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 Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. At the original hearing the tenant had arranged for two witnesses to attend, however due to time constraints the hearing was adjourned without calling these witnesses.

The hearing was reconvened on June 19, 2012 at which time one of the two witnesses attended the hearing and provided testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for damage to the rental unit; for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on December 14, 2010 for a 13 month fixed term tenancy beginning on January 1, 2011 that converted to a month to month tenancy on February 1, 2012 for a monthly rent of $1,850.00 due on the 1st of each month with a security deposit of $925.00 paid.

The tenancy agreement includes terms that the tenant pays a $200.00 deposit against future bills: hydro (house meter), water, garbage removal and the tenant pays 20% of the above mentioned bills as governed by the unit entitlement within 5 days of receipt of said bills.

The landlord submitted into evidence a copy of a Condition Inspection Report signed by the tenant on both move in and move out. The tenant notes in the Report that she disagrees with the landlord's assessment of the condition of the unit at the end of the tenancy.

The parties agree that during the tenancy the tenant sublet the rental unit to two other people in the summer of 2011. The landlord testified that when the new tenants moved in the rent was put up to $1,929.00. While the tenant agreed the new rent was $1,929.00 she testified that it began on January 1, 2012.

The tenancy ended after the tenant provided the landlord with written notice dated February 27, 2012 with an effective vacancy date of March 31, 2012. The landlord testified that he received the notice on March 2, 2012.

The tenant submits she did not have the landlord's address but rather a service address for his agent, who no longer lived in the address provided, so she had to find the landlord's address. The tenant also testified prior to the end of February 2012 the landlord was fully aware of her intention to end the tenancy effective March 30, 2012.

The landlord testified he could not get in the rental unit until March 15, 2012 to take pictures but that he posted the availability of the rental unit on March 16, 2012 and that he had been unable to rent the unit until May 2012. The landlord seeks compensation for lost revenue for the month of April 2012.

The landlord also seeks compensation in the amount of $120.00 as a "re-renting fee" for processing an application for the sub-tenants who would be the party to the sublet between the tenant and her tenants. The tenancy agreement has a clause that identifies a "rerenting" fee of $350.00.

The landlord seeks compensation for utility charges that remain unpaid. The charges are not for the individual rental unit but rather for the electrical, water and sewage, and yard maintenance of the residential property. The landlord seeks compensation in the amount of $374.89 broken down as follows:

1. Hydro - $44.33;
2. Water and Sewage - $303.28; and
3. Lawn maintenance - $27.28.

The landlord seeks compensation in the amount of $125.00 for the removal of garbage that had been left in a common area and for cleaning under the stove; grease in pan rack; crumbs from the fridge; grease on the floor and install screens.

The landlord testified that sections of the hardwood flooring have been scratched and seeks compensation for the replacement individual boards in the amount of $1,208.00. This amount was provided by the landlord during the hearing despite his original claim of $1,650.00.

The landlord testified that he verbally instructed the tenant at the start of the tenancy that shoes should not be worn and that felt pads should be used on furniture but that no written instructions were provided. The tenant testified no instructions were ever provided verbally.

The landlord has submitted photographs showing close up shots of specific scratches of flooring. The tenant submits that not all of the photographs provided are of the flooring in the rental unit. The tenant points out that some of the photographs show a floor with that has a red staining while others show a more brown staining. The landlord suggests that this coloration difference results from the different lighting when the photographs were taken.

The Condition Inspection Report indicates, in the living room section, that the flooring was "scratch by f.p. plus 6 other scratches in hardwood". There is no indication of any damage to flooring in the kitchen in the Report. The landlord testified that there are 16 to 18 boards that need replacing and include boards in front of the fireplace; by the west window; and in front of the dishwasher.

The landlord also seeks compensation in the amount of $2,310.00 to replace the vinyl finish on the flooring of the exterior deck. The landlord submits the replacement is required to fix 3 gouges in the flooring ranging in length from 4 to 14 inches in length and something that appears to be a burn mark.

While the damage is relatively small the landlord testified that he needs to replace the entire deck because he can no longer obtain the specific vinyl that was originally installed. The landlord also testified that because the entire deck needed replacement this would require additional carpentry work with the siding.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Despite the tenant's claim that she was uncertain where to send the notice to I accept that the landlord had not provided any new address for the purposes of service than that which was provided in the tenancy agreement and the tenant should have submitted her notice to that address. As such, I find the delay by the tenant caused the landlord to receive the notice later than is allowed under Section 45 and therefore the tenant is responsible for the payment of rent for the month of April 2012.

However, Section 7 states a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with the *Act* must do whatever is reasonable to minimize the damage or loss.

From the landlord's own testimony despite being informed, in writing, on March 2, 2012 of the tenant's intent to end the tenancy on March 31, 2012 the landlord took absolutely no action to advertise the rental unit until March 16, 2012.

