



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC, FF
Tenant: CNR, ERP, FF, MNDC, RP, RR

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenants. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants' application (file 786155) was originally scheduled for a hearing on January 17, 2012, which was adjourned and joined with the landlord's application (file 785597) to be heard together on January 18, 2012.

The landlord did not attend the hearing but was represented at the conference call hearing by an agent who provided affirmed testimony and called one witness. Both tenants also attended and gave affirmed testimony. The parties were also provided with an opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the parties stated that the tenants moved from the rental unit on January 15, 2012, and therefore, the tenants' applications for an order cancelling a notice to end tenancy, for an order that the landlord make emergency repairs for health or safety reasons, for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and for an order that the landlord make repairs to the unit, site or property are withdrawn. The landlord's agent

did not agree to withdraw the application for an Order of Possession because the tenants have not yet returned the keys to the rental unit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agree that this month-to-month tenancy began in mid-May, 2011 and ended on January 15, 2012. Rent in the amount of \$1,350.00 per month was payable by instalments of \$675.00 on the 1st and 15th days of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$675.00.

The landlord's agent testified that as at December 27, 2011 the tenants are in arrears of rent the sum of \$3,375.00. On that date, the landlord's agent met the tenants to give a notice to end tenancy. The tenants agreed at that time that they owed rental arrears and told the landlord's agent that they would borrow the money. The tenants also offered to repair the house in exchange for cancelling rental arrears, but the landlord's agent did not agree. The tenants had paid half of October's rent on October 1, 2011 but have made no payments since. The tenants owe \$675.00 for October, 2011 as well as \$1,350.00 for November, \$1,350.00 for December, 2011 for a total of \$3,375.00 and the landlord claims and additional \$1,350.00 for January, 2012, as well as loss of revenue for February, 2012.

A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was provided by the tenants in advance of the hearing, although only 1 page of the 2-page form has been provided. The notice is dated December 6, 2011 and contains an expected date of vacancy of December 15, 2011, but was not served on the tenants until December 27, 2011. The notice states that the tenants have failed to pay rent in the amount of \$3,375.00 that was due on December 1, 2011.

The landlord's witness testified that the tenants advised that the roof leaked in November, 2011. The witness did not look at it but sent a repair person about a week later. The repair person told the witness that the entire roof needed to be replaced, but he fixed the leak, and the witness, who was an employee or agent of the landlord, paid the repair person. The witness also received information from one of the tenants that it was fixed. The last time the tenants emailed the witness was in December, 2011, at which time they advised about the leaky roof again, but no further complaints since. The witness also testified that the tenants weren't available; they didn't answer any further phone calls.

During cross examination, the witness was asked what the witness told the tenants in mid-May prior to moving into the rental unit about water stains on the ceiling. The witness responded that the previous tenant didn't say anything about it for 2 years and the roof did not leak. The witness also told the tenants at that time that the rent was low, and therefore minor repairs were the responsibility of the tenants. The tenants had complained about a leak but told the witness that they had completed a temporary fix. The witness denies that the tenants told the witness again in the summer that it leaked, but the landlord and witness were both present when the witness promised to fix the roof by the end of the summer. The roof did not get fixed, but the leaking problem was fixed. Thereafter, the witness told the tenants that the rent had to be paid in full before the roof would be fixed.

The first tenant testified that in mid-May the tenants looked at the property but were apprehensive about water stains on the ceiling of the dining room. The landlord told the tenants that it didn't leak. Then in early June, the ceiling in the dining room started to drip water and the water marks got bigger. The tenant put a tarp over the leak and advised the landlord's agent, being the witness that testified for the landlord at this hearing. The witness advised that he'd let the owner know and it would be fixed as soon as possible. The tenants did not hear back from the witness or the landlord and in mid-June the main bedroom ceiling started to leak. The tenant looked again and found a hole in the roof about 1 foot square with plywood covering it. The tenant covered that with another tarp but the leak continued. The witness was called again and said that because the tenants hadn't complained again he thought that it was okay, and again said he'd tell the owner. Still nothing was done.

In late July, 2011 the tenant met with the witness and the owner who promised to replace the roof before the end of the summer, but nothing was done until the tenant told the witness that no more rent would be paid until the roof was fixed. Two roofers showed up and said the whole roof needed replacing. The ceiling caved in in the dining room and the house is now mouldy, wet and water has caused the drywall to bubble

and break. The tenants were required to stay with friends for about 20 days in total; the tenants are a family of 4.

The tenant also testified that 60 to 70 hours has been spent by the tenant attempting to fix the leaks, and the tenant claims \$15.00 to \$20.00 per hour for that labor. The tenant also testified to being concerned about asbestos because the rental unit is an old house.

During cross examination, the tenant admitted that the parties had agreed that the tenant would fix minor repairs for anything under \$200.00. The tenants re-tarped the roof over and over.

