



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

This hearing was adjourned to allow the tenants opportunity to see the landlords' evidence package as it was served late due to the hospitalization of one of the landlords. At the reconvened hearing held today one of the tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant claimed the landlords evidence was not received however the landlord testified it was sent by registered mail on July 13, 2013. When documents are sent by registered mail they are considered to have been received five days after posting pursuant to s, 90 of the Act. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords permitted to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy originally started on April 01, 2012 for a three month term. A new tenancy agreement was entered into on July 01, 2012 for a fixed term that was due to expire on March 01, 2013. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$1,200.00 per month plus 60 percent of Hydro. The tenants paid a security deposit of \$600.00 on March 31, 2012.

The landlord attending testifies that in March, 2013 the tenants proposed paying a reduced rent of \$1,100.00 per month and then the tenants would pay 100 percent of the Hydro bills. The landlords agreed to the tenants' proposal and a new tenancy agreement was drawn up to show this change. However the tenants failed to sign the new agreement but did start to pay the reduced rent from April when the landlords agreed the tenants could pay a reduced rent of \$1,000.00 for Hydro from March and April and then from May the rent would be \$1,100.00 and the tenants would pay all the Hydro.

The landlord testifies that the tenants only paid rent of \$594.00 for June and paid no rent for July. The landlords had issued the tenants with a One Month Notice to End Tenancy on April 17, 2013 for cause and the tenants failed to dispute that Notice or move from the rental unit on the effective date of the Notice of May 31, 2013.

The landlord testifies that the tenants moved out but did not tell the landlords when they were going so an inspection of the property could be conducted. The landlord testifies that due to the tenant's failure to notify the landlords of their intention to move out at the end of July, the landlords were unable to re-rent the unit for August and therefore seek to recover unpaid rent for August of \$1,100.00.

The landlord testifies that the basement suite was vacant and due to the dirty garbage, the tenants' old camper parked on the drive and the broken glass which the tenants failed to clean up, the landlords had to tell potential tenants that an eviction Notice had been issued to the upper tenants for cause. The landlord testifies that the tenants' camper was not on wheels but rather on blocks and the tenants had several vehicles including the camper parked on the drive which also blocked access for any tenants in the lower suite. The condition of the outside of the basement unit made it difficult for the landlords to re-rent the basement unit and the landlords therefore seek to recover the rent for that unit from the tenants for May of \$975.00.

The landlord testifies that the tenants used an additional dish washer which the tenants hooked up to their sink. This caused a blockage in the sink and the sink overflowed and leaked water into the basement unit. The landlord testifies that they had to get a plumber in to unblock the pipes in the sink in the tenants unit and seek to recover the cost for the plumber of \$156.24. An invoice for this work has been provided in evidence.

The landlord testifies that as a consequence of the water leak there was a silverfish infestation in the basement unit. The landlord had to get an exterminator into spray the walls in the lower site and the exterminator was also asked to speak to these tenants

and spray their unit also. The landlord seeks to recover the cost for the exterminator of \$210.00. A copy of the invoice has been provided in evidence.

The landlord testifies that they had estimated the work to do repairs and clean up the property after the tenants moved out at \$2,500.00. The landlord testifies that this cost was not as much as estimated and came to \$520.00. The tenants failed to cut the grass in the back yard and as a result the landlords had to rent a heavy duty weed eater and seek to recover that cost of \$300.00. There was a broken window which was repaired for \$120.00 and the tenants failed to clean the carpets. The carpets were cleaned by the landlords at a cost of \$100.00. The landlords have not provided any receipts for this work.

The landlords seek to keep the tenants security deposit of \$600.00 and to recover the \$50.00 filing fee from the tenants.

The tenant disputes the landlords claim. The tenant testifies that the original agreement was that the lower tenants or the landlord would pay 40 percent of the Hydro. As the landlords failed to pay this the tenants reduced their rent for June to \$594.00. The tenant agrees that they failed to pay rent for July and states they could not afford to pay the rent and put a security deposit down on a new place. The tenant testifies that the new agreement was not valid as the tenants did not sign it.

The tenant disputes the landlords claim for a loss of rent for the lower unit. The tenant testifies that the garbage left outside the unit was left by the last tenant residing in that unit and was not the responsibility of the tenants to remove. The tenants in the lower unit had an agreement to maintain the back yard and the upper tenants' agreed to maintain the front yard. The tenant testifies that the landlord left it up to the tenants to make this agreement and as the lower tenant had a dog that tenant agreed to maintain the back yard as the upper tenants did not want to have to pick up her dog's feces.

