Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application for a Monetary Order for damage to the rental unit, unpaid rent, damage or loss under the Act, regulation or tenancy agreement, retention of the pet deposit and security deposit and recovery of the filing fee. The female tenant appeared at the hearing and confirmed both tenants had been served with the landlords' application and evidence. The female landlord was joined by the male landlord part way through the hearing. All parties that appeared at the hearing were provided the opportunity to be heard and to respond to the other party's submissions.

The landlord objected to late evidence submitted by the tenant. As the tenant's evidence was received by the landlord on November 12, 2009 and the quantity of documentation was not large, I accepted the tenant's late evidence.

Issues(s) to be Decided

1. Have the landlords established a entitlement to monetary compensation from the tenants and if so, the amount?
2. Award of the filing fee.

Background and Evidence

Upon hearing from both parties and upon review of the evidence before me, I make the following findings. The parties entered into a written tenancy agreement on June 9, 2008 for a fixed term to end on June 30, 2009. At the end of the fixed term, the tenancy agreement provides that the tenants must vacate the rental unit. The tenants were required to pay rent of $850.00 per month and had paid a security deposit and pet deposit in the amount of $425.00 each on June 9, 2008 and June 15, 2008. At the end of May 2009 the tenants gave the landlords written notice to end tenancy on June 30, 2009. The tenants did not pay rent for June 2009. The landlords served the tenants with a *10 Day Notice to End Tenancy for Unpaid Rent* by personal delivery on June 4, 2009 with an effective date of June 15, 2009. The tenants vacated the majority of the

tenant's possession on June 15, 2009 but did not inform the landlords and did not return the keys until July 3, 2009 and by mail sent July 7, 2009.

I heard that the female tenant and female landlord met at the rental property to inspect the condition of the rental unit and that the landlord indicated the state of the rental unit was not satisfactory. The date of this meeting was in dispute as the landlord alleged this meeting took place on June 30, 2009 and the tenant alleged the meeting took place on June 28, 2009. Both parties agreed that the tenant was provided the opportunity to clean up the rental unit and met at the rental property again on July 3, 2009 and that the rental unit was sufficiently clean.

The landlord is seeking to recover unpaid rent for June 2009. The tenant explained that she erroneously believed that the security deposit and pet deposit could be applied to their last month's rent but acknowledged that the tenants did not have the landlords' consent to apply the deposits to the rent owed.

The landlord is seeking to recover $70.00 paid for yard maintenance and provided an invoice dated July 3, 2009. The landlord submitted that the tenants were required to maintain the side yard, back yard and trash area in accordance with the terms of the tenancy agreement. The tenant provided a photograph of one area in the yard the tenants were responsible for and the photograph depicted soil with no grass. The tenant claims that she was not aware of another area of the property for which the tenants were responsible. The landlord and tenant both provided a copy of a tenancy agreement. Both versions were identical except for the seventh page, which deals with yard maintenance. The landlord's version provides that the tenants will mow or weed the rear and yard surrounding the building and the clause appears to be initialled by the tenants. The tenants' version of the tenancy agreement does not contain this extra clause. The tenant claimed she did not recall initialling this term but acknowledged that the initials resemble hers.

The landlord is seeking to recover $50.00 paid to the male tenant to paint the newly constructed wall and two doors. The parties agreed that the doors were not painted by the tenant. The tenant testified that the wall was painted by the tenant and that the landlord advised the painting was to include the doors after the agreement was made. Approximately 4 ½ months after the tenancy began the landlord reclaimed the paint supply which the tenant believed was to be returned to the tenants so that the doors could be painted. The landlord did not return the paint to the tenants.

The landlord is seeking to recover a reduced amount of $30.21 from the tenants for two plants provided to the tenants which subsequently died. The landlord submitted that the parties had agreed that the landlord would provide plants for the tenant's enjoyment on the sundeck and the tenants would take care of the plants. The landlord alleged the tenants neglected the plants and the tenants are responsible for replacing the plants. The tenant was of the position that she told the landlord she would consider the landlord's proposal to care for plants on the sundeck and that the landlord appeared at the rental unit one day with the plants. The tenant claimed she watered the plants but

that they died because the landlord left the plants in the small pots they came in from the store. Neither party re-potted the plants into larger containers.

The landlord is seeking recovery of $10.96 for a broken kitchen blind. Upon enquiry, the landlord stated the blind was vinyl and approximately 2 years old. The tenant claimed no knowledge of a broken blind.

