



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, FF
 CNC, CNR, OLC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied 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 landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for cause; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

Both landlords and both tenants attended the first scheduled hearing. Both landlords and one of the tenants gave affirmed testimony and the parties were also given the opportunity to question each other and make submissions. No issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing, the parties agreed that the landlords will have an Order of Possession effective at 1:00 p.m. on June 30, 2017, and the tenants withdraw the application for an order cancelling a notice to end tenancy for cause and for an order cancelling a notice to end the tenancy for unpaid rent or utilities. Therefore, I grant an Order of Possession in favour of the landlords effective that date and time.

The hearing did not conclude on the first scheduled date and I adjourned the hearing for continuation. My Interim Decision was provided to the parties. On the second day of the hearing, only one of the landlords attended the hearing, and the other landlord represented the absentee landlord.

Issue(s) to be Decided

The issues remaining to be decided are:

- have the landlords established a monetary claim as against the tenants for unpaid utilities?
- have the landlords established a monetary claim as against the tenants for damage to the unit, site or property, and more specifically for damages caused by sewage?
- should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically, an order that the tenants are not responsible for damages?

Background and Evidence

The first landlord (ND) testified that this fixed-term tenancy began on January 1, 2017, although the tenants moved in a few days early, and the tenancy was to expire on December 31, 2017 thereafter reverting to a month-to-month tenancy. A copy of a tenancy agreement has been provided as evidence for this hearing. Rent in the amount of \$1,300.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$700.00 as well as a pet damage deposit in the amount of \$700.00, both of which are still held in trust by the landlords. The rental unit is the lower suite in a house, and the upper unit is also tenanted. The landlords purchased the home in November, 2016 and the tenants moved in at the end of December.

The landlord testified that the parties signed a tenancy agreement at the beginning of December for rent in the amount of \$1,400.00 per month, for a tenancy to commence on January 1, 2017. The previous owner had told the landlords that it cost between \$150.00 and \$160.00 per month to heat the whole house, and that information was passed on to the tenants. The parties signed a new tenancy agreement for \$100.00 per month less, and both agreements specified that the tenants would pay 50 % of the utilities, and the tenants agreed to not use the hot tub.

The tenants didn't pay the utilities and the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated May 16, 2017 and contains an effective date of vacancy of June 1, 2017 for unpaid utilities in the amount of \$778.60 following a demand on April 12, 2017.

The landlord further testified that emails were exchanged by the parties, and the tenants agreed to pay 50% of the hydro, and e-transferred somewhere near \$500.00, which was 35%, and then withdrew the e-transfer.

Prior to the tenancy, on December 23, 2016 a plumber was hired to inspect and clean the sump pump, and the sewage was inspected and cleaned out. A copy of an invoice in the amount of \$823.20 has been provided as evidence for this hearing, which is dated December 23, 2017, and the landlord testified that the year is incorrect. The invoice shows charges for a call-out to

clean and inspect the sump pit, for removing the pump, checking and vacuuming, checking discharge, testing and cleaning up.

During the tenancy the tenants smelled sewage for awhile and never told the landlords, and damage occurred. The landlords learned of it from other tenants, and it should have been noticed by these tenants first. The landlords hired an emergency plumber and restoration company immediately. An invoice in the amount of \$892.63 has been provided for this hearing from the plumber as well as one from the restoration company in the amount of \$1,726.65. The plumber invoice indicates that the failed sump pump was replaced and that Restoration had to suck up the crawl space and sump pit first. It also states that rubber gloves, paper towels and feminine hygiene products were found. Labor was \$270.000 plus overtime at \$101.25, for a total bill of \$892.63. The Restoration invoice shows an emergency sewer backup, and flood technicians set up, extracted and dumped sewage from the crawl space.

The second landlord (SD) testified that the plumber found feminine hygiene products, however the tenant advised that she has gone through menopause and doesn't use them. The landlords had it cleaned out, and testified that pressure would push a clog to the sump and any clog would have left evidence if the items were there prior. Everything was clean and serviced.

The tenants called the landlord after they started to use the hot tub, and the landlord said that was okay. Hydro bills are in the landlord's name.

The landlords seek a monetary order as against the tenants in the amounts of \$1,726.65 for the restoration company; \$892.63 for the plumber's invoice; and \$778.60 for unpaid utilities; for a total of \$3,397.88.

The tenant testified that both tenants grew up in rural areas and did not put stuff down the toilets. The tenants would not damage a place they live in or cause any inconvenience. The tenants seek an order that they are not responsible for damages.

The tenants' written material also states that the landlords told the tenants at the beginning of the tenancy that the rental unit had been professionally cleaned, and suggests that the cleaner may have put rags and rubber gloves down the toilet.

The tenants wanted a fair agreement respecting utilities, and had the tenants known that the cost would be that high, they would not have entered into the tenancy agreement.

Analysis

Firstly, with respect to the landlords' monetary claim for unpaid utilities, I have reviewed the bills and the tenancy agreement. The tenancy agreement is in writing, and does not specify that any utilities are included, but it is clear that the parties had conversations and exchanged emails

about the hydro. The tenant suggested that had they known the cost of utilities, they would not have rented, however that is dependent on its usage and the landlords could not have anticipated how much utilities would cost. The landlords claim a lower amount than the bills, and I find that the tenants are responsible for \$778.60.

Where a party makes a monetary claim against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate such damage or loss.

I have reviewed the invoices and I find that the landlords have established elements 1 and 3, however I am not satisfied that the landlords have established element 2 in the test for damages. Both landlords testified that prior to the tenants moving in the system had been cleaned out. The landlords rely on the fact that pressure would have pushed any items into the sump which would have shown up then. However, the tenant denies putting any items down the sewage system, and there are other tenants as well. The landlord also testified that the tenants ought to have noticed the smell, but there is no indication that they did.

A tenant is required to repair damages caused by a tenant. Nothing in the evidence before me satisfies me that items from a previous tenancy could not possibly have been left behind from the December 23, 2016 cleaning, or that the clog wasn't caused by the cleaner or tenants in the other rental unit. Therefore, I find that the landlords have not established that the damage or loss is a result of the tenants' failure to comply with the *Act* or the tenancy agreement.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

A landlord is required to return any pet damage deposit or security deposit to a tenant within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must apply for dispute resolution claiming against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the landlords have applied to keep the deposits, and I order the landlords to keep \$878.60 of the deposits held in trust, and to deal with the balance of \$621.40 in accordance with Section 38 of the *Residential Tenancy Act*.

Since the tenancy is ending, I dismiss the tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

Conclusion

For the reasons set out above, and by consent, the tenants' applications for an order cancelling a notice to end the tenancy for cause and a notice to end the tenancy for unpaid rent or utilities are withdrawn by the tenants, and I grant an Order of Possession in favour of the landlords effective June 30, 2017 at 1:00 p.m. and the tenancy will end at that time.

I hereby order the landlords to keep \$878.60 of the deposits held in trust, and I order the landlords to deal with the balance of \$621.40 in accordance with Section 38 of the *Residential Tenancy Act*.

The tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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: June 27, 2017

Residential Tenancy Branch