Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order for loss revenue and an order to retain the security deposit in partial satisfaction of the claim. The tenants are seeking an order to have double the security and pet deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, the tenancy agreement or the regulations?

Background and Evidence

The tenancy began on or about May 12, 2012 that was to be of a fixed term ending on May 31, 2013. Rent in the amount of $1500.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of $750.00 and a pet deposit of $500.00. Condition inspection reports were conducted upon move in and move out. The tenants vacated the unit on October 1, 2012. The landlord had no issue in which the unit was returned to him at the end of tenancy. Both parties agree to all of the above facts.

The tenants gave the following testimony; the tenants rented a house on a one acre plot in a somewhat rural area, shortly after moving in the tenants noticed a foul smell in the water that would not dissipate, the tenants were aware that the primary water source was lake water and had been assured by the landlord that it was filtered and safe, the foul odor emanating from the water increasingly got worse, after two to three weeks

both subject tenants; their children and the family dog began feeling ill, symptoms included ; burning throat, headache, nausea and a general feeling of sickness, contacted the landlord several times by phone and e-mail and asked to have the problem resolved, the tenants children were so distraught with the smell of the water that one of their children starting crying from the water burning her eyes, the landlord sent a water technician who made attempts to “bleach the system”, the technician advised that he didn’t know what was wrong and that the landlord didn’t have the means to pay for all of these costs incurred, the tenants made further attempts to contact the landlord, on August 1, 2012 the tenant sent an e-mail asking the landlord to have someone check the water again as it had not gotten any better, the same technician returned and advised that nothing was wrong and he didn’t know what else to do, the tenants pleaded with the technician to change the filter and became involved in a heated verbal exchange with the technician, the technician did change a filter but within 24 hours the smelly water problem returned, the tenants contacted the local authorities and were told not to drink or use the water for bathing, the tenants advised the landlord of this situation and came to an agreement that the tenants were to purchase water jugs and a cooler as a remedy, after several more attempts to have the landlord’s technician return to rectify the situation the tenants became so frustrated and felt so ill that they felt they could no longer reside there, on September 16, 2012 the tenants e-mailed the landlord and advised that because he was not providing a safe healthy water supply as required under the Act he had breached their initial tenancy agreement and that the lease was no longer in effect and would be moving out as of October 1, 2012, the tenants feel that they should be entitled to the return of double their security and pet deposits as the landlord did not return those within 15 days of moving out, after the tenants gave notice the water technician made three more trips within two weeks, this frustrated the tenants further that over three months of complaining to the landlord; the water technician only attended three times.

The landlord gave the following testimony; the landlord disputes the allegations from the

tenants that he did not deal with the water problem quickly and decisively, hired a water technician to try and resolve the problem as soon as possible, had the water tested and no issues were found with it, the tenants purchased the water jugs and cooler without having his consent, seeks the recovery of those costs, doesn't feel the tenants had the right to "break the lease" and feels the notice they gave was insufficient, tried to remedy the situation at a considerable financial cost, the landlord; had the carbon filter replaced, the system bleached, and a complete inspection and adjustment, seeking the recovery of loss of revenue for the balance of the lease among other costs, adamantly disputes that the water purifying system is reverse osmosis system, feels the tenants have exaggerated the severity of the problem to try to break the lease.

Analysis

Both parties provided extensive documentary evidence for this hearing. All documentation along with all testimonies were considered when making a decision however due to the voluminous amounts of documents and for the sake of clarity and brevity, only the claims as made on each applicants application is addressed.

As both parties have made an application, I will address each party's claims and my findings as follows.

Firstly, dealing with the tenant's application;

First Claim – The tenants are seeking the return of double the pet and security deposit.

The tenants are of the position that the landlord misrepresented the property by assuring them that the water met all health and safety requirements and that when an issue arose with the water the landlord did not make all reasonable efforts to mitigate and rectify the situation in a timely manner. Based on that misrepresentation, the tenants feel that since the landlord did not provide an essential service, he breached the tenancy agreement and that the lease was no longer valid. In addition the tenants feel that since the landlord did not return their pet and security deposit within fifteen days of

the end of tenancy they should be entitled to the return of double their pet and security deposit.