The landlord is seeking to recover a reduced amount of $166.94 for water consumed by the tenants. The tenant agreed to pay this amount.

The landlord is seeking $300.00 for liquidated damages. The tenancy agreement provides for a liquidated damages clause in the event the tenants end the tenancy before the expiration of the fixed term. In support of this claim, the landlord testified that the tenants overheld the unit until July and that the rental unit could not be rented for July 2009 due to non-communication by the tenants in June, the eviction process for non-payment of rent and the condition of the rental unit. The landlord stated that the key was returned to the landlord by Xpresspost sent on July 7, 2009 and received by the landlords on July 18, 2009. Upon enquiry, the landlord stated that advertising efforts commenced June 25, 2009 and the landlords suffered a vacancy for July 2009.

The tenant did not agree to paying liquidated damages as she submitted that she had cleaned the rental unit on June 29, 2009 and the landlord was going to incur advertising costs in any event because the fixed term was set to expire. The landlord disagreed with the tenant's claim the tenant sufficiently cleaned the unit by June 29, 2009 and pointed to the Notice of Opportunity to Schedule a Condition Inspection set for June 30, 2009 to indicate the first inspection took place on June 30, 2009 and not June 28, 2009 as alleged by the tenant.

The tenant stated that she left her key at the rental unit on July 3, 2009 and that her husband's key was returned in the mail. The tenants' forwarding address was provided in the envelope containing the key. The tenant provided evidence that the registered mail was sent on July 7, 2009 and delivered on July 8, 2009 as evidenced by a signature obtained from Canada Post. The signature on the registered mail was not that of the landlord; however, the landlord explained that the landlords travel a lot and that they have a postal service to receive mail on their behalf and that the landlords picked up the mail from the postal service on July 18, 2009. I note that in the landlords' evidence is a registered mail receipt for mail sent to the tenants at their forwarding address on July 16, 2009. I also note that the landlord's application for dispute resolution was initiated on July 28, 2009.

Both parties provided photographs of the rental property and written submissions in support their respective positions which I have considered in making my decision. In the landlord's evidence the landlord requested lesser amounts for water bills and replacement plants, but also included loss of rent for July 2009. The tenant requested compensation of $200.00 for hydro in the tenant's evidence but has not filed an application for dispute resolution.

Analysis

Where a party makes a claim for compensation against another party, the party making the claim has the burden to prove the claim. The applicant must prove the other party breached the Act or tenancy agreement which caused the landlord to incur a loss, the quantum of the loss and that the applicant did whatever was necessary to minimize the amount of loss. Where one party provides a reasonable explanation of the events and the other party provides an equally probable version of events, without other evidence to substantiate their version, the party making the claim has not met the burden of proof and the claim fails. Further, awards for damages are intended to be restorative, meaning the award should place the party seeking compensation in the same position they would have been in had the damage not occurred. Awards for damage to depreciating fixtures must take into account normal aging and deterioration.

As it is not in dispute that the tenants failed to pay rent for June 2009 and the tenancy ended in June 2009 the landlord has established an entitlement to unpaid rent for June 2009 in the amount of $850.00. As it was not in dispute that the water costs were not included in the rent and the tenant agreed to the landlord's claim of $166.94 for water consumption, the landlord is also awarded water costs of $166.94.

Based on the evidence before me, I find it more likely than not that the kitchen blind was damaged during the tenancy and the tenants are required to compensate the landlord for the loss incurred by the landlord. As I heard the blind was vinyl and approximately two years old, I award the landlord $5.00 for the kitchen blind.

Based on the tenancy agreement, including the tenants' initials next to the yard care clause, I find it more likely than not that the tenants were aware of their obligation to maintain the yard. I am satisfied that the landlords sufficiently segregated the amount paid to the landscapers to reflect maintenance of the tenants' portion of yard. Therefore, I award the landlord $70.00 for yard maintenance not performed by the tenants.

Where parties enter into verbal terms, the party seeking to enforce the terms or seek compensation for a breach of the terms must show that the other party was aware of their obligations under the agreement, that the terms were clear and not unconscionable, and that the other party breached the terms. With respect to the dead plants, I found insufficient evidence that the parties had discussed who was responsible for re-potting the plants in larger containers and I am satisfied the plants were not likely to survive in the small containers they arrived in since the sundeck was a hot and sunny location. I found the landlord's purported terms that the tenant keep the plants alive to be unconscionable and did not take into account any number of events that may kill the plants. Therefore, I do not award the landlord the cost of replacement plants.

