



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their Application requesting that a 10 day Notice to End Tenancy for unpaid rent be cancelled and to recover the filing fee for the Application.

The Landlord filed her Application seeking to end the tenancy and obtain an order of possession due to unpaid rent, requesting a monetary order for compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to 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 Matters

At the outset of the hearing the parties explained that the Tenants had vacated the rental unit on December 3, 2011. The Landlord requested that her Application be amended to include a claim for December 2011 rent, as the Tenants had not given her the required Notice to End Tenancy and had not paid her the December rent.

The Tenants object to this amendment because they claimed the Landlord had caused them many problems during the tenancy and there were bed bugs in the rental unit. I note that the alleged bed bugs and other problems were the subject of prior hearings under different file numbers and before other Dispute Resolution Officers.

The hearing before me had been adjourned from November 28, 2011, in order to allow one of the Tenants to attend a medical procedure. As a result, on November 28, 2011, I

adjourned the hearing to December 15, 2011. At the time I was allowing the adjournment on November 28, 2011, I explained to the appearing Tenant that while the November rent was a matter under dispute, the Tenants were required to pay the Landlord the rent for December 2011 under the Act. The Tenant agreed that they would pay the Landlord the December rent on time. In fact the Tenants did not pay the rent.

Instead, the day after the adjourned hearing, November 29, 2011, the Tenants gave the Landlord notice they were ending the tenancy on December 2, 2011. The Tenants then vacated the rental unit on December 3, 2011, some four days later.

In regard to the Landlord's request to amend the application, I find that the Tenants will not be prejudiced as a result of this amendment as they knew or ought to have known that December rent would be an issue in this hearing, given the history of this dispute, and the fact they refused to pay the rent. Under section 26 of the Act the Tenants were not allowed to withhold any rent from the Landlord unless there is some authority under the Act allowing them to do so, such as an order from a Dispute Resolution Officer allowing this. Here the Tenants had no authority under the Act to withhold rent for December.

Therefore, pursuant to section 64 of the Act, and the rules of procedure, I allow the Landlord to amend her Application to include a request for the December rent, as I find this is an efficient and just means to resolve this dispute.

The Tenants testified during the hearing that the Landlord could keep their security deposit.

As the Tenants have vacated the rental unit the issue of possession is no longer required to be dealt with and is dismissed.

Issue(s) to be Decided

Were the Tenants allowed to withhold a portion of the rent for November 2011?

Is the Landlord entitled to December 2011 rent?

Background and Evidence

On October 31, 2011, a drain pipe from the garburator in the rental unit burst, causing a flood in the laundry room below.

The Landlord alleges that the Tenants caused this, as they had put the “guts” of four to six pumpkins down the garburator. The “guts” plugged and damaged the water line causing it to burst, according to the Landlord. The Landlord explained that by the “guts” of the pumpkin she meant the internal pumpkin flesh, stringy pieces and seeds. The Landlord alleges that at the start of the tenancy she told the Tenants to avoid using the garburator.

The Landlord also referred to the tenancy agreement which incorporated an addendum. Clause 5 of the addendum required the Tenants to pay for all damages caused by the Tenants or their guests. Clause 7 requires, “All non-recyclable & food waste is to be bagged and deposited in the garbage can.”

A witness who appeared testified that she is the occupant of the lower rental unit owned by the same Landlord.

The witness testified that on October 31, 2011, she heard a loud noise in the laundry room. When she went to inspect the noise, she found pumpkin all over the laundry room and coming out of a pipe, with a little bit of water. The witness testified she informed the Tenants of this and one of the Tenants turned the water on again in the sink for the rental unit and caused further flooding.

The witness testified that the burst pipe was completely filled with pumpkin, as well as a sink in the laundry room. The witness testified that she saw the seeds, pulp and “stringy bits” in the laundry room. She testified she helped the Tenants to clean up the pumpkin mess in the laundry room and lent them her shop vacuum cleaner.

The witness testified that later in the evening on that day, Halloween, she saw four pumpkins with candles in them on the porch of the Tenants’ rental unit. She testified that the Tenants had left the rental unit leaving the candles in the pumpkins burning, unattended. The witness testified she blew out these candles as no one was around watching out for these.

The Tenants had no questions for the witness in cross examination.

The Tenants denied being told by the Landlord they could not use the garburator. They testified that they used the garburator in a normal fashion, putting small bits of the pumpkin down the sink, a little at a time, with lots of water running.

The Tenants testified they had used the garburator many times during the tenancy and had no prior problems with it. They testified they did not jam the whole pumpkin down the garburator.

The Tenants did not pay their rent on November 1, 2011, the day it was due. They sent the Landlord an email informing her that they would not pay November rent until they had the bill from the plumber who repaired the pipes and then they would deduct the bill from the rent due the Landlord. They felt the Landlord had to pay for these repairs.

The Tenants and the Landlord then had an exchange about who should pay for the cost of the plumber to repair the damaged pipe. The Tenants told the Landlord it is her responsibility, as they were not at fault. The Landlord claimed the problem was caused by the misuse of the garburator by the Tenants and they should pay for it.

The Tenants had a plumber come out on November 3, 2011, and paid the plumber \$308.00.

They informed the Landlord they were deducting \$308.00 from the November rent and paid the Landlord the balance of \$1,192.00 for November rent, which lead to the Landlord issuing the 10 day Notice to End Tenancy for unpaid rent.

The Tenants testified that on November 28, 2011, the day the first hearing was adjourned, they did not know they were moving out. The Tenants testified that on November 29, 2011, when they sent the Landlord an email to end the tenancy, they knew they were not giving the Landlord the full month of notice as required under the Act. They testified they asked the Landlord to not charge them all the rent for December, just the two days they were there. The Landlord declined this request.

The Tenants argued they did not feel they should have to give the Landlord the notice as required under the Act, since the Landlord was irresponsible and the Tenants had problems with the rental unit.

Analysis

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

As the sole issue in the Tenants' Application dealt with a request to cancel the Notice to End Tenancy and they ended up vacating the rental unit, their Application is dismissed without leave to reapply.

As to the Landlord's Application, I find that the Tenants are responsible for the damage caused to the pipe, due to putting an excessive amount of pumpkin into the garburator. The evidence indicates the Tenants had four pumpkins for Halloween festivities. On a balance of probabilities, I find it is more likely than not that an excessive amount of pumpkin "guts" were put into the garburator by the Tenants. I find this problem required the plumber to perform work, and that the Tenants are solely responsible to pay for the cost of the plumber.

I further find that the Tenants had no right or authority under the Act to deduct this amount from the rent due to the Landlord. Therefore, I order that the Tenants pay the Landlord the sum of \$308.00 that they deducted from the November rent.

I further find that the Tenants must pay the Landlord \$1,500.00 in rent for the month of December.

Under section 45 of the Act the Tenants were required to give the Landlord no less than one month of notice that they were moving out. The Tenants testified that they were aware of this when they left the rental unit, but they felt they were entitled to not pay the rent. I find that the Tenants had no such entitlement under the law to avoid paying the December rent. Therefore, I order the Tenants to pay the Landlord \$1,500.00 in rent for December 2011.

I find that the Landlord has established a total monetary claim of **\$1,858.00** comprised of \$308.00 in rent for November, \$1,500.00 in rent for December and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord may retain the deposit of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,108.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants had no right or authority under the law to withhold \$308.00 in November rent from the Landlord. Furthermore, the Tenants failed to give the Landlord the required notice to end tenancy under the Act, and therefore owe the Landlord \$1,500.00 in rent for December.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 21, 2011.
