Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

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

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenants for an order for the return of double their security deposit and other compensation. Both parties participated in the conference call hearing and had opportunity to be heard.

While there are two tenants involved in this action, only one tenant, A.I., participated in the hearing and represented both herself and T.B. In this decision when "tenant" is used in the singular, it refers to A.I. and/or to her testimony.

The tenants had named three parties as respondents in their cross-application, one of which was the property management company. The property manager testified that the corporate entity had no dealings with the rental unit during the tenancy and the tenant acknowledged that she had contacted the company who advised that they were not involved with the tenancy. The tenant objected to the removal of the company as a respondent, stating that the company was involved in re-renting the unit at the end of her tenancy and that the property manager, S.J., had initially given the tenants a business card which identified the company. I find that the company cannot be brought within the definition of landlord under the Act. S.J. gave the tenants a business card which identified her as a property manager and gave contact information to the tenants to enable them to reach her through her company telephone, fax and email, but I am unable to find that S.J. was acting as an agent for the company during the tenancy. The fact that the company was involved in re-renting the unit at the end of the tenancy is immaterial as it does not relate to this tenancy. I find that the company has been improperly named as a respondent and order the company to be removed as a respondent. The style of cause in this decision and the accompanying order reflects

this change.

Issue(s) to be Decided

Are the parties entitled to monetary orders as requested?

Background, Evidence and Analysis

The parties agreed that the tenancy began on September 1, 2007 and ended on February 28, 2009. The parties further agreed that the tenants paid a $750.00 security deposit on September 1, 2007. The parties further agreed that the tenants gave notice in early February that they would be vacating the rental unit on February 28, 2009.

The landlord claimed that a condition inspection was performed at the beginning of the tenancy and a report (the "Move-In Report") completed at that time. The tenant argued that the Move-In Report was not completed until one year later. Both parties signed the Move-In Report and the tenants indicated on the report that they agreed that the report accurately reflected the condition of the rental unit. The parties agreed that when the tenants moved into the rental unit, the unit had not been thoroughly cleaned by the previous tenants. The Move-In Report indicates that in the kitchen, the stove, oven and hood fan were dirty as were the windows and window coverings. The carpet in the living room had "marks" and was listed as dirty and the windows and coverings in this room were also listed as dirty. In the dining room, the windows and coverings were also dirty. In the master bedroom the carpet was said to be dirty with "lint all around edge" and the windows and coverings were dirty. The second bedroom had a hole in the wall and the carpet was dirty. The front and rear entrance doors were said to be dirty but in OK condition. The carpets and walls in the basement were said to be dirty and the window coverings missing in the basement.

Tenants' Claim

The tenant testified that because of the condition of the rental unit, the tenants spent considerable time cleaning and removing garbage. The tenant further testified that the previous tenant kept a key for the first part of the tenancy and that the tenants decided to install a new deadbolt as they were not confident that the rental unit was secure.

The tenants vacated the rental unit on February 28. The tenants testified that they had

to move from the rental unit because there were continuous electrical problems during the tenancy and they feared for their safety. The landlord testified that when the tenants gave verbal notice that they were vacating, they indicated that they had found a home with a garage or workshop in which the tenant T.B. could use his woodworking tools as the tools were bothering A.I. when he worked in the basement.

The landlord testified that she performed a condition inspection of the rental unit together with the tenant T.B. on February 28 and that T.B. refused to sign the report (the "Move-Out Report"). A.I. testified that T.B. told her that he did not inspect the rental unit with the landlord. T.B. did not give testimony at the hearing or provide a sworn affidavit. The Move-Out Report reflects that all of the rooms were extremely dirty, carpets were heavily stained, holes were in several of the walls and some light fixtures had been replaced.

The tenants seek to recover their moving costs to and from the rental unit, compensation for the time and labour spent cleaning and removing garbage, and recovery of the cost of replacing the deadbolt. The tenants further seek the return of double their security deposit pursuant to section 38 of the Act, claiming that the landlord extinguished her right to claim against the security deposit by failing to perform a condition inspection with the tenants at the end of the tenancy. The tenants also seek recovery of the cost of a land title search and the cost of registered mail as well as recovery of the filing fee paid to bring this application.

