



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of revenue, liquidated damages, cost of general cleaning and cleaning the blinds and the cost of the application, as well as an order to retain the security deposit in partial satisfaction of the claim.

The hearing was also to hear a cross application by the tenant seeking the return of the security deposit and damages for loss of quiet enjoyment. The tenant was also seeking reimbursement for a “rent difference” between the subject suite and their current residence based on the landlord’s delay in responding to the tenant’s request to move to another rental unit within the complex.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of rent?

Is the tenant entitled to monetary compensation in damages?

Background and Evidence

Landlord’s Claim

The landlord testified that the tenancy began as a fixed-term to run from November 1, 2012 to October 31, 2013. The rent was \$1,550.00 per month and a security deposit of \$775.00 was paid. The tenant terminated the tenancy on January 31, 2013.

Submitted into evidence by the landlord were copies of communications, copies of rental advertisements, a copy of the tenancy agreement, A copy of the move-in and move-out condition inspection reports, a copy of the final ledger with charges being claimed, copies of receipts and invoices and proof of service

The landlord testified that the tenant violated the tenancy agreement by terminating the contract prior to the fixed term expiry date. The landlord testified that, as soon as the tenant's notice was received, immediate efforts were made to show the unit to prospective renters. However, the landlord still suffered a loss of revenue for the month of February 2013 and is therefore claiming compensation of \$1,550.00.

The landlord testified that the tenancy agreement signed by the tenant contains a liquidated damages term requiring the tenant to pay \$300.00 for the estimated administrative costs in terminating the agreement prematurely and this amount is being claimed as well.

The landlord testified that the suite was not left in a reasonably clean condition and that the landlord incurred costs of \$84.00 to clean the blinds and \$44.00 for general cleaning. The landlord testified that it is a requirement under the tenancy agreement that the blinds be professionally cleaned at the end of the tenancy. The landlord testified that the stove, oven and behind the appliances were left not cleaned, as well as some other areas in the rental unit. The landlord made reference to photos and the move-out condition inspection report.

The tenant disputed the landlord's evidence and position with respect to the circumstances surrounding the tenant's termination of the contract. The tenant testified that they spoke to an agent of the landlord about transferring to another unit and were assured that it could be done. The tenant testified that they sent the landlord a communication on December 14, 2012 stating that, if they were not permitted to transfer to a one-bedroom unit, they would have to break their lease and move out. The tenant testified that they made repeated efforts to get a response, but when they did not hear back, they believed that the request for a transfer had been accepted. The tenant is of the opinion that the landlord violated a verbal agreement to allow them to transfer to another unit. The tenant disagrees with the landlord's claim for the loss of revenue for February.

The tenant acknowledged that they signed the tenancy agreement that contains a liquidated damages clause provision and they expected that the payment of this fee would effectively terminate the fixed term.

In regard to the charges for the blind cleaning, the tenant disputes this cost on the basis that they did rent a machine to clean the blinds themselves. The tenant pointed out that they had only resided in the unit for 3 months.

In regard to the landlord's claim for cleaning costs, the tenant is adamant that the unit was left in a reasonably clean condition. The tenant stated that during their move-in condition inspection, they were not shown the inside of the oven, refrigerator or behind the appliances and pointed out that they discovered that some cleaning was still required after they took possession.

Tenant's Claims

The tenant amended their application to claim compensation of \$5,230.00 less the \$600.00 liquidated damages for a total claim of \$4,930.00, including:

- \$1,550.00 for double the security deposit,
- \$630.00 representing the difference in rental rates between the subject residence at \$1,550.00 and the one that the tenant found after terminating the tenancy, for \$920.00 per month, and
- \$3,000.00 for loss of quiet enjoyment during their tenancy.

The tenant testified that, because the landlord did not accommodate their request for a transfer to another unit in a timely manner, this caused a month delay for them in searching for another less-expensive residence to move to. The tenant holds the landlord accountable for prolonging their payment of \$1,550.00 for the subject suite, when they could have relocated earlier and paid a lower amount of \$920.00 for the new suite they found. The tenant feels entitled to be compensated \$630.00 by the landlord for the extra cost caused by the landlord's delay in responding to their request.

The tenant testified that they are claiming a rent abatement of \$3,000.00 for incidents that occurred during the month of January 2013. The tenant testified that on January 12 and January 20, 2013 they were significantly inconvenienced by the landlord's agents arriving without notice at inopportune times. The tenant also stated that the management of the building was not up to expected standards and calls to the building supervisor were not answered nor returned. The tenant feels that the effect on their tenancy warrants an abatement of \$3,000.00.

The landlord disputed the tenant's claim for double the security deposit on the basis that the landlord made the application for dispute resolution within the 15-day statutory deadline under the Act.

The landlord denied that any verbal contracts or promises were made to the tenant committing to a transfer allowing them to move to a less expensive suite. The landlord stated that the tenant's version of what transpired was unlikely because the building supervisor has no authority to approve a tenant's transfer request. Only the owners have the authority to allow this. The landlord pointed out that nothing in the tenancy agreement provides that the tenant is entitled to end their tenancy by transferring to another unit. The landlord stated that there is no legal nor contractual obligation requiring that the landlord consider permitting a transfer within the complex.

The landlord also argued that the tenant is not entitled to be compensated the \$630.00 difference in the rent for moving out. The landlord pointed out that the tenant chose to break the lease they signed by terminating it prior to the expiry of the fixed term. According to the landlord, this would give rise to compensation to the landlord, who had fully complied with the terms of the contract, not the tenant who violated the terms of the agreement by ending it before the expiry of the fixed term.

