Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNR, MNSD MNDC FF

Introduction

The hearing was convened to deal with an application by the tenant for the return of the tenant's $475.00 security deposit and the $50.00 cost of filing. The hearing was also convened to hear a cross- application by the landlord for a monetary claim of $1,545.00 including $995.00 for loss of rent for the month of December 2010, $490.00 for damages and cleaning, the $50.00 cost of filing the claim and to retain the security deposit for damages and loss. Both parties appeared.

Issues to be Decided for the Tenant's Application

- Whether the tenant is entitled to the return of the security deposit paid.

Issues to be Decided for the Landlord's Application.

- Whether the landlord is entitled to compensation under section 67 of the *Act* for rent, loss of rent and damages.

Background and Evidence

The landlord testified that the tenancy began on November 30, 2010 with rent set at $950.00 per month, plus $10.00 for parking and that a security deposit was paid in the amount of $475.00. The landlord testified that a move-in condition inspection report was done and signed by the tenant. The landlord pointed out that the report showed that the unit was in a clean condition and the tenant had noted all deficiencies such as a broken handle on the refrigerator. The landlord testified that on November 2, 2010, the tenant advised the landlord by telephone that the tenant would be moving at the end of November 2010. The landlord testified that the tenant was advised that verbal notice would not be acceptable under the Act. According to the landlord, on November 3, 2010, the tenant's written notice to vacate was left under the landlord's door.

The landlord stated that, despite efforts to re-rent the unit, including ads placed on the internet, and "for rent" signs and the fact that the landlord actually showed the unit prior

to the tenant vacating, the landlord was not able to find a replacement tenant until February 2011. The landlord is claiming a loss of rent for the month of December 2010.

The landlord is holding the tenant responsible for re-painting the unit, replacement of a broken door and cleaning costs.

The landlord's application, submitted December 14, 2010 included a list of damages indicating that there were, wall repairs and painting as 8 hours at $20.00 per hour, purchase of 2 gallons of paint for $100.00, cleaning the stove as 2 hours at $20.00 per hour, estimated cost of a replacement door as $150.00 and estimated labour to replace the door as 2 hours at $20.00 per hour.

However, an invoice dated December 5, 2010 that was submitted into evidence by the landlord on April 11, 2011, lists, patching walls for 2 hours at $35.00 per hour, priming and painting walls for 6 hours at $35.00 per hour, cleaning the stove as 2 hours at $35.00 per hour and a written quote for a replacement door dated April 7, 2011 for $167.02.

The landlord testified that the door was approximately 15 years old but was in good condition at the start of the tenancy. The landlord alleged that the door was damaged by the tenant and the landlord had submitted photos along with estimates for the cost. The landlord testified that the door had not yet been replaced.

The landlord stated that the unit had been freshly painted just prior to the tenancy, but needed to be re-painted afterwards due to patched holes left by the tenant. The landlord had submitted photos of the patched walls. The landlord is also claiming costs for cleaning the oven, which is stated on the application to be $40.00, but on the invoice dated December 5, 2010, the cost was shown as $70.00.

The tenant disputed the landlord's claim that the tenant failed to give written notice in compliance with the Act. The tenant stated that part of the difficulty was the unavailability of the landlord and the landlord's refusal to return the tenant's phone calls. The tenant testified that it was a challenge communicating with the landlord because of the confrontational stance with which they were met. The tenant stated that, after attempting to discuss the ending of the tenancy directly with the landlord , the tenant finally sought advice from the Residential Tenancy Branch and was advised to give the notice in writing. The tenant stated that this written notice was slipped under the landlord's door on October 31, 2010. A copy of the Notice was in evidence.

With regard to the landlord's attempt to re-rent the unit, the tenant agreed that the unit was shown prior to their departure, but, according to the tenant, no written advanced notice was ever given and this left no time for the tenant to prepare for the showings.

The tenant also stated that they never saw any “for rent” signs on the property. In addition, the tenant stated that the landlord failed to do the repairs and much-needed improvements that were necessary to properly market the unit in a more attractive condition. The tenant felt that this was the reason the unit was not re-rented for December. The tenant disagreed with the landlord’s claim for one-month loss of rent.

The tenant stated that the reason they had found it necessary to patch the walls was due to the fact that the plaster was in such a fragile condition that small nail holes that would not normally mar the surface instead caused significant damage. The tenant stated that the drywall or plaster was already crumbling in spots due to previous wear and tear when the tenant initially took tenancy. The tenant stated that they were given the impression by the landlord that the unit would be re-painted in any case. The tenant disagreed with the claim for painting.

The tenant pointed out that, despite the lack of deficiency notations on the move-in condition inspection report, the fact is that the unit was not in very good repair from the outset. The tenant stated that they did not take issue with the numerous condition problems during the tenancy. The tenant stated that any significant problems they did try to bring forward for the landlord to address were always ignored.