The landlord is of the position that he did everything reasonably possible to mitigate and correct the water issue and that the lease is valid. He is of the position the tenants have wrongly ended the tenancy and that he should be entitled to retain the security and pet deposit in partial satisfaction of his claim of loss revenue.

In the matter before me Section 32 clearly addresses this as follows;

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) **complies with the health, safety and housing standards required by law**, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) **A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.**

The Landlord is responsible for ensuring that rental units and property, meet “health, safety and housing standards” established by law, and are reasonably suitable for

occupation given the nature and location of the property. Both parties wish to rely on a letter that confirms the noxious odor and unpleasant nature of the water . Based on that letter and all the evidence before me it is clear that the landlord did not provide water that met with health and safety standards. Based on that finding Section 45 (3) of the Act applies as follows;

Tenant's notice

45 (1) 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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Although the landlord did have a technician attend several times to inspect the problem and make some repairs, I am not satisfied that the landlord carried out the task of mitigating this situation in a timely and urgent fashion. The landlord resides in New Brunswick and although he had a technician and a contact person available to “check on things”, I do not find it sufficient with the matter presented today. Water is perhaps the most essential of any service provided by the landlord and when that service is not met the tenant’s cannot reasonably be expected to endure this problem for over three months. The tenants could not drink or bathe in their only source of water. I do find the landlord was in breach of the original tenancy agreement and that it was no longer valid.

The tenants feel that since they didn’t receive their deposit within fifteen days of the tenancy ending they should be entitled to the return of double their deposits. I do not agree with the tenants in this regard. Both parties agreed that a move in and move out condition inspection report was conducted in accordance with the Act. In addition both parties agree the tenant’s moved out on October 1, 2012.

In the case before me section 38(1)(c) and (d) of the Act applies;

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Although I did not find in favour for the landlord in regards to the above claim, the landlord felt he had a legitimate claim to the security deposit and made an application in accordance with Act. The landlord filed for dispute resolution within 15 days of the latter; the tenancy ending or the receipt of the tenants forwarding address in writing.

I do not find that the tenants are entitled to the return of double the pet and security deposit. The tenants are entitled to the original security deposit of $750.00 and the original pet deposit of $500.00 for a total of $1250.00.

I will deal with the landlord's application and my findings as follows;

First Claim – The landlord is seeking $12000.00 for loss of revenue for the months of October 2012- May 2013 for the tenant's "breaking the lease". Based on my previous finding for the tenants that a material term had been breached and that the tenancy was no longer in effect, I do not find the landlord is entitled to this portion of his application; accordingly I dismiss this portion of his application.

Second Claim – The landlord is seeking $219.19 for the recovery of the costs of a water cooler and bottles. The tenants stated that the landlord initially agreed to allow the tenants to keep the cooler and water, but later changed his mind when the issue of this hearing arose. The landlord contradicted himself during the hearing. He initially stated

that he was fine with the tenants taking the amount of the bottles and cooler off of the rent to help “smooth things out” but later stated that since they applied for dispute resolution he seeks compensation. It’s clear from the correspondence provided that an agreement was in place to allow the tenants to keep the cooler and water as they were unable to use the existing water in the home. I’m satisfied that agreement was in place. The landlord is not entitled to the recovery of the costs of the cooler and bottles and accordingly I dismiss this portion of his application.

Third Claim – The landlord is seeking $987.26 for travel expenses. It was explained that the Act does not provide for the recovery of these costs and that this portion of the landlord’s application is dismissed. The landlord indicated that he understood.

Fourth Claim – The landlord is seeking $60.00 for administrative costs associated with litigating his claim. It was explained that the Act does not provide for the recovery of these costs and that this portion of the landlord’s application is dismissed. The landlord indicated that he understood.

As the landlord was not successful in his claim, he is not entitled to the recovery the filing fee and must bear that cost.

As for the monetary order, I find that the tenant has established a claim for $1250.00. The tenant is also entitled to recovery of the $50.00 filing fee. I grant the tenant an order under section 67 for the balance due of $1250.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order for $1300.00.

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: January 14, 2013.

Residential Tenancy Branch