



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPR, MNR, MNSD, MNDC, OLC, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for landlords' use and for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants security deposit in partial satisfaction of the monetary order requested pursuant to section 38;

The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony that the notice of hearing package and the submitted documentary evidence were served to the other party via Canada Post Registered Mail. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence served by the other party. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

The landlords' agent (the landlords) withdrew the two portions of the landlord's application for possession of the rental unit (OPL and OPR) as the tenants have already vacated the rental unit and that this was added to the application in error. No further action is required for this portion of the landlords' claim.

The tenants have withdrawn their request for an order for the landlord to comply (OLC) as this was also added in error. No further action is required this portion of the tenants' claim.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid utilities and for money owed for cleaning and repairs?

Are the landlords entitled to retain all or part of the security deposit to offset their monetary claim?

Are the tenants entitled to a monetary order for money owed or compensation for loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties agreed that no signed tenancy agreement was signed, but that a verbal agreement was made in which this tenancy began on November 1, 2014 on a month-to-month basis. The monthly rent began as \$500.00 payable on the 1st day of each month to \$1,000.00 when the tenant's girlfriend moved in with him. Both parties also agreed that a \$250.00 security deposit was paid by the tenant via service in lieu of cash.

The landlords seek a monetary claim of \$1,445.70 which consists of:

\$1,350.00	Unpaid Utilities
\$95.20	Cleaning
\$53.70	Damages

The landlords clarified that both parties agreed that the tenants would forfeit their \$250.00 security deposit to offset the damage and cleaning for the rental unit at the end of the tenancy. The tenants confirmed that such an agreement was made. Both parties agreed that the total damages and cleaning totalled, \$345.70 and that the difference owed after deducting the \$250.00 security deposit was \$95.70. The tenants confirmed that they did owe this amount to the landlords, but that it was not paid because of the dispute over utilities. The tenants conceded this portion of the landlords' claim by agreeing to them.

The landlords stated that when the tenancy began a verbal agreement was made that utilities were included with the rent and that if the utility costs went up the tenant would pay a portion. The tenants confirmed this agreement. The landlords then stated when the rent

increased to \$1,000.00 that an agreement was made for the tenants to also pay an additional \$150.00 for utilities. The tenants disputed this stating that no such agreement was made. The landlord stated that all of the agreements were made verbally and that there was no supporting evidence of the agreement.

The tenants seek a monetary claim of \$3,000.00 which consists of:

\$1,000.00	Compensation for complying with 2 Months' Notice to End Tenancy by moving out
\$2,000.00	Compensation as the Landlords have failed to use the unit for the stated purpose

Both parties confirmed in their direct testimony that the landlords withheld the 1 Months Compensation after the tenants complied with the 2 Month Notice as a dispute arose over payment of utilities.

The tenants stated that the rental unit was not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. The tenants stated that D.M. is not the owner of the rental property who has moved into the rental unit. The landlords disputed this stating that D.M. is the landlord's agent and has moved into the rental unit immediately after the tenants had vacated it. The landlords stated that D.M. acts as the owner's agent in dealing with the rental property. The tenant confirmed that the landlord's agent did move into the rental unit, but that the landlord's agent was not the owner.

Both parties agreed that the 2 Month Notice dated September 21, 2015 states the reason of the notice as:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse.

I note that a hand written addition states: Landlord, Caretaker/Manager of Property as per Owner. Both parties agreed that the landlord's intent was for the landlord/caretaker, D.M. to move into the rental unit and assume responsibilities as an onsite manager/agent of the landlord/owner.

Analysis

I find based upon the undisputed affirmed evidence of both parties that the tenants have conceded the \$95.70 portion of the landlords' claim as it is clear that both parties agreed that the tenants would forfeit the \$250.00 security deposit to the landlord in order to offset

the \$345.70 cleaning and damages claim. The landlords have been successful in this portion of the claim.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the landlords' claim for recovery of utility costs totalling, \$1,350.00, the landlords have claimed that an agreement was made with the tenants to pay an additional \$150.00 per month for utilities based upon a verbal agreement. The tenants have disputed this claim stating that no such agreement was made for the utilities and that the original tenancy agreement was for the utilities to be included. The tenants stated that the increase for the second person was why the rent was increased from \$500.00 to \$1,000.00. I accept the affirmed evidence of both parties and find on a balance of probabilities that the landlords have failed to establish a claim for utilities. The landlord has provided conflicting and contradictory evidence to that of the tenants. The landlords are unable to provide sufficient evidence to support their claim that an agreement was made with the tenants for utilities. I find that the landlords have failed to provide sufficient evidence to satisfy me that that an agreement was made for the tenant's to pay the additional \$150.00 per month for utilities. This portion of the landlords' claim is dismissed.

I accept the undisputed affirmed evidence of both parties that the tenants complied with the landlords' 2 Month Notice dated September 21, 2015 and are entitled to compensation equal to one month's rent of \$1,000.00. Both parties agreed that the landlords have withheld this amount pending the dispute of the utilities. As such, I find that the tenants have established a claim for the \$1,000.00 in compensation due as per the 2 Month Notice.

The Residential Tenancy Act defines a Landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Based upon this definition and the understanding of both parties having agreed that the landlord, D.M. is the owner's agent and has moved into the rental unit, I find that the tenants have failed to provide sufficient evidence to establish a claim that the landlords have failed to use the rental unit as per the listed intended purpose of the 2 Month Notice. This portion of the tenants' claim is dismissed.

The landlords have established a total claim of \$95.70.

The tenants have established a claim of \$1,000.00. The tenants are also entitled to recover of the \$50.00 filing fee.

In offsetting these claims, I find that the tenants are entitled to a monetary order for \$954.30.

Conclusion

The tenants are granted a monetary order for \$954.30.

This order must be served upon the landlords. Should the landlords fail to comply with the order, this order may be filed in the Small Claims Division of the Provincial 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: August 19, 2016

Residential Tenancy Branch