Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to unpaid rent or utilities?
3. Has the landlord established an entitlement to damage or loss under the Act, regulations or tenancy agreement?
4. Is the landlord authorized to retain all or part of the security deposit owed to the tenants?

Background and Evidence

I was provided the following undisputed information:

- The tenancy commenced October 1, 2009;
- The tenants paid a $575.00 security deposit;
- At the end of a one year fixed term the tenancy converted to a month-to-month tenancy;
- During the tenancy the rent was increased to $1,176.00 per month.
- The tenants moved-out of the rental unit November 21, 2011 and a move-out inspection was performed on November 25, 2011 at which time the tenants returned the keys to the landlord; and,
- The tenants provided a forwarding address on the move-out inspection report and authorized the landlord to retain $467.00 of the security deposit.

The landlord's original application was completed on December 14, 2011 and received by the Residential Tenancy Branch, by mail, on December 19, 2011. The landlord subsequently filed to amend the application. Below I have summarized the landlord's amended claims against the tenants and the tenants' responses.

Carpet cleaning – $72.80
The landlord submitted that the tenant authorized deduction of $65.00 at time of move-out inspection for the carpet cleaning but actual cost was $72.80 including tax. The tenants submitted that the landlord should be held responsible for any amount in excess of the amount they already agreed to pay during the move-out inspection.

Painting and wall repair -- $200.00
It was undisputed the tenants authorized this deduction.

General suite cleaning -- $162.00
It was undisputed the tenants authorized this deduction.

Window cleaning -- $40.00
It was undisputed the tenants authorized this deduction.

Unpaid/Loss of rent -- $1,176.00
The landlord received the tenant's notice to end tenancy in the mailbox on November 2, 2011. Upon receipt of the notice the landlord contacted the tenants and the tenant came to the office to sign a "Late Notice to Vacate" form on November 10, 2011. The landlord suffered a vacancy for the months of December 2011 and January 2012. The landlord is seeking to hold the tenants responsible for compensating the landlord for loss of rent for December 2011 due to the late notice to end tenancy.

The tenants stated that they put their notice to end tenancy in the landlord's mailbox on November 1, 2011 after 5:00 p.m. The tenants claimed the landlord indicated they would not show the unit unless the tenant signed the Late Notice to Vacate form so the tenant signed the form. The tenants submitted that the building and unit were neglected and that is likely the reason the unit did not re-rent. The tenants pointed specifically to mould, a flood in the unit shortly before the tenancy ended, an unsafe balcony, and rotted countertops. The tenants claimed the landlord was showing prospective tenants other units in the building but not their unit because of its condition.

The landlord stated he did not recall how much the unit was advertised for but knows it was re-rented for $1,200.00. The landlord acknowledged that the unit required some repairs and updating. For example: the cabinets had be repainted, countertops

replaced and new carpeting installed. The landlord's agent determined the unit was in poor condition after the tenants gave notice; however, the agent was of the belief he had shown the unit to prospective tenants. The landlord acknowledged he manages numerous units and could not recall the specifics as to when he showed the unit.

The landlord initially submitted that the tenants had painted the cabinets black but the tenants refuted this claim and submitted when they moved-in they were painted black. The tenants point to this discrepancy as evidence the move-in inspection report did not accurately reflect the condition of the unit at the beginning of the tenancy.

The documentary evidence provided by the landlord included copies of: the tenancy agreement; the tenants' ledger account; a page of the tenancy agreement entered into with the subsequent tenants; condition inspection reports; carpet cleaning invoice; painting invoice; pay advise for cleaning performed by resident manager; numerous statements and invoices for advertising in various publications; and, registered mail receipts.

Analysis

Where a tenant wishes to end a month-to-month tenancy the tenant is required to give the landlord at least one full month of written notice in accordance with the requirements of section 45 of the Act. Since the tenants' rent was payable on the 1st of every month, in order to end the tenancy for November 30, 2011 the landlord would be entitled to receive the tenant's notice no later than October 31, 2011. I heard from the tenants that they left their notice in the landlord's mailbox on November 1, 2011 and it was received by the landlord November 2, 2011. It is undisputable that the tenants' notice to end tenancy effective November 30, 2011 was late.

Where a tenant gives late notice to end tenancy the effective date will change to comply with the Act. Alternatively, the landlord may agree to end the tenancy earlier and put the tenant on notice that the landlord reserves the right to claim for loss of rent for the following month if the unit is not re-rented. In this case, the landlord agreed to accept the late notice and put the tenants on notice that they may be held responsible for loss of rent for December 2011 as evidenced by the "Late Notice to Vacate" document signed by the tenant November 10, 2011.

With respect to the tenant's submission that the landlord would not show the unit until the Late Notice document was signed I find this to be an indication the landlord was acting in accordance with the Act and Residential Tenancy Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent*. It is important to note the tenants did not have

to sign the Late Notice document and could have continued their tenancy until December 31, 2011. Therefore, I find the landlord was acting reasonably by not showing the unit to prospective tenants until such time the agreed upon effective date of the tenant's notice was confirmed by way of the signed "Late Notice to Vacate".