Although the appropriate time for the tenants to make a claim for the cleaning performed at the beginning of the tenancy has long since passed, because the landlord could recall that the rental unit required cleaning at the beginning of the tenancy, I accept that the Move-In Report accurately reflects the condition of the unit. However, the tenants claim that they spent 12 hours cleaning and seek to charge a rate of $20.00 per hour. The Move-In Report and the photographs provided by the tenant do not indicate that 20 hours of cleaning would have been required. I find that the claim is inflated and I find that in the absence of further evidence showing what cleaning is required, I find it appropriate to award the tenants the same amount for cleaning as is claimed by the landlord, which is $140.00.

I accept that carpets required cleaning at the beginning of the tenancy and although the tenants failed to provide an invoice showing what was spent on carpet cleaning, because their claim for carpet cleaning is less than the landlord's claim for carpet cleaning at the end of the tenancy, I find the claim to be reasonable and I award the tenants $134.40.

While the Act states that landlords must replace locks at the beginning of the tenancy upon the tenants' request, there is no evidence showing that the tenants made such a request to the landlord or that they provided a receipt to the landlord showing the amount spent on the lock. In the absence of such evidence, I find that the claim is unproven and accordingly the claim is dismissed.

The tenants' claim for the cost of garbage removal is dismissed. The tenants submitted no photographs of the items left behind, submitted no receipts for the landfill and purport to charge a rental fee for the use of their own truck. Although the Move-In Report has something written by "Grounds and Walks" in the section about the exterior of the building, the writing is too small to read. I find that the tenants have not proven their claim that garbage removal was required or that it took several trips to accomplish and accordingly I dismiss the claim.

The tenant's claim for move-out expenses is denied in its entirety. The tenants claimed that they moved out because of ongoing electrical problems and submitted into evidence copies of emails going back and forth between themselves and the landlord in which they complained about the problems. The tenants had the option of filing for dispute resolution and requesting an order that the landlord perform repairs, but chose to move instead. I find that the landlord cannot be held liable for the expenses associated with that choice.

The tenant's claim for double their security deposit is denied. T.B. did not participate in the hearing to give testimony regarding the Move-Out Report and in his place, A.I. gave hearsay evidence. I accept the landlord's firsthand evidence over the hearsay evidence of the tenant and I find that the landlord and T.B. conducted an inspection at the end of the tenancy and generated the Move-Out Report. I find that the landlord did not extinguish her claim on the security deposit. However, even if she had, in order to

trigger the doubling provision under section 38 of the Act, the landlord would have had to not act at all within 15 days of the end of the tenancy. This was not the case. The landlord made her application 13 days after the end of the tenancy, thereby defeating the doubling provision.

The tenants' claim for the cost of registered mail and the land title search is denied. I find that these are litigation-related expenses and under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee paid to make an application for dispute resolution.

Because the tenants' claim has been substantially unsuccessful and that part of the claim which was successful was brought almost two years after it should have been, the tenants' claim for the return of the filing fee is denied.

Landlord's claim

The landlord testified that the tenants left the rental unit uncleaned at the end of the tenancy and entered into evidence an email in which the tenants advised that they would not be cleaning the rental unit because the unit had not been clean when they moved in. The tenant testified that she did perform some cleaning, although she did not shampoo carpets or clean the oven.

The landlord's claims and my findings around each are as follows.

The landlord seeks to recover $30.00 in unpaid rent for the month of November 2008. The tenant acknowledged having withheld $30.00 from the rent in that month to pay for a shower head and further acknowledged that she did not have the landlord's permission for the deduction and did not provide the landlord with a receipt. I find that the landlord is entitled to $30.00 in unpaid rent for November and I award the landlord that sum.

