Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nuevo Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the conference call hearing and both gave affirmed testimony. The tenant also provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to the landlord, however the landlord has provided no evidentiary material. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

The application of the landlord names a landlord company only as applicant and one tenant as respondent. However, the tenant's application names the landlord company and another person as landlord respondents. The tenant explained during the course of the hearing that the person named as landlord was the property manager. The landlord's agent who attended the hearing is not the same person named in the tenant's application.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
Is the tenant entitled to recover all or part of the pet damage deposit or security deposit?

Background and Evidence

The landlords' agent testified that this fixed term tenancy began on July 1, 2012 and was to expire on July 31, 2013, however the tenant moved out of the rental unit on October 31, 2012. Rent in the amount of $1,120.00 per month was payable in advance at the end of each month for the next month, and there are no rental arrears to the end of October, 2012. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of $560.00 which is still held in trust by the landlord.

The landlords' agent further testified that during the tenancy, on September 19, 2012 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause for breach of a material term of the tenancy by sliding the notice under the door of the rental unit. Subsequently, the landlord's agent told the tenant that the landlord would attempt to re-rent the rental unit before November 1, 2013; that the tenancy was for a fixed period of 13 months under the tenancy agreement and the tenant would be responsible for full rent until the rental unit was re-rented. The notice was issued because the rental unit has a no-dog policy and the tenant acquired a dog and refused to remove it from the rental unit. The landlord's agent tried to work with the tenant after issuance of the notice to end tenancy, but the tenant refused.

The landlord advertised the rental unit for rent on October 4, 2012 on Craigslist, Kijiji and Rental Guide, which are free on-line advertising websites, but the landlord has not provided any evidence of such advertisements.

The rental unit was re-rented for December 1, 2012, and the landlord claims one month of rent from the tenant in the amount of $1,120.00, $50.00 for recovery of the filing fee for the cost of this application, and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

The landlords' agent further testified that the landlord received the tenant's forwarding address by registered mail on January 2, 2013, and the details portion of the Landlord's Application for Dispute Resolution states the same.

The tenant testified that although the tenant paid rent for the month of July, 2012, the tenant didn't actually move into the rental unit until the week of July 8. At the beginning of the tenancy the carpets had an odour of urine which was noticed by the landlord's manager, after professional cleaning. The tenant had the carpets professionally cleaned again, and has provided an invoice for deep cleaning and deodorizing a one bedroom apartment for a cost of $100.00. The invoice is dated July 13, 2012 and contains the address of the rental unit. The tenant advised the landlord in writing and provided a copy of a letter dated July 19, 2012 addressed to the landlord company which requests replacement of the living room carpet and underlay because the professional carpet cleaner was unable to get rid of the odor. The tenant testified that the odor was not from the poodle owned by the tenant, as suggested by the apartment manager, but from a pet of previous tenants.

The tenant provided a copy of the tenancy agreement and addendum which are both signed by the tenant and a landlord and dated June 30, 2012 and contain the names of the landlord company as landlord and the tenant as tenant. It provides for rent in the amount of $1,120.00 payable on the 1st day of each month for a fixed period ending July 31, 2013. The addendum contains 21 clauses. The clauses that pertain to pets state as follows:

> 3. Only tenants with existing pets are allowed to keep their pets but the tenants must have proper litter boxes and keep their suites properly cleaned.
>
> 4. No new pets will be allowed in the future.
>
> 5. No pets allowed unless approved in writing from the rental office and a pet deposit is paid.

The tenant testified that employees of the landlord company demanded removal of the pet and threatened to enter the rental unit to remove the dog if the tenant left the dog at home. The landlord's employees also handed the tenant a letter, a copy of which was provided for this hearing which states: "We will be showing your suite whether you home or not as per paragraph 14 addendum to rental agreement." The letter is dated September 27, 2012, addressed to the tenant, and signed, "#301 Management." Paragraph 14 of the addendum states:

14. In your last month of tenancy we have your authorization to show your suite to potential renters.

The tenant further testified that the landlord did not attempt to work with the tenant. The landlord simply issued the notice to end tenancy, and the tenant accepted the effective date of vacancy and did not attempt to dispute the notice, but would not give up the poodle. The tenant has provided a copy of the notice to end tenancy and the reason for issuing the breach is said to be, "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The notice is dated September 19, 2012 and contains an expected date of vacancy of October 31, 2012.

On October 31, 2012 at 10:00 p.m. the parties conducted a move-out condition inspection at which time the tenant gave the landlord's manager a letter and provided a copy for this hearing. The letter is dated October 30, 2012 and contains the tenant's forwarding address and a request for return of the postdated cheques for rent. The manager agreed to do so but never returned the cheques. The tenant placed a stop payment on the rent cheques.

There was no copy machine available so the tenant took photographs of the condition inspection report with the tenant's wireless telephone. Copies of the photographs were provided for this hearing. The move-in and move-out condition inspection reports are both on the same form. During that inspection, the landlord told the tenant that a new tenant was taking possession on November 1, 2012, and agrees that the landlord showed the rental unit during the month of October, 2012 to perspective renters.