Despite the landlord's assertion that he couldn't get into the rental unit to take pictures for posting the unit; I find that photographs are not a necessary requirement to advertise a rental unit and therefore the landlord should have been advertising immediately upon receipt of the tenant's written notice.

I therefore find the landlord failed in his obligation to make all reasonable attempts to mitigate this loss and dismiss this portion of the landlord's claim.

As to the landlord's claim of $120.00 to assess the sub-tenants for the tenant's desire to sublet the rental unit, Section 34(3) of the *Act* specifically prohibits a landlord from charging anything for considering, investigating, or consenting to an assignment or sublease. As such, I dismiss this port of the landlord's claim.

From the testimony of both parties I accept the tenant owes the landlord some compensation for utilities. I also note at this time that from the testimony the landlord still holds a $200.00 "utility deposit" in addition to the $925.00 security deposit contrary to the *Act* that specifically prohibits a landlord from charging any other deposits other than a security deposit or pet damage deposit.

Based on the tenancy agreement submitted I find that while there is a clause that states: "Tenant to assist with garden maintenance such as weeding garden beds and watering gardens and lawn" there is no indication that the tenant is responsible for the payment to a third party for lawn care. As such, I find the landlord is not entitled to compensation for lawn care.

In regard to the landlord's claim for water and sewage I note that the tenancy agreement stipulates the tenant is responsible for water but there is no mention of sewage. I find that if the landlord intended to have sewage included in the tenant's utilities, and despite his claim that that is simply how water and sewage is billed as one item, the landlord was obligated to clearly identify sewage as a utility cost in the tenancy agreement.

In determination of the amount of utilities the landlord has not provided statements from the utility providers for the entire period of the tenancy. While the landlord submitted his own estimates as to the amounts not covered by statements, I find that since the landlord made his Application on April 11, 2012 and the hearing was conducted in June

2012 the landlord has failed to provide any statements regarding usage that he would have received by the hearing date.

In the case of hydro, I note the landlord has statements for the periods of January 1, 2011 to February 10, 2011 or February 11 to March 31, 2012. As such, I find the landlord has provided sufficient evidence to establish the value of hydro owed by the tenant in the amount of $28.53.

In regard to the landlord's claim of $303.28 for water and sewage, based on the statements submitted into evidence and accounting for my finding that water under the tenancy agreement does not include sewage I find the landlord is entitled to $136.36 for water usage.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

From the testimony of both parties and the photographic evidence, in particular of the landlord, I find the landlord has failed to establish that the tenant failed to meet her obligation, under Section 37, to leave the unit reasonably clean. Reasonably clean does not mean in a brand new condition and I accept the tenant did leave the unit reasonably clean.

Further, as the garbage the landlord is claiming that he had to remove, I accept that the photographic submission of the landlord shows an area that is one of the common areas of the property and has provided no evidence that these items were left by the tenant. For these reasons, I find the landlord has failed to establish his claim for cleaning and garbage removal and I dismiss this portion of the landlord's Application.

In regard to the landlord's claim for replacement of individual boards the landlord submits in his testimony three very distinct areas where damage occurred, two locations in the living area and one in the kitchen, yet in the Condition Inspection Report the landlord only indicates scratching in front of the fireplace.

Further, the tenant raises the concern that the photographs may not have been all taken in the rental unit based on the different colouring in the stain. Based, in part, on this disputed evidence and the inconsistencies between the landlord's evidence and his testimony, I find the landlord has failed to establish any damage to the flooring and/or that it resulted from the tenancy.

Further, the landlord has provided no evidence to establish that he looked at any other options to minimize any damage or loss related to repairing any damage that may have existed to the floor. Despite the landlord's claim that replacement of individual boards was the only acceptable remediation, he provided no evidence to support this assertion.

For the reasons above, I find the landlord has failed to establish that the hardwood floor was damaged or that he has suffered a loss resulting from a violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of his Application.

In relation to the landlord's claim that the tenant caused damage to the vinyl deck flooring, I accept from the photographic evidence that was provided that there were some slashes in the decking. I note however that landlord again has provided no evidence that he was not able to obtain a sufficiently sized portion of the vinyl decking to patch the scratches on the decking.

Further, the landlord has provided no evidence to establish that he could not have had the vinyl patched with another material that would sufficiently repair the damage. As a result, I again find the landlord has failed to meet his obligations under Section 7 to do all that is reasonable to mitigate the loss and I dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$164.89** comprised of $28.53 hydro and $136.36 water. As the landlord was largely unsuccessful in his Application, I dismiss his claim to recover the $50.00 fee paid for this application.

I order the landlord may deduct this amount from the $925.00 security deposit and $200.00 non-compliant utilities deposit in partial satisfaction of this claim. I further order the landlord to return the balance of these monies to the tenant and I grant a monetary order to the tenant in the amount of **$960.11**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: June 26, 2012.

Residential Tenancy Branch