The landlord seeks to recover $1,500.00 in lost income for the month of March 2008. The landlord testified that the tenant advertised the rental unit and showed the unit to a number of people and that the landlord also advertised the rental unit and showed it. The landlord testified that she was unable to re-rent the unit for two months due to the poor condition in which it had been left. The tenant showed copies of her Craigslist

advertisement which has photographs of the rental unit. The photographs show a tidy, attractively furnished unit. The tenant claimed that this was the condition in which the rental unit was left. The landlord provided photographs showing that the rental unit had not been cleaned, carpets were stained and that numerous items had been left in the unit and in the yard. The tenant argued that a number of prospective renters had contacted her and submitted rental applications and that their contact information had been passed to the property manager who did not contact the prospective renters. The tenants submitted a statement from C.B. who stated that he wanted to rent the unit, but that he did not receive a call from the property manager. The tenants suggested that the landlord was not considering some potential renters because of prejudice and submitted into evidence an email in which the landlord indicated that she had difficulty getting background information from Asian renters because they were “tight-lipped.” The landlord testified that she attempted to contact C.B. on several occasions but was unable to get through to him and that she followed up on the applications given to her by the tenants. I do not accept that the photographs in the Craigslist advertisement accurately reflect the condition of the rental unit at the end of the tenancy. I accept that the landlord’s photographs are an accurate depiction of the unit. Despite the tenant’s assertion that the rental unit showed well and that prospective tenants were anxious to rent the unit, the landlord’s photographs have persuaded me that it is more likely that repairs would have had to have been completed before the rental unit could be re-rented. In order for the tenants to end the tenancy on less than one full month’s notice, the tenants would have had to advise the landlord in writing that she was breaching a material term of the tenancy and given her a reasonable opportunity to rectify the breach. The tenants did not do this and as a result, I find that the tenants’ notice was ineffective to end the tenancy prior to March 31. I am satisfied that the landlord acted reasonably to mitigate her losses and I am persuaded that repairs were required to the rental unit before it could be re-rented. I find that the landlord is entitled to recover $1,500.00 in lost income for the month of March and I award the landlord that sum.

The landlord claims $1,446.17 in repairs. The landlord provided a copy of an invoice from Tanat Agencies which itemizes repairs which include removal of garbage, repair and repainting of walls, repainting the area surrounding the fireplace, replacing a cabinet door handle, repairing bi-fold doors, repairing the master bedroom door jamb,

replacing missing faucet handles and replacing the switch for the hood fan in the kitchen. The invoice also charges for materials and labour for removing items to the dump, vacuuming, cleaning cat excrement, removing shelving in the basement, taking acid to the fire department and removing and replacing draperies. The tenant testified that most of the damage was there at the beginning of the tenancy. The tenant acknowledged that acid may have been left at the rental unit and further acknowledged that some cleaning was required. The tenant testified that the hood fan worked during the tenancy and said that although she had a cat, she did not have a litterbox in the house. The landlord testified that the floor of the pantry was stained with cat urine and provided a photograph of the pantry. The landlord testified that the tenant T.B. was supposed to clean, reseal and repaint the fireplace and that he failed to do so to the standard expected by the landlord. The tenant argued that the agreement regarding the fireplace was a separate employment contract and was separate and distinct from tenancy issues. I find that the landlord has proven all of the repair claim except for the $100.00 charge for the repair and painting of the fireplace area which I dismiss as I find that this was a contract independent of the tenancy agreement. I also dismiss $100.00 of the $180.00 charge for patching holes in the drywall as the landlord acknowledged that the largest of the photographed holes in the drywall could have been there at the beginning of the tenancy. I find that $80.00 will adequately compensate the landlord for the remainder of the drywall repairs which were required. I have accepted the remainder of the claim on the basis that the Move-In Report does not indicate the damage that the tenant alleges was there at the beginning of the tenancy. Even if the Move-In Report was not generated in the month the tenancy began, both parties agreed in writing that it accurately reflected the condition of the unit at the beginning of the tenancy and are bound by it. The landlord is awarded $1,246.17 for repairs.

The landlord claims $175.00 as a charge for replacing light fixtures which the landlord claims were changed by the tenants. The landlord submitted an invoice showing that a total of $357.50 was spent on light fixtures on March 16. The landlord testified that she only seeks a portion of that as the other light fixtures were the responsibility of the landlord. The tenant claimed that the landlord gave them permission to change the fixtures and would have changed them back, but the landlord took the keys on March 1 and did not give them access to the rental unit. I find that the landlord bore no

obligation to permit the tenants access to the unit after the tenancy had ended and I find that the tenants were obligated to replace the light fixtures. I award the landlord $175.00.

