Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF, O

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Landlord applied on June 13, 2011 for:

1. An Order to keep all or part of the damage deposit - Section 38;
2. A Monetary Order for unpaid rent or utilities - Section 67; and

The Tenant applied on June 20, 2011 for:

1. A Monetary Order for return of the security deposit - Section 67;
2. A Monetary Order for damages or loss – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Landlord confirmed that as the Tenant moved out of the unit, the Landlord does not require an Order of Possession as selected on the application. The Landlord also confirmed a claim for damage or loss that is detailed in the application but not selected under the application options. The Landlord states that the failure to select a claim against the security deposit in the application was also an oversight. The Tenant confirmed that the claim for the return of the security deposit as selected in the application is a claim for return of double the security deposit and that the monetary amount claimed is that contained in the work sheet submitted with the

application and not as set out in the application itself. Further, the Tenant confirmed a claim for damages or loss detailed in the application but not selected in the application. Neither Party objected to the clarifications made in relation to the claims.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?
Is the Tenant entitled to return of double the security deposit?
Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy on a one year lease began on October 1, 2010. No move-in inspection was completed. Rent in the amount of $1,650.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of $825.00. The Tenant failed to pay rent for the month of May 2011 and on May 5, 2011 the Landlord served the Tenant with a notice to end tenancy. The Tenants did not dispute the notice and moved out of the unit on May 21, 2011. A move-out inspection was completed between the Tenants and the Landlord's agent and a note was signed indicating a clean unit with no damages.

The Landlord states that when the Tenants moved out of the unit they took various articles of furniture belonging to the Landlord that had been left with the Tenants. The Landlord states that these articles were left in the unit to be used by the Tenants but were to have stayed in the unit. The Landlord states that there was no intention to give these articles to the Tenants as the articles were valuable. The Landlords claim the loss of a couch, loveseat, leather coffee table, lawn mower, lamp, children's toys and furniture and a weed whacker in the total amount of $3,250.00.

The Tenants state that the Landlords told the Tenants that they could have the articles claimed by the Landlord and that an addendum was attached to the lease noting this. The Tenant states that the Landlord also verbally told the Tenants that these articles could be thrown away as well, if the Tenant chose. The Tenant states that the lease

notes those articles, a barbeque and a kitchen t.v., that were to stay in the unit at the end of the tenancy. The Tenants state that the Landlords were clear about the articles left behind that the Tenants could keep, that were to stay and that were to be picked up by friends. The addendum also notes the occupancy of two other persons in the unit along with the Tenants. The Landlords deny that there was any addendum to the lease. The Landlord's Witness states that when the move-out inspection was conducted, the Witness inquired about these articles and the Tenants told him that the lease agreement provided that these articles belonged to the Tenants.

The Landlord claims that the Tenants broke the lease by failing to pay the rent and moving out of the unit. The Landlord states that the unit has been re-rented for September 2011 and claims the loss of 3 months' rent in the amount of $6,600.00.

The Tenants state that rent is owed to the Landlords to the date of the end of the tenancy and that they should not be responsible for rent past this date. The Tenants state that the Landlords kept the Tenants post dated cheques for June, July and August 2011 and that the Landlords cashed the Tenants' June cheque after the end of the tenancy. The Tenants state that as a result they have suffered a hardship and had to take out short term loans to cover living expenses. The Tenants claim return of the June rent, the short term loans, late payment fees, and stop payment fees for the July and August cheques.

The Tenants state that they sent the Landlords their forwarding address on June 2, 2011 by fax and by registered mail. The Tenants claim the cost of the registered mail. The Tenants state that the Landlords failed to return their security deposit and claim return of double its amount. The quantum of the Tenants' claim, less the amount of May rent owing, is $2,810.35.

Analysis

In a claim for damages or loss, the party making the claim has the onus of proving on a balance of probabilities that the other party caused the damage or loss. The evidence

of each Party in relation to the articles left in the unit is contradictory. The Tenants state that the Landlord told them to keep the articles and that the addendum is proof that the Landlord intended to give the Tenants the articles. The Landlords deny the addendum and state that their intention not to give these articles to the Tenants is evident by the value of the articles. Leaving the addendum aside as contradicted, if the articles were of such value it would not seem reasonable that the Landlords would leave these articles behind for the Tenants to use as opposed to noting them in the body of the lease as done with the barbeque and the tv, or having them picked up as done with other articles left behind. Accordingly, I find that the Tenant's evidence is preferable to the Landlord's evidence and I find that the Landlord has not met the burden of proof in relation to a loss arising from leaving the articles with the Tenants and I therefore dismiss this part of the application.

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to this section. The Landlord in this case has elected to end the one year lease agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of May 21, 2011. As such, the Tenant is liable for rent to that date and I find that the Landlord is entitled to the prorated amount of **$1,117.74** (1,650/31 x 21) for May 2011 rent.

As the Tenants were not liable for rent past the date of May 21, 2011, I find that the Landlords cashed the Tenants June rent cheque with no right to this rent and that as a result, the Tenants incurred losses from the cost of loans made to cover the shortfall, late fees and stop payments. I therefore find that the Tenants are entitled to a monetary amount of **$1,650.00** for the June cheque plus **$568.45** for related losses as claimed ($395.45 + 115.00 + 20.00 + 20.00 + 18.00). I dismiss the claim for the cost of a registered letter to send the Landlord's the Tenants' forwarding address as this cost was not a loss arising from an act or negligence of the Landlord.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Tenants provided their forwarding address to the Landlord on June 2, 2011 by fax and registered letter, and as the Landlords filed the application within 15 days of this date, I find that the Tenants are not entitled to return of double their security deposit.

As both the Tenant and Landlord have been successful with their claims, I decline to make an award in relation to the recovery of the filing fee. The Landlord has been awarded $1,117.74 and currently holds an $825.00 security deposit. I order the Landlord to retain this sum in partial satisfaction of his claim, leaving a balance of $292.74. The Tenant has been awarded $2,218.45. Setting off the awards against each other leaves a balance of **$1,925.71** payable by the Landlord to the Tenant and I grant the Tenant a monetary order under section 67 for that sum.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **$1,925.71**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 09, 2011.

Residential Tenancy Branch