In light of the above, I find the landlord has established that the tenants violated the Act and tenancy agreement by not giving the landlord sufficient notice to end tenancy and the landlord agreed to end the tenancy earlier upon putting the tenants on notice that the landlord may claim for loss of rent against them.

Establishing that the tenants violated the Act with respect to giving late notice to end tenancy does not in itself give rise to an automatic award for the landlord. Rather, the landlord remains subject to the statutory duty to mitigate its losses. Mitigation is established where it is shown that the party claiming the loss has done whatever is reasonable to minimize the loss.

I was provided a substantial amount of documentary evidence to demonstrate that the landlord advertises available units regularly and frequently and at a considerable cost. Thus, I am satisfied advertising efforts are not an issue in this case. However, I was presented disputed verbal evidence that the unit was not shown to prospective tenants during November 2011 despite prospective tenants viewing other units in the building. I find that the tenants' submission of such is not overtly damaging to the landlord's claim for loss of rent. Where a landlord has multiple vacancies or tenancies about to end, I find it is reasonable that the landlord would show the units most suitable to the prospective tenant and prioritize units based upon their vacancy status or whether the tenancy is about to end with proper notice.

The tenants submitted the unit was not well maintained and the building has been neglected. However, I find the condition inspection report indicates the unit was in good condition at the beginning of the tenancy and in need of cleaning and repainting at the end of the tenancy, which the tenants agreed to pay for.

Although the tenants alleged the move-in inspection report did not accurately describe the actual condition of the unit, section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. I find failure to indicate the cabinets were black at the beginning of the tenancy to be insufficient evidence to

establish the signed move-in inspection report was misrepresented the condition of the unit.

I have been presented invoices that indicate the rental unit was repainted and cleaned in early December 2011 and I find that to be within a reasonable period of time after the tenants vacated the unit.

Considering all of the above, I find the landlord entitled to loss of rent for the month of December 2011 in the amount of $1,176.00.

With respect to the additional cost of carpet cleaning I find the landlord has provided documentary evidence to corroborate the actual cost. Upon review of the document whereby the tenant authorized the landlord to make certain deductions from the security deposit, I find this document does not indicate that the authorized deduction will serve as a final settlement in full satisfaction of the item damaged or in need of cleaning. In the absence that the document forms a settlement agreement I find the landlord has not waived its right to seek actual costs from the tenants by way of filing an Application for Dispute Resolution. Therefore, I grant the landlord's request to recover the total amount of $72.80 from the tenants for carpet cleaning.

As the landlord has sought to recover actual costs from the tenants for carpet cleaning I have considered whether all authorized deductions have been supported by evidence of actual costs. I find the landlord has provided evidence to support the authorized deductions for cleaning. The landlord received consent to deduct $200.00 for painting and I find this is less than the actual amount paid for painting, presumably to account for normal wear and tear or other damage for which the tenants were not responsible. Therefore, I am satisfied the landlord has established an entitlement to the amounts authorized by the tenants for cleaning and painting.

With respect to the security deposit I find the landlord legally obtained the tenant's written consent to make deductions totalling $467.00 from the $575.00 security deposit, meaning the landlord was obligated to return the balance of the security deposit to the tenants or file an Application for Dispute Resolution seeking authorization to retain the balance of $108.00. Section 38(1) of the Act provides that a landlord has 15 days from the date the tenancy ends or the landlord receives the forwarding address, whichever date is later, to refund the security deposit or file an Application for Dispute Resolution.

In this case, I find the landlord did not make the Application for Dispute Resolution within 15 days of the later date for the following reasons. It was undisputed that the forwarding address was received by the landlord on November 25, 2011. The issue is

when did the tenancy end? Section 44 of the Act provides for the various ways a tenancy ends. Section 44 provides, in part:

> 44 (1) A tenancy ends only if one or more of the following applies:
>
> (d) the tenant vacates or abandons the rental unit;

On November 25, 2011 the tenants had finished moving out, completed the move-out inspection with the landlord, returned the keys to the landlord. I find the tenants had vacated the rental unit and returned possession of the unit to the landlord no later than November 25, 2011. Therefore, I find the landlord had until December 10, 2011 to file an Application for Dispute Resolution seeking to retain the balance of the tenants' security deposit. Since the landlord did not complete the application and mail it until December 14, 2011 I find the landlord's application exceeded their statutory time limit and now the $108.00 balance of security deposit is doubled pursuant to section 38(6) of the Act.

In addition to the original security deposit, the tenants are credited with an additional $108.00 in recognition of the landlord's failure to file their Application for Dispute Resolution within 15 days of the tenancy ending or receiving the tenant's forwarding address in writing.

As the landlord was largely successful in this application I award the filing fee to the landlords. The landlord has been provided a Monetary Order calculated as follows:

Carpet cleaning	$ 72.80
Painting/wall repair	200.00
General cleaning	162.00
Window cleaning	40.00
December 2011 loss of rent	1,176.00
Filing fee	50.00
Less: security deposit	(575.00)
Less: doubled portion of security deposit	(108.00)
Monetary Order for landlord	$ 909.80

The landlords must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain all of the security deposit, including a portion that has been doubled, and has been provided a Monetary Order for the balance outstanding of $909.80 to serve upon the tenants and enforce as necessary.

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: March 23, 2012.

Residential Tenancy Branch