The landlord claims $140.00 as the cost of cleaning the rental unit at the end of the tenancy. The landlord provided an invoice showing that $140.00 was paid for housecleaning on March 12. As the tenant has acknowledged that she did not thoroughly clean the rental unit at the end of the tenancy, I find that the landlord is entitled to recover the cost of cleaning the unit and I award the landlord $140.00.

The landlord claims $276.95 as the cost of cleaning carpets at the end of the tenancy and provided a copy of an invoice showing that this amount was paid on March 13. The tenant argued that the invoice did not look like a typical invoice. I find nothing unusual about the invoice and as the tenant has acknowledged that she did not clean the carpets at the end of the tenancy, I find that the landlord is entitled to recover the cost of carpet cleaning and I award the landlord $276.95.

The landlord claims $80.00 as the cost of a remote control for the fireplace which she testified that she has been unable to locate. The landlord testified that the remote was purchased new during the tenancy and that it cannot be replaced. The landlord estimated its value at $80.00. The tenant claimed to have returned the remote control and described its location to the landlord. The landlord insisted that the remote was not found in the location suggested by the tenant. I find that the landlord is entitled to recover the value of the remote. However, I find that the amount claimed by the landlord is excessive and I find that $50.00 will adequately compensate the landlord. I award the landlord $80.00.

The landlord claims $1,000.00 as the cost of replacing the countertop in the rental unit. The landlord provided a photograph showing that a large, circular burn mark was left on the countertop. The tenant claimed that the mark was there at the outset of the tenancy even though it did not appear on the Move-In Report. The landlord testified that the entire counter had to be replaced and testified that she told an estimator the size of the counter and was given an estimate of $1,000.00 for a complete counter replacement. I accept that the Move-In Report accurately reflects the condition of the rental unit and

find that the tenants caused the damage to the countertop. However, I find it appropriate to award a sum which reflects the diminished value of the countertop rather than the cost of replacing the entire countertop. I find that $200.00 will adequately compensate the landlord and I award the landlord that sum.

The landlord claims $477.00 as the cost of replacing a wall in the basement of the rental unit. The parties agreed that at the beginning of the tenancy T.B. was given permission to remove a wall in the basement. The landlord testified that T.B. was given permission on the condition that he replace the wall at the end of the tenancy. A.I. testified that she was told by T.B. that the landlord did not stipulate that he was required to replace the wall. The landlord submitted documentation showing that it will cost an estimated $477.00 to replace the wall. The landlord testified that there was a closet in the wall when it was removed; the tenant insisted that there was not a closet in the wall. I accept the direct evidence of the landlord and reject the hearsay evidence of A.I. and find that it was a condition that T.B. replace the wall at the end of the tenancy. I find that the landlord is entitled to recover the cost of replacing the wall. However, I am not satisfied that there was a closet in the wall which was removed and I find that the estimate must be reduced to reflect the cost of installing the closet. I find that $380.00 will adequately compensate the landlord and I award the landlord this sum.

The landlord did not apply to recover the filing fee paid to bring her application and therefore no order is made in respect of her filing fee.

In summary, the tenants have been successful in the following claims:

Cleaning	$140.00
Carpet cleaning	$134.40
Total:	**$274.40**

The landlord has been successful in the following claims:

November unpaid rent	$ 30.00

March loss of income	$1,500.00
Repairs	$1,246.17
Light fixtures	$ 175.00
Cleaning	$ 140.00
Carpet cleaning	$ 276.95
Remote control	$ 50.00
Counter top	$ 200.00
Wall replacement	$ 380.00
Total:	**$3,998.12**

Having made an award in favour of both parties, it is appropriate that one award be set off as against the other. The landlord has been awarded a total of $3998.12, while the tenants have been awarded $274.40. Setting off one award as against the other leaves a balance owing to the landlord in the amount of $3,723.72. I order that the landlord retain the deposit and interest of $765.07 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of $2,958.65. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for $2,958.65.

Dated June 15, 2009.