With respect to the door damage alleged by the landlord, the tenant stated that the door was in worn and damaged condition from the beginning, but because it was fully functional, they did not make an issue of it during the tenancy. The tenant stated that they were deprived of the right to participate in the move-out condition inspection due to overt hostility from the landlord, who ultimately ordered the tenant off the property.

With respect to the cleaning of the stove, the tenant acknowledged that only the exterior of the appliance had been cleaned. However, according to the tenant, the landlord refused the tenant’s offer to stay to clean the oven. The tenant disputed the amount claimed by the landlord and felt that the job should not have taken more than one hour.

Analysis – Tenant’s Claim for Return of Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or make an application for dispute resolution to claim against the security deposit. The Act also states that the landlord can retain a deposit if the tenant agrees in writing, after the end of the tenancy, that it can be kept by the landlord or if there is an order issued that the landlord retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit. However, the landlord did make a claim against the deposit within the required 15 days. I find that the security deposit is money held in trust by the landlord on behalf of the tenant and therefore this would function as a credit of $475.00 in favour of the tenant.

Analysis:

With respect to a monetary claim for damages or loss, it is important that the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 45 of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that: (a) is not earlier than one month after the date the landlord receives the notice, and; (b) is the day before the day in the month, that rent is payable under the tenancy agreement.

There is disputed verbal testimony in regard to whether or not the tenant gave adequate notice to vacate. Despite the copy of the tenant's written notice dated October 31, 2010, I accept the landlord's testimony that this Notice was not actually received by the landlord prior to the end of October. Moreover, even if I accepted that the notice was slipped under the door on October 31, 2010 as the tenant stated, the Act provides that any document posted on the door or placed in another prominent place is deemed served in three days.

With respect to the $995.00 claim for loss of rent for December 2010 being claimed in damages due to the tenant's failure to give proper notice to end the tenancy under the Act, I find that this claim must still meet all elements of the test for damages.

I find that the tenant did not comply with the Act and the landlord suffered a loss. With respect to meeting element 4 of the test, I find that the landlord did mitigate the loss by trying to re-rent the unit. However, I accept the tenant's testimony that the landlord failed to give proper written notice to show the unit, and find that this may have impeded

the marketing somewhat, being that the tenant was not able to prepare and clean the rental unit to make it more attractive to potential renters. I also find that there were some wear and tear condition issues that were not adequately addressed by the landlord in a timely manner after the tenant vacated, and I find that this would also hamper the efforts to re-rent the unit. Accordingly, I find that the landlord's claim for loss of rent has not successfully met the criteria under element 4 of the test for damages and must therefore be dismissed.

With respect to the claims for damage and cleaning costs made by the landlord, I find section 32 of the Act imposes responsibility on both the landlord and tenant in terms of caring for the property. The Act states that a landlord must provide and maintain residential property in a state of decoration and repair that would comply with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, making it suitable for occupation by a tenant. Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 37(2) of the Act states that, when a tenant vacates a rental unit, it must be left reasonably clean, and undamaged except for reasonable wear and tear.

I find that the rental unit was already subject to normal wear and tear to a degree when the tenant took possession. But I do accept that the landlord's evidence that the landlord did have some additional repairs and renovations to do after the end of this tenancy stemming from the tenant**.**

With respect to the door damage, I find that the door was at least 15 years old and was likely subject to some earlier wear. In any case, I find that the landlord has not incurred any expense at all being that, as of the date of this hearing, the door has not yet been replaced. I find that this claim failed element 3 of the test for damages.

I find the landlord's evidentiary submissions about the cost of the remaining repairs to be confusing and contradictory. The landlord's application was submitted on December 14, 2010 listing certain costs of repair, but a receipt dated December 5, 2010 submitted into evidence in April 2011 provided different figures for the costs relating to the same repairs. Even if I accepted that the landlord's claim succeeded in meeting elements 1 and 2 of the test for damages, I find that the claim has not sufficiently met element 3 of the test. The actual costs are not clearly proven. With the exception of the estimated $20.00 cost of cleaning the oven which was consented to by the tenant, I am not able to grant the landlord's claim for expenses for the repairs.

Accordingly, I find that the portion of the landlord's application relating to cleaning and repairs has succeeded in part and the landlord is entitled to monetary compensation of

$20.00. The remainder of the landlord's claims for compensation for the repairs and were not sufficiently supported and must be dismissed.

I find that the total compensation owed to the tenant is $475.00 for the security deposit and the total compensation owed to the landlord is $20.00 for cleaning the oven.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find the landlord is entitled to damages of $20.00 and the tenant is entitled to monetary compensation of $475.00 and after setting off these two amounts, this leaves $455.00 remaining in favour of the tenant plus the $50.00 cost of the application totaling $505.00. I hereby grant the tenant a monetary order in the amount of $505.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's and the tenant's applications are dismissed without leave.

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: April 20, 2011.

Residential Tenancy Branch