The other tenant testified to finding the 1foot square hole in the roof. The hole went through the roof entirely and partially into the ceiling. When the two agents of the landlord attended, the tenant asked them to look at the ceiling but they refused. They told the tenant that they were only there to talk about unpaid rent. The tenant stated that 1 bucket was kept in the bedroom and 3 in the dining room at all times. Since the roofers were there, the tenant has not been able to stop the water.

The tenant also stated that the keys to the rental unit will be returned today.

Analysis

The *Residential Tenancy Act* states that a landlord is required to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The *Act* also states that a landlord's obligations in that regard apply whether or not a tenant knew of a breach by the landlord at the time of entering into the tenancy agreement. Another section of the *Act* that applies to this dispute is Section 5 which states that landlords and tenants may not avoid or contract out of the *Act* or the regulations and that any attempt to avoid or contract out of the *Act* or the regulations is of no effect. Therefore, I must find, in the circumstances that the parties' agreement for the tenants to complete minor repairs is contrary to the *Act* and is of no effect. The onus is on the landlord to maintain the residential property regardless of the agreement made by the parties at the outset of the tenancy.

With respect to the landlord's application for an Order of Possession, I decline to issue one because the tenants have vacated the rental unit. The tenants have agreed to return the keys to the landlord or the landlord's agent and if the tenants fail to do so, the

landlord may make an application for dispute resolution with respect to the cost to re-key the locks.

With respect to the landlord's application for unpaid rent, the tenants have not disputed that rent remains unpaid for half of October, November, and all of December, 2011. Therefore, I find that the landlord is entitled to recovery of rent. The *Residential Tenancy Act* states that tenants may not withhold rent from the landlord even if the landlord fails to comply with the *Act*.

With respect to the tenants' application for a monetary order, firstly, the landlord's agent did not dispute the tenant's testimony that 60 to 70 hours was spent by the tenant on roof repairs, and the tenant claimed \$15.00 to \$20.00 per hour for that service. In the circumstances, I find that lower amounts claimed by the tenants are justified. Therefore, I find that the tenants are entitled to a monetary order in the amount of \$900.00 for roof repair.

I also heard the undisputed testimony of the tenant that agents for the landlord refused to look at the damage to the ceilings in the rental unit and were only concerned with the collection of rent. The landlord clearly had no intentions of rectifying the situation despite promises to fix the roof before the end of the summer. The tenants remained in the rental unit until the landlord had the tenants served with a notice to end tenancy for unpaid rent, and the tenants ultimately moved on January 15, 2012, which is far later than the end of the summer of 2011. The tenants also testified that the ceiling in the dining room started to drip and water marks got bigger, and upon notifying the landlord the tenants were promised it would be fixed as soon as possible. The landlord did not do anything to rectify the problem, and therefore, I find that the tenants are entitled to recovery of half the rent from June to December, 2011. The tenants have paid rent up to the first half of October, 2011 in the amount of \$1,350.00 per month. The tenants also paid the landlord the full amount of rent for June, July, August, and September, 2011 in the amount of \$5,400.00 and I find that the tenants are entitled to compensation of half that amount, or \$2,700.00. I further find that October's rent has been paid in full. I further find that the tenants owe the landlord half a month's rent for November, half a month's rent for December, 2011, and one quarter of a month's rent for the month of January, 2012, for a total of \$1,687.50.

With respect to the tenants' claim for a monetary order for being required to stay elsewhere for a period of 20 days or more, the order for compensation of half of the rent for June to December is meant to cover that expense, and no further award for compensation will be granted.

The tenants also claimed damage to personal property but did not establish any entitlement at the hearing, and therefore, the application cannot succeed.

The *Residential Tenancy Act* also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss. In this case, I find that the landlord did nothing to mitigate any loss of revenue. The landlord refused to complete repairs required, and therefore, the landlord has failed to establish that the tenants owe the landlord anything for loss of revenue for the rental unit. The landlord's application for loss of revenue for January and February, 2012 is hereby dismissed without leave to reapply.

Having found that the landlord owes the tenants more money than the tenants owe the landlord, the landlord's application to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the landlord's claim must be dismissed.

In summary, I find that the tenants owe rent in the total amount of \$1,687.50. The landlord owes the tenants \$900.00 for repairs to the roof, and recovery of rent paid in the amount of \$2,700.00. The landlord also holds a security deposit in the amount of \$675.00 which the tenants are entitled to recover. In determining the amount of any monetary award, I find it prudent to set off the landlord's monetary award from the tenants' monetary award, and the tenants will receive a monetary order for the difference:

Award to Landlord	Award to Tenants	Difference
0	\$900.00 (repairs)	\$900.00
0	\$675.00 (security deposit)	\$675.00
Total		\$3,587.50

Since both parties have been partially successful with the applications before me, I decline to order that either party recover the filing fee from the other for the cost of the applications.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,587.50. This order is final and binding on the parties 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: January 20, 2012.

Residential Tenancy Branch