Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MND, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

The tenant submitted 27 pages of evidence to the Residential Tenancy Branch one day before the hearing. She claimed that three weeks prior to the hearing she served that evidence on the landlord by ExpressPost with no signature required but the landlord denied having received the evidence. The tenant requested an adjournment to which the landlord objected. I declined to grant an adjournment as the tenant had filed her claim on May 11 but waited until the eleventh hour to serve her evidence on the Branch, in clear violation of the Rules of Procedure, and could not prove that she had served the landlord with the evidence at all. Although the tenant claimed that a two week illness immediately prior to the hearing prevented her from serving documents, this does not explain why she failed to act earlier in the 19 week period between the time she filed her claim and the date of the hearing. I found that the tenant's failure to act diligently was the sole reason an adjournment was required and I found that the landlord would be unduly prejudiced by an adjournment. The hearing proceeded at the scheduled time and the evidence submitted by the tenant immediately prior to the hearing was not considered.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy agreement began on or about April 1, 2009 and ended sometime between November 1 and November 7, 2009. The tenancy was set to continue for a fixed term of one year. The tenant paid a $412.50 security deposit.

The tenant testified that shortly after she moved into the rental unit she discovered small bites on her body which she attributed to fleas, as the previous tenant had owned a cat. Approximately 2 ½ months into the tenancy the tenant's new furniture was delivered to the unit. When the furniture arrived, the tenant noticed a sign on a door down the hall from her unit which advised that the suite was being treated for bedbugs. The tenant's movers questioned whether she wished to move the furniture into the unit or into storage. The tenant conferred with the resident manager who assured her that there was a bedbug issue in the suite with the sign, but that it was "under control." On the strength of that assurance, the tenant asked the movers to move the furniture into the rental unit. Shortly thereafter, the tenant began finding bedbugs in the rental unit. The landlord arranged for her unit to be professionally treated by Omni Pest Control Services on June 17 and August 5. The tenant demanded a further treatment on September 27 which was performed by Mantle Pest Control. The tenant claimed that she paid for another treatment in October. The tenant gave the landlord that she would be vacating the unit on October 31 and testified that she moved out on November 1.

The tenant claimed that she was advised by the pest control company to discard all of her furniture so she wrapped her furniture, labelled it as having been infested and brought it outside the building. The tenant claimed that the manager offered to discard the furniture for her and that she later discovered that he had retained some of the furniture. The tenant discarded her clothing as attempts to remove eggs through washing and dry cleaning were unsuccessful. The tenant claimed that she washed towels in the laundry room of the building and kept the towels in her car only to discover that they had transported bedbugs from the laundry room to the car. The tenant had her car treated and rented a replacement car for a period of time. The tenant also had

to board her cat with a veterinarian on 4 occasions while her apartment was being treated. The tenant seeks to recover these costs as well as her security deposit.

The landlord testified that as soon as there were reports of bedbug activity in the building, they immediately arranged for repeated treatment of all affected areas. The landlord provided copies of invoices showing that treatment in the building began on June 1. An invoice dated August 31 shows that the pest control company discovered no bedbug activity in the rental unit although another suite was treated on that date. The landlord maintained that this was the last time the building was treated for bedbugs and that subsequent inspections revealed no activity in the building. The landlord also purchased 3 bedbug monitors during the period of infestation and at one point used a monitor in the rental unit. The landlord disputed that treatment was required on September 27 and stated that they only agreed to pay for service because the tenant insisted that it be done.

The landlord testified that at the end of the tenancy they discovered that the tenant had damaged the walls, which required that the unit be repainted despite having been painted immediately prior to the tenancy. The landlord claimed that the approximately 8 year old carpet was badly damaged and had to be replaced and the drapes, whose age he did not know, required replacement as well. The landlord seeks to recover half the cost of repainting and replacing carpets and drapes. The landlord testified that the tenant failed to pay the final electric bill and seeks to recover the cost of that bill. The landlord also seeks to recover $130.00 in dump fees to dispose of items, including furniture, which were abandoned by the tenant. The landlord seeks to recover one month of lost income as the tenant failed to live in the unit throughout the fixed term and stated that because the tenant did not vacate the unit until November 7, he was unable to re-rent for the month of November.