Also provided is a documented list of events, which includes a statement that the tenant hand-delivered the tenant's forwarding address to the landlord in a letter dated October 30, 2012. The tenant's application for dispute resolution states that the letter was delivered in person to the apartment manager on October 31, 2012 and the tenant testified that it was in fact handed to the apartment manager on that day.

Analysis

It's clear in the evidence that neither party has complied with the *Residential Tenancy Act.* The tenant breached the terms of the tenancy agreement by acquiring a pet when the addendum to the tenancy agreement prohibits pets by new tenants. I find that the tenant was aware of the no pet policy as evidenced by the tenant's signature on the addendum and the tenancy agreement, and I find that it was a material term of the

tenancy. Therefore, I find that the landlord was well within a landlord's rights to issue the notice to end tenancy.

Further, the tenant chose to accept the notice to end tenancy and move out of the rental unit on its effective date of October 31, 2012 rather than removing the poodle from the rental unit, after having signed a fixed term tenancy agreement to expire on July 31, 2013.

I have reviewed the tenancy agreement, and I find that the testimony of the landlord's agent is incorrect, in that rent is not payable on the last day of the month, but clearly states that rent is payable on the 1st day of each month.

I further find that the landlord's employees have contradicted a landlord's responsibilities in threatening to remove the pet if the tenant left the pet at home. The employees have also breached the terms of the *Act* by giving the tenant a note advising that they will enter the rental unit whenever they choose, in accordance with the addendum to the tenancy agreement. A landlord may not contract outside the *Act,* and the *Act* requires a landlord to provide the tenant with not less than 24 hours written notice of the landlord's intention to enter the rental unit for any reason unless the tenant consents at the time the landlord or its agents enter. Therefore, I find that paragraph 14 of the tenancy agreement addendum is not lawful and is not enforceable.

In the circumstances, I find that the tenant breached the terms of the tenancy agreement, and the landlord ended the tenancy earlier than the end of the fixed term as a result of that breach. I further find that the tenant accepted the end of the tenancy and moved out. Where a tenant breaches the terms, the tenant is liable for the rent up until the rental unit is re-rented, and if a landlord can prove that rent at a lower rate was necessary in order to re-rent, the tenant would be liable for the difference until the end of the fixed term.

However, the *Act* requires any party who makes a claim against another to do whatever is reasonable to mitigate, or reduce the loss suffered. In this case, that would mean that the landlord had the obligation of advertising the rental unit for rent at a reasonable time and at a reasonable amount of rent. The landlord testified that the rental unit was re-rented for December 1, 2012 and that advertisements were placed on Craigslist, Kijiji and Rental Guide on October 4, 2012 but has provided absolutely no evidence of the date the rental unit was re-rented or that any advertisements were placed or the dates of any such advertisements. The tenant testified that an employee (manager) of the landlord told the tenant during the move-out condition inspection on October 31, 2012 that new tenants were moving in on November 1, 2012. In the absence of any evidence to support the landlord's testimony, since that testimony is disputed by the tenant, I find

that the landlord has not met the burden of proof and has not satisfied me that the landlord complied with the *Act* by mitigating any loss suffered, and the landlord's application is hereby dismissed.

With respect to the security deposit, the landlord testified that the tenant's forwarding address in writing was received by the landlord by registered mail on January 2, 2013. The tenant testified that the letter containing the tenant's forwarding address was provided to the landlord's apartment manager when the move-out condition inspection took place, on October 31, 2012. The landlord provided no evidence of the date of receipt or the fact that the tenant's letter was received by registered mail. One cannot make verbal claims and fail to back them up with documentation to support those claims, especially when the facts are in dispute. The letter of the tenant is dated October 30, 2012, and the move-out condition inspection report was completed on October 31, 2012. I prefer the testimony of the tenant because of the date of the letter and the fact that the parties were together on October 31, 2012 support the tenant's testimony. Nothing supports the landlord's testimony.

The *Act* requires a landlord to return a security deposit in full to a tenant or make an application to keep it within 15 days of the later of the date the tenancy ends or the date that the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must be ordered to pay the tenant double the amount of such deposit. In this case, I find that the tenancy ended on October 31, 2012 and the landlord received the tenant's forwarding address in writing on the same day. The landlord filed the application for dispute resolution claiming against the security deposit on January 11, 2013 which is well beyond the time required under the *Act.* Therefore, I find that the tenant is entitled to double recovery of the $560.00 original deposit, or $1,120.00.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the $50.00 filing fee for the cost of the application.

I further find that the person named as landlord on the tenant's application is an employee of the landlord company and not liable under the terms of the tenancy agreement, and the tenant's application with respect to that person is hereby dismissed.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* as against the landlord company named in the Tenant's Application for Dispute Resolution in the amount of $1,170.00.

The tenant's application for a monetary order as against the person named in the Tenant's Application for Dispute Resolution is hereby dismissed without leave to reapply.

This order is final and binding on the parties and may be enforced.

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 21, 2013

Residential Tenancy Branch