With respect to the tenant's claim for compensation for the loss of quiet enjoyment, the landlord's position is that there was no violation of the Act or agreement in this regard. The landlord pointed out that the tenant was not forced to allow access, but was asked for permission and consented. The landlord testified that it was in the tenant's best interest to have their unit shown in order to get it re-rented to reduce their liability for the landlord's loss of revenue and the landlord was assisting the tenant's with this.

Analysis: Landlord's Claim

An applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find it important to note that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent, and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I accept that, despite marketing the unit without delay, the landlord was unable to find a replacement renter for February 1, 2013, following the tenant's written notice to move and find that the landlord did incur a loss of \$1,550.00 revenue for the month of February. In fact, I find that the landlord's evidence verified that they finally found a new tenant to take the unit on April 1, 2013.

In regard to the landlord's claim for the \$300.00 liquidated damages, I find that this is a clear term in the tenancy agreement and the tenant is required to pay the landlord \$300.00 liquidated damages for terminating the tenancy prematurely.

With respect to the costs incurred for cleaning the rental unit, I accept the tenant's testimony that the unit was left in a reasonably clean condition, despite some areas that needed to be cleaned up after the tenant vacated.

I accept the tenant's testimony that they did clean the blinds after their 3-month residency in the unit, and I find that these blinds were, on a balance of probabilities, left reasonably clean.

I find that the fact that the landlord has a policy, and a term in the tenancy requiring professional cleaning of the blinds, regardless of their condition, may in some situations such as this, exceed the tenant's statutory responsibilities under sections 32 and 37 of the Act by imposing a higher standard under the contract, than that permitted under the Act. Accordingly, I find that the landlord's claims for cleaning must be dismissed.

Based on the above facts I find that the landlord has established a total monetary claim of \$1,850.00, comprised of \$1,550.00 for the loss of rent for February 2013 and \$300.00 for liquidated damages.

Analysis: Tenant's Claim.

I find that the landlord was holding a security deposit in trust for the tenants in the amount of \$775.00. I find that the tenant terminated the tenancy and provided the landlord with their forwarding address on January 31, 2013.

I find that, under section 38 of the Act, the landlord had 15 days from January 31, 2013, to either return the tenant's security deposit or make an application to keep it, failing which the tenant would be entitled a refund of double the security deposit. The landlord applied on February 13, 2013 making a claim for loss of revenue within the 15 days.

Therefore the tenant is not entitled to be credited with double the \$775.00 security deposit and I find that the deposit being held in trust is \$775.00.

With respect to the tenant's claim for compensation for the \$630.00 difference in rental rates between the subject residence at \$1,550.00 and the one that the tenant later moved to, with a lower rental rate of \$920.00 per month, I accept that an earlier move would have reduced their expenditures for the month of January 2013 if they terminated the tenancy and vacated a month earlier. The tenant attributes this delay to the landlord's failure to respond to their request for a transfer to a lower-cost unit in the same complex.

However, I find that, in order to make a successful claim under section 7 of the Act, the person claiming compensation for damages, must establish that the cost or loss was attributable to the other party's violation of the Act or the tenancy agreement. In this instance I find that the landlord's action or inaction in this regard did not constitute a violation of any specific term in the tenancy agreement, nor any section of the Act.

I find that the landlord's delay in responding to the tenant's proposal that they be allowed to transfer to a lower-priced unit in the same complex did not constitute a contravention the Act or tenancy terms. Therefore the claim for compensation fails the element 2 of the test for damages. For this reason, I find that the tenant's \$630.00 monetary claim has no merit and must be dismissed.

In regard to the tenant's claim for \$3,000.00 for loss of quiet enjoyment, I find that this claim is based on the allegation that the tenant was disturbed by the landlord during the last month of the tenancy.

I find that section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act states that a landlord must not enter a rental unit for any purpose unless the tenant gives permission at the time of the entry or at least 24 before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees; .

I accept the tenant's testimony that the landlord was active in showing the rental unit during the month of January 2013 and did request access to show the unit without first giving the tenant 24 hours written notice as required by the Act. That being said, I do not find the intrusions to be extreme and I find that the tenant was at liberty to decline the access but chose to allow the landlord into their unit.

Given that it was the tenant who violated the contract by ending the tenancy early, I find that the landlord's efforts to mitigate their own losses, and also limit the tenant's liability, by actively trying to re-rent the unit as quickly as possible, to be reasonable and not gratuitously intrusive..

I find that, although the tenant was likely inconvenienced to a degree by the landlord's search for new occupants, the tenancy was not significantly devalued. I therefore find that the tenant is not entitled to monetary damages for t loss of quiet enjoyment and the \$3,000.00 claim must be dismissed.

Based on the evidence before me, I find that the tenant is entitled to a credit of \$775.00 representing the refund of the security deposit being held in trust on their behalf by the landlord.

Based on the evidence I find that the landlord is entitled to total compensation of \$1,900.00, comprised of loss of revenue of \$1,550.00 for February 2013, liquidated damages of \$300.00 and the \$50.00 cost of the application.

I hereby order that the landlord retain the tenant's \$750.00 security deposit in partial satisfaction of the claim leaving \$1,150.00 still outstanding in favour of the landlord.

I hereby grant the Landlord a monetary order for \$1,150.00. This order must be served on the tenant and may be enforced through Small Claims Court if not paid.

The tenant's application is dismissed without leave and the remainder of the landlord's application is hereby dismissed without leave.

Conclusion

The landlord is partially successful in the application, the remainder of which is dismissed and a monetary order is granted for loss of revenue and liquidated damages. The tenant's application is dismissed in its entirety without leave.

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: May 08, 2013

Residential Tenancy Branch

