



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNDC, FF
Tenants: CNR, MNDC, ERP, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order for unpaid rent. The tenants sought to cancel a notice to end tenancy; a monetary order for compensation; and an order to have the landlord complete repairs and emergency repairs.

The hearing was conducted via teleconference and was attended the landlord and an agent for the tenants.

I note the parties had attended a hearing on July 14, 2016 to hear the tenants' Application for Dispute Resolution. At that hearing the Arbitrator amended the tenants' Application to exclude the matter of possession and their request for repairs and emergency repairs as the parties had agreed the tenants were no longer living in the rental unit.

The Arbitrator also adjourned that matter to be heard with the landlord's Application for Dispute Resolution that was originally scheduled for this hearing date. I note also that in conjunction with the previous Arbitrator's finding that the tenancy had ended I find the portion of the landlord's Application requesting an order of possession is also moot. I amend the landlord's Application to exclude the matter of possession.

Further, on July 18, 2016 the landlord submitted an Amendment to an Application for Dispute Resolution seeking to reduce his claim from \$6,000.00 to \$4,500.00. The landlord indicated he no longer sought to include unpaid rent for the month of August 2016, reducing the total claim to \$4,000.00 and he wanted to add a claim of \$500.00 for cleaning of the property. The landlord provided documentary evidence that the amendment form was served to the tenants by registered mail. I accept the landlord's amendments.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for cleaning of the residential property and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for compensation and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on June 22, 2015 for a 1 year and 1 day fixed term tenancy beginning on July 1, 2015 for a monthly rent of \$2,000.00 due on the 1st of each month with a security deposit of \$1,000.00 paid.

The landlord submitted the tenants failed to pay rent for the month of June 2016 so he issued a 10 Day Notice to End Tenancy for Unpaid Rent on June 8, 2016 with an effective vacancy date of June 18, 2016. The tenants did dispute the Notice by filing an Application for Dispute Resolution as noted above however the tenants vacated the rental unit prior to their original hearing.

The tenants submitted that they moved out of the rental unit on June 28, 2016. The landlord submitted that the tenants had left some things behind including parking cars in the driveway until July 10, 2016. The tenant confirmed they had left some items behinds, unintentionally.

The landlord submitted the tenants failed to pay any rent for the months of June and July 2016 and seeks to recover these losses in this Application. The tenants confirmed rent was not paid for June 2016 because the landlord had failed to deal with some of the problems with the property.

The landlord also submitted that the tenants failed to clean the residential property and seeks \$500.00 for cleaning; junk removal; changing locks and replacement of the garage door opener. In support of this claim the landlord has submitted several photographs. The landlord did not submit any receipts or invoices for any of the above noted work.

The tenants seek compensation for the landlord's failure to maintain the property; pest control; losses due to electrical problems and water leaking into the garage.

The tenants submitted the landlord failed to deal with a rat and ant infestation and as a result the tenants seek \$450.00. The tenants did not submit any documentary evidence of a rat or ant infestation other than their written statement and a photograph of rat droppings but they did provide a receipt dated April 12, 2016 for "pest control" costs.

The landlord submitted that the tenants had informed him that they had purchased mouse poison and insecticide. He further states that because he never heard from the tenants again about the problem he thought it was resolved.

The tenants also sought compensation for grass cutting in the amount of \$250.00. They noted in the Monetary Order Worksheet that they had the grass cut twice at \$75.00 each time for a total of \$150.00. In their written description of this claim the tenants stated that they paid the lawn cutter \$100.00 each time and gave him a \$50.00 tip. The landlord points to the tenancy agreement indicating that it does not indicate inclusion of landscaping or yard maintenance as part of the tenancy.

The tenants submitted that there were two occasions when the power went out and they could not access the fuse box. They stated they lost approximately \$150.00 in food each time. The tenants seek \$300.00 for lost food. The tenants have provided no documentary evidence other than their written statement and they have provided no receipts for any losses.

The landlord confirmed that control panel is in another rental unit and that on any occasions that the power went out it was turned on within a reasonable time. The landlord also asserts that the only time the power may have gone out was when the tenants were using their commercial grade hair dryers.

The tenants also seek compensation in the amount of \$125.00 for a hair dryer burning out because of the electrical problems. Other than their written statement the tenants have provided no additional documentary evidence and they have provided no receipts for this loss.

