Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a monetary order. Both parties participated in the hearing.

Issue(s) to be Decided

Did the tenant act in accordance with the legislation to trigger the landlord's obligation to return the security deposit?

Is the landlord responsible to pay the tenant for utilities which were left unpaid by a previous tenant?

Is the landlord responsible to pay the tenant for a portion of utilities when the lower suite is unoccupied?

Is the tenant entitled to compensation for cleaning the rental unit at the outset of the tenancy?

Does the landlord have grounds to end this tenancy?

Background and Evidence

The following are undisputed facts. The residential property is a home in which there are two suites, one on the upper floor (the "Rental Unit") and one on the lower floor (the "Lower Unit"). From 2005 until January 31, 2008 the tenant lived in the Lower Unit. The tenant had paid a $250.00 security deposit for the Lower Unit. In early January, the parties entered into a tenancy agreement under which the tenant was to live in the Rental Unit beginning on February 1, 2008. After vacating the Lower Unit, the tenant verbally requested that his security deposit be returned, but the landlord refused to return it as she alleged the tenant had damaged the Lower Unit. In May 2009 the

tenant sent the landlord a letter which contained his address and in which he requested the return of the security deposit.

The tenancy agreement provides as follows:

> Heating, electricity paid mutual with downstairs
>
> (a) 60% upstairs, 40% downstairs – 4 tenants
>
> (b) 1/3 downstairs, 2/3 upstairs – 3 tenants

The parties agreed that this term should be interpreted as meaning that when 2 tenants were residing in the Lower Unit, the tenant was to pay 60% of the utilities, and when just 1 tenant was residing in the Lower Unit, the tenant was responsible for 2/3 of the utilities. In April 2009, a single tenant who had been occupying the Lower Unit vacated that unit and failed to pay his 1/3 share of the utilities for that month. The Lower Unit was vacant in the months of May and June.

On or about June 1, 2009, the landlord served the tenant with a one-month notice to end tenancy. The notice alleged that the tenant had not done required repairs of damage to the unit and that the tenant had sublet the unit without the landlord's consent. At the hearing the landlord stated that she did not believe the tenant was subletting the Rental Unit and thought she must have checked that box in error.

The parties held widely divergent views on a number of issues. The tenant took the position that he was entitled to the return of double his security deposit because the landlord had not returned his deposit within the timeframe established by the Act. The landlord insisted that she was justified in retaining the deposit because of damage to the lower unit.

The tenant took the position that he was entitled to recover the 1/3 of April's utility bill from the landlord and was further entitled to recover 1/3 of the bills for May and June from the landlord. The landlord strenuously objected to having to pay any part of the utility bills as she had not consumed any of the utilities.

The tenant took the position that he was entitled to be compensated for the approximately 6 hours he spent cleaning the Rental Unit at the outset of the tenancy.

The tenant testified that the carpets, bathroom, kitchen and all walls, surfaces and floors in the Rental Unit were unclean when he moved in. The tenant provided photographs showing the condition of the Rental Unit at the time he moved in. The landlord testified that she did not carefully inspect the Rental Unit before the tenant moved in, but when she was in the Rental Unit cleaning the fireplace she did not notice that it was excessively dirty. The landlord argued that if the tenant had complained that the Rental Unit was unclean, she would have cleaned it for him and objected to the tenant having waited for more than a year after the start of the tenancy to make his claim. The tenant testified that he complained to the landlord to no avail.

The landlord testified that she served the tenant with the notice to end tenancy because he had not repaired the damage he did in the Lower Unit during the time he lived there.

Analysis

Section 38(1) of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 is clear that the events that trigger the landlord's obligation to deal with the security deposit are the end of the tenancy and the date the forwarding address is received in writing. In this case, the tenancy in the Lower Unit ended on January 31, 2008 and the forwarding address was not received by the landlord in writing until May 2009. Even though the landlord clearly knew where the tenant was residing, I find that the tenant was still obligated to provide the landlord with his forwarding address in writing to trigger the landlord's obligation to deal with the deposit.

Section 39 of the Act provides as follows:

> 39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
>
> 38(a) the landlord may keep the security deposit or the pet damage deposit, or both, and
>
> 38(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I find that the tenant did not provide his forwarding address in writing within one year from the date of the tenancy and therefore the landlord is entitled to keep the deposit and the tenant's right to claim its return has been extinguished. I therefore dismiss the tenant's claim for the return of the deposit.

I find that the landlord must be held liable for the utilities which were unpaid by the tenant of the Lower Unit in April. Residential Tenancy Policy Guideline #1 provides as follows:

> If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

As the tenant did not have a contractual relationship with the tenant of the Lower Unit, it stands to reason that the tenant must be permitted to make his claim against the landlord, who has a contractual relationship with the other tenant and can bring a claim against him to recover her loss. I award the tenant $103.44 for utilities for the month of April which were owing by the other tenant.

I find that 1/3 of the utility bills for the months of May and June in which the Lower Unit was vacant must also be paid by the landlord. The provision in the tenancy agreement under which the tenant is required to pay utilities does not address what percentage of the utilities the tenant must pay in the event the Lower Unit is vacant. While it is true that there is no one in the Lower Unit consuming electricity or natural gas, the monthly bill not only reflects a charge for consumption but also other charges and fees. It was open to the landlord to draft the tenancy agreement in such a way as to make the tenant

wholly responsible for the utilities when the Lower Unit was vacant, but she chose not to do so and as a result, the tenancy agreement is unspecific on this point. This is an appropriate circumstances in which to apply the contractual rule of *contra preferentum*, under which an ambiguous term in a contract will be construed against the party that drafted the contract. I award the tenant $42.33 for the gas bill for May, $32.30 for the electric bill for May and June and $42.33 for the gas bill for June.

I accept the tenant's evidence that the Rental Unit was unclean at the outset of the tenancy. I find that the tenant made the landlord aware that the Rental Unit was unclean and that the landlord failed to ensure the Rental Unit was cleaned for the tenant. The tenant claimed $270.00, which is based on a quotation from a professional cleaning agency for cleaning a unit of this size. As the tenant is not a professional, I find that he is not entitled to charge the same rate as a professional. I accept that it took 6 hours for the tenant to clean the unit and I award him $90.00, which represents 6 hours of cleaning at a rate of $15.00 per hour.

As for the notice to end tenancy, I find that the landlord has failed to prove that she has grounds to end the tenancy. The landlord may not evict the tenant from the Rental Unit for damage done to the Lower Unit during a separate tenancy. I order that the notice to end tenancy dated June 1, 2009 be set aside. As a result, the tenancy will continue.

In summary, the tenant has been successful in the following claims:

April utilities	$103.44
May gas bill	$ 42.33
May & June electric bill	$ 32.30
June gas bill	$ 42.33
Cleaning	$ 90.00
Filing fee	$ 50.00
Total:	**$360.40**

The tenant may deduct $360.40 from future rent owed to the landlord.

Conclusion

The tenant is awarded $360.40. The notice to end tenancy is set aside.

Dated July 17, 2009.

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