The tenant testified that the carpet and drapes were badly damaged prior to her tenancy. The tenant claimed that she had spoken with the city and had been told that the final electric bill had been paid, so disputed that she owed anything. The tenant

argued that she would have disposed of her furniture, but the manager offered to dispose of items for her and on that assurance she left it behind.

Analysis

The landlord bears a number of obligations with respect to the tenant. He owes the tenant a statutory obligation to ensure that she has quiet enjoyment of the rental unit throughout the tenancy and he is obligated to act in a manner that is not negligent, addressing repair and maintenance issues in a timely and effective manner. In this case, I find that the landlord can in no way be found negligent. It is clear that when he received reports of bedbugs, he acted quickly and arranged to have all affected units treated. The landlord ensured that the pest control company followed up on all treatments and continued treating the rental unit at the tenant's insistence even after the company had advised that there were no more bedbugs. As the landlord has not been negligent, I find that the tenant's claims for the loss of her belongings, boarding of her cat, costs of renting a car and cleaning her car and belongings must fail. The landlord is not the tenant's insurer and in the absence of negligence cannot be held responsible for those losses. Although the tenant paid for one treatment of the rental unit, this occurred after the landlord's professionals had stated that they found no evidence of bedbug activity. The claim for recovery of these losses is dismissed. I find insufficient evidence to prove that the treatment paid for by the tenant was required. The claim for the tenant's damage deposit on her new residence is dismissed as there is no legal basis on which to make such an award. While the landlord may be held liable for moving costs when the landlord has breached a material term of the tenancy, I find there is insufficient evidence to prove such a breach and accordingly dismiss the claim for moving charges. The claim for the title search is dismissed as this is a cost of litigation and is not recoverable under the Act. The tenant's claim is dismissed in its entirety. I note that the tenant did not make a claim for loss of quiet enjoyment and I therefore have not addressed this issue in my findings.

Turning to the landlord's claim, the landlord claimed half the cost of repainting the rental unit. The landlord provided an invoice showing the cost of painting 3 rental units. I am

unable to determine how much of the cost should be ascribed to the rental unit and how much to the other units. It is unnecessary for me to make a finding of liability as the landlord has failed to prove the quantum of this claim. The claim for the cost of painting is dismissed.

The landlord also claimed half the cost of carpets and drapes. The landlord estimated that the carpets were 8 years old and was unsure of the age of the drapes. The landlord provided no photographs showing the condition of the carpets and drapes and without objective corroborating evidence, I am unable to determine the degree to which the already aged carpets and what I presume to be aged drapes were damaged by the tenant. I find that the landlord has not proven that the damage to the carpet and drapes went beyond what might be characterized as reasonable wear and tear and accordingly I dismiss those claims.

The landlord claimed $102.70 as the cost of an outstanding electrical bill and provided evidence showing that he wrote a cheque to the city to cover that charge. The tenant testified that the city had confirmed that the bill had been paid. It seems clear that the tenant was told that the bill had been paid because the cost had been covered by the landlord. I find that the landlord is entitled to be compensated for the $102.70 bill and I award the landlord that sum.

The landlord claimed $130.00 in dump fees. I find it more likely than not that the manager told the tenant not to dump her belongings because he thought the furniture was salvageable. The landlord confirmed that some of the tenant's belongings had been retained. I find that the landlord must bear the cost of the dump fees as the tenant was specifically told not to dump those items. The claim is dismissed.

The landlord claims $825.00 as what he described as a penalty for breaking the one year lease. There is no provision under the Act whereby a landlord is entitled to charge a penalty for breaking a lease and while the landlord may have been referring to a liquidated damages provision, which as an aside may only represent a genuine pre-estimate of loss and may not be a penalty, no such provision exists in the tenancy

agreement. The landlord has failed to prove that steps were taken to mitigate any loss of income and I find that whatever this $825.00 claim was meant to represent, the landlord has failed to prove an entitlement to such an award and accordingly the claim is dismissed.

As the tenant's claim has been dismissed in its entirety, she will bear the cost of her filing fee. The landlord has been partially successful and I find it appropriate that he recover a portion of the filing fee. I award the landlord $25.00.

Conclusion

The landlord has been awarded $127.70. I order the landlord to retain this sum from the $412.50 security deposit and I further order the landlord to return the $284.80 balance of the security deposit to the tenant forthwith. I grant the tenant a monetary order under section 67 for $284.80. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: September 28, 2010

Dispute Resolution Officer