The tenant sought compensation in the amount of \$2,916.00 in total for losses suffered as a result of a water leak in the garage. The tenants have submitted several photographs to show the condition of any of the items claimed for however they did not submit an invoices/receipts or any documentation as to how they established the value of these losses. The compensation is broken down as follows:

Description	Amount
Tools – rusted	\$1,000.00
Books and paintings	\$500.00
3 pieces of luggage	\$400.00
12 suits – dry-cleaning	\$276.00
3 long coats – dry-cleaning	\$90.00
Clothing thrown away	\$650.00
Total	\$2,916.00

The tenants submitted they were never informed by the landlord of a water infiltration problem in the garage at any time despite knowing about it before the start of the tenancy. They assert that as a result they had a number of items they were storage in the garage damaged and destroyed.

The landlord submitted that the tenants were well aware of the leak because in August 2015 they arranged for repairs to be made to the roof that the landlord allowed them to deduct from their August rent payment.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 of the *Act* states that 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 the right under this *Act* to deduct all or a portion of the rent.

The tenants did not dispute non-payment of rent for the month of June 2016 and as such I find the landlord is entitled to a monetary award in the amount of \$2,000.00. While I accept that the tenants may have moved the majority of their belongings out of the rental unit by June 28, 2016 I find that the tenants had left cars and other belongings on the property that would lead the landlord to believe they had not yet vacated the property, until July 10, 2016. As such, I find the tenants continued to hold possession of the rental unit on and after July 1, 2016 when rent was due for the next rental period. As a result, I also find the landlord is entitled to rent for the month of July 2016 in the amount of \$2,000.00.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

While I accept, from the testimony of both parties, the landlord was required to remove some large items from the rental unit whether left behind unintentionally or not. I find, however, the landlord has provided no proof that they needed to clean the property; change locks or replace a garage door opener.

Despite my finding above that the landlord did have to remove some large items left behind at the rental unit, I find the landlord has provided no evidence that he has incurred any costs as a result. Therefore, I find the landlord has failed to establish he has suffered a loss and I dismiss this portion of the landlord's claim.

Section 32(1) of the *Act* requires the landlord must 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 make it suitable for occupation by a tenant.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

Residential Tenancy Policy Guideline #1 stipulates that generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

In regard to the tenants' claim for compensation for grass cutting, I find the tenancy agreement does not provide any specificity as to who is responsible for the cutting the grass in this tenancy. As such, I rely upon Policy Guideline #1 as noted above, that generally a tenant is responsible for routine yard maintenance. As a result, I dismiss the tenants' claim for \$250.00.

As to the tenants' claim for compensation for electrical problems I find the tenants have failed to provide any evidence at all that the power was out for any extended period of time that was within the control of the landlord. Furthermore, I find that even if power had been out the tenants have provided no evidence that they lost any food products or that they purchased replacement products and suffered a loss. I also find there is no evidence before me of any problems with a hair dryer resulting from any electrical problem caused by the landlord or that even if it did that the tenants suffered any loss. Therefore, I dismiss the tenants' claim for \$425.00 for electrical issues.

Regarding compensation for the tenants for reimbursement of costs associated with pest control. I accept that the landlord had been informed by the tenants that there was a pest problem. I also accept the tenants attempted to take care of the problem by purchasing poison and insecticide on there own.

However, I find there is no evidence before me that after the initial report the tenants ever reported a continuing problem. As such, I find the tenants have failed to provide sufficient evidence to establish that the landlord was aware of any problem that required attending. If a landlord is not informed of problem he cannot be held responsible to repair the problem. I dismiss the tenants' claim for \$450.00.

In regard to the tenants' claim for compensation for losses suffered as result of water infiltration in the garage. I prefer the landlord's evidence and I find the tenants were aware of the problem from the start of the tenancy. As a result, I find the tenants had an obligation to mitigate any losses by storing items in the garage in a manner that

recognized the moisture problems. As such, I find the landlord cannot be held responsible for these losses.

Even if the tenants had proved the landlord was responsible for these costs, I find the tenants have failed to provide sufficient evidence of the condition of these items prior to the start of the tenancy; then after the water problems; or the cost of any items or services were ever incurred. As a result, I dismiss the tenants' claim for

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$4,100.00** comprised of \$4,000.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 26, 2016

Residential Tenancy Branch