The tenant testifies that the camper was in good working order and insured. The camper occupied the tenants' allocated parking space on their half of the driveway. The tenant testifies that their other vehicle was parked on the street.

The tenant disputes the landlords' claim that their dishwasher overflowed. The tenant testifies that the leak came from the upstairs toilet and the landlord has replaced that toilet without using a licensed plumber and the leak was not fixed. The tenant testifies that he did not have a water leak in his unit but the downstairs tenants still complained of a water leak. The tenant testifies that the roof also leaked around the fireplace and the landlords simply wrapped a plastic bag around the chimney. The landlords were absent landlords who did not do maintenance on the property.

The tenant testifies that he has no idea about any broken window as this must have occurred after the tenants move out. The tenant testifies that the landlord threatened the tenant and the police were called to look around the suite a week after the tenants moved out and the police commented that the suite was left in a good condition.

The tenant testifies that the carpets were cleaned by the tenants and the suite was left in a better condition than when the tenants moved in.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses

Section 26 of the Act states: *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.*

The tenant argues that they did not sign the new agreement which reduced the rent to \$1,100.00 and the tenants taking responsibility for all the Hydro. However I have considered the landlords evidence and the e-mail correspondence between the parties and find that this proposal to lower the rent and for the tenants to pay all the Hydro was the tenants' proposal. The landlords agreed to this and sent the tenants a new agreement to sign. The tenants failed to sign the new agreement but started to pay the reduced rent. I therefore find the tenants agreed to this proposal that the tenants themselves suggested. The tenants therefore were not entitled to pay a reduced rent for June for unpaid utilities and owe rent of \$506.00 to the landlords. I further find the tenants owe rent of \$1,100.00 to the landlords for July. The total amount of outstanding rent is **\$1,606.00** and the landlords are entitled to a monetary award to recover this from the tenants.

With regard to the landlords claim to recover unpaid rent for August; the One Month Notice had an effective date of May 31, 2013. The tenants did not dispute that Notice and should have therefore moved from the unit on that date. The tenants continued to reside in the unit until July 31, 2013 and failed to inform the landlords when they were moving out. The landlords have not shown what steps they took to mitigate their loss by getting the unit re-rented as quickly as possible for August therefore I find the landlords are entitled to a reduced amount of loss of income for August of \$550.00.

With regard to the landlords claim for a loss of rent for the lower suite; the tenant disputes the landlords claim that the garbage located on the property was the tenants or that their camper was in a poor condition. When one parties' evidence is contradicted by the other then the burden of proof falls to the person making the claim. In this matter the landlords would be required to provide corroborating evidence to support their claim that the tenants made it difficult to re-rent the lower suite. The landlords have not provided any corroborating evidence and when it is one persons word against that of the other then the burden of proof is not met. Consequently the landlords claim for \$975.00 is dismissed.

With regard to the landlords claim for a bill to unblock the pipes due to the tenants use of a dishwasher in their sink; the tenant disputes that their dishwasher caused the sink to overflow and state the water leak came from a leaking toilet which was not repaired correctly and from a leak in the roof. The landlords have provided a copy of the invoice from the plumber however this invoice does not state what caused the leak into the lower unit. Therefore the landlord has insufficient evidence to show that the tenants were responsible for the leak and as such the landlords claim for the plumber and the exterminator must be dismissed.

With regard to the landlords claim for cutting the grass, the window repair and cleaning the carpets; the landlords have provided no evidence to support their claim that the tenants were responsible for maintaining the back yard and that this was not the reasonability of the lower tenants, the landlords have provided no evidence to show the tenants were responsible for the broken window and the landlords have provided no evidence that the tenants failed to leave the carpets in a clean condition. Furthermore the landlords have provided no evidence to show the actual costs incurred for these three items. Consequently I find the landlords have not met the burden of proof required and therefore their claim for \$520.00 is dismissed.

I find the landlords are entitled to keep the security deposit of **\$600.00** and this amount will be offset against the unpaid rent pursuant to s. 38(4)(b) of the *Act*. I find as the landlords have been partially successful with their claim that the landlords are also entitled to recover the **\$50.00** filing fee pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords as follows:

Unpaid rent June and July	\$1,606.00
Loss of rent for August	\$550.00
Less the security deposit	(-\$600.00)
Plus the filing fee	\$50.00
Total amount due to the landlords	\$1,606.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,606.00** pursuant to s. 67 of the *Act*. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

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: August 23, 2013

Residential Tenancy Branch