With respect to the painting agreement, I do not find the agreement to be an agreement that falls within the jurisdiction of the *Residential Tenancy Act*. Rather, I find it to be an agreement between the two individuals for one individual to perform work on the real

property in exchange for money. As with any other agreement for work to be performed on real property, the party who has paid for the work and who is not satisfied with the fulfillment of the terms of the agreement may seek remedy to recover their damage or loss in Provincial Court (Small Claims). In other words, just because a painting agreement was reached between two individuals who also had a landlord and tenant relationship does automatically mean the disputes concerning the fulfillment of the agreement may be resolved by way of an application made under the *Residential Tenancy Act*. Therefore, I decline to resolve the dispute concerning the painting as I do not find it to be a term of the tenancy agreement or otherwise disputable under the *Residential Tenancy Act*.

The liquidated damages clause of the tenancy agreement applies where the tenants end the tenancy before the end of the fixed term. In this case, I am satisfied the tenants did not pay rent when required for June 2009 and that the landlords issued a valid 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of June 15, 2009. Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice, the tenancy legally ended on June 15, 2009 and the tenants were required to vacate the rental unit by that date. Accordingly, I find that the actions of the tenants caused the tenancy to end before the expiration of the fixed term. As I did not find the liquidated damages clause to be excessive or penalizing it is enforceable against the tenants and I award the landlords liquidated damages of $300.00.

The landlords have requested retention of the tenants' security deposit and pet deposit in partial satisfaction of the amounts owed to the landlord. The Act requires a landlord to make an application to retain security and pet deposits, or refund the deposits to the tenant, within 15 days of the tenancy ending or receiving the forwarding address in writing. Although the landlords claim they did not receive the tenants' forwarding address until July 18, 2009 it is unclear to me why or how they were able to send a registered letter to the tenants at their forwarding address on July 16, 2009. Since the tenants provided a forwarding address on July 7, 2009 via registered mail, the tenants' forwarding address is deemed to be received by the landlord five days later, on July 12, 2009, in accordance with section 90 of the Act. Therefore, the landlords had until July 27, 2009 to make an application to retain the deposits. In this case, the landlords applied to retain the deposits after July 27, 2009 and I find the tenants are entitled to double the security deposit and pet deposit under section 38(6) of the Act. Section 38(6) of the Act is not discretionary as it states that a landlord must pay a tenant double the security deposit or pet deposit where a landlord does not return or apply to retain a deposit within the time limits imposed by the Act. I am obligated to enforce the requirements of the Act as they are written.

I do not award the landlords for loss of rent for July 2009 as I was not satisfied that the landlords did whatever was reasonable to minimize their loss as required by section 7 of the Act. I make this determination based on the following factors. The fixed term tenancy agreement required the tenants to vacate the rental unit June 30, 2009 and there was no subsequent tenancy agreement in place. The tenants had clearly

communicated that they intended to move out at the end of June in their letter to the landlord sent at the end of May 2009. The landlords had issued a Notice to End Tenancy effective June 15, 2009. The landlords did not commence advertising efforts until June 25, 2009.

As the landlords were partially successful in this application, I award a portion of the filing fee to the landlords. With this decision I provide the tenants with a Monetary Order calculated as follows:

Unpaid rent – June 2009	$ 850.00
Tenant's share of water bills	166.94
Damage to kitchen blind	5.00
Tenant's share of yard maintenance	70.00
Liquidated damages	300.00
Filing fee	40.00
Landlords' entitlement to compensation	$ 1,431.94
Less: double security deposit	(850.00)
Less: double pet deposit	(850.00)
Less: interest on original amount of deposits	(7.07)
Monetary Order for tenants	$ (275.13)

The landlords are ordered to pay the tenants $275.13 forthwith and the tenants are provided Monetary Order to serve upon the landlords and file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord was successful in establishing an entitlement to compensation of $1,431.94 from the tenants; however, the tenants are entitled to credit for double the security deposit and pet deposits, plus accrued interest on the deposits. The landlords are ordered to pay the tenants the balance of $275.13 and the tenants are provided a Monetary Order to serve upon the landlords and file in Provincial Court (Small Claims).

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: November 19, 2009.

Dispute Resolution Officer