$3558.77. As she was partially successful, I find her entitled to recover half of the filing fee in the amount of \$50.00. Pursuant to Section 67 of the Act, I grant the landlord a monetary order for the sum of \$3608.77. This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: February 24, 2011.

Residential Tenancy Branch