Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNR, MNSD, MNDC, FF
Tenants: MNDC, MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

This hearing was originally convened on May 31, 2013 however as the tenants had filed their cross application only 8 days prior to the original hearing and the landlords were served with notice of the hearing with insufficient time to prepare a response, I adjourned the hearing.

At the outset of the reconvened hearing the tenants indicated that the landlords provided only one copy of their evidence that was served between hearings and that it was the female tenant who received the evidence. The tenants submit that failure to serve both tenants with their evidence is a violation of Residential Tenancy Branch Rule of Procedure 3.1.

The tenants submit that they believe the landlords did this so that they might obtain an additional adjournment to the proceedings. However the tenants did not wish to ask for an adjournment and in fact requested that the hearing proceed. The tenants sought to have certain parts of the landlords' evidence excluded. Specifically, the tenants took issue with the landlords' submission of:

1. Additional photographs –the tenants explained that these should not be considered because these photographs had been altered to include the dates and the original photographs submitted by the landlords did not and as such this provides evidence the landlords could tamper with the photographs;
2. The landlords' submission of a full copy of an email that the tenants had previously submitted into evidence that had excluded the beginning two paragraphs should not be considered because the tenants had provided a copy of the full email along with an explanation that it was a printer error that caused their original evidence to print the email without those paragraphs; and

3. The landlords' provision of additional evidence in regard to their original claim should not be considered because the adjournment had been granted for the landlords to provide a response to the tenants' claim only.

Rule of Procedure 11.5 stipulates that an arbitrator may refuse to accept the evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the *Residential Tenancy Act* (*Act)* or the Rules of Procedure, or, if for some other reason, the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.

I find that despite the landlords only providing one copy of their evidence served between hearings to the tenants that the tenants have provided no evidence that this is a willful or recurring failure of the landlords to comply with the *Act* or Rules of Procedure. I also find that at least one of the tenants had the landlords' evidence and because the tenants live together and have both had access to the package delivered to the one tenant and they both appeared at the hearing and were prepared to respond to the landlords' evidence the acceptance of the evidence would not prejudice the tenants or result in a breach of the principles of natural justice.

Further, I find that in relation to the additional photographic evidence and evidence regarding the altered email the issues raised by the tenants when suggesting they should not be considered confirm that the tenants have been able to consider the evidence and have prepared a relevant response to the evidence.

I also note that the in regard to the provision of the landlords' additional evidence regarding their own claim the instruction I provided at the original hearing as to the purpose was that the hearing was adjourned in response to the late filing of the tenants' Application and I allowed both parties to serve additional evidence. I placed no restrictions on whether or not the additional evidence related to the tenants' Application or the landlords' Application.

As such, I dismiss the tenants' request to exclude any of the landlords' evidence.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and utilities; for cleaning the rental unit; and for miscellaneous charges for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 44, 45, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to a monetary order for return of double the security deposit; for compensation for a reduction in the value of the tenancy and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 38, 67, and 72 of the *Act.*

Background and Evidence

The landlords provided a copy of a tenancy agreement signed by the parties on December 19, 2011 for a 1 year fixed term tenancy beginning on January 15, 2012 that converted to a month to month tenancy on January 16, 2013 for a monthly rent of $1,500.00 due on the 15th of each month with a security deposit of $750.00 paid. The parties agree the tenancy ended when the tenants vacated the rental unit on February 15, 2013.

The tenants provided into evidence a copy of an email to the landlords dated January 28, 2013 advising the landlords of their intention to end the tenancy on February 15, 2013. The email states that "after a long discussion about all the issues involving the basement suite below us during the last year and no other options available to us, we decided to move out once we find more suitable place for our family. We looked over the weekend and found a house rental that will work for us."

The tenants had attached a copy of a Mutual Agreement to End a Tenancy form to the email (and included into evidence) that they had completed themselves stating that they would vacate the rental unit no later than 1:00 p.m. on February 15, 2013.

The tenants provided copies of emails relevant to the issues of concern with the basement rental unit. These emails were dated from February 21, 2012 to March 21, 2012.

The first email dated February 21, 2012 is the email that the tenants submitted with the first two paragraphs missing. The landlords assert the tenants deliberately left out the first two paragraphs. The tenants submit that it was a printer error that resulted when they had set their printer to only print off highlighted evidence when print a substantial volume of evidence. The tenants did not indicate why they had highlighted only a portion of the email in question.

The tenants submit that when they rented the rental unit they had no idea that the landlords intended to renovate a portion of the basement of the house and to rent it separately to another tenant. The tenants submit that they signed the tenancy agreement believing they were renting the full house and that the landlords began renovations shortly after they moved in.

The tenants seek a refund of 25% of all rent paid for the duration of the tenancy or an amount of $4,875.00. The tenants want compensation because the rental unit was reduced in size by this much when the landlords renovated and rented out the basement rental unit without the tenants being aware of it when the signed the tenancy agreement.

The email of February 21, 2012 includes a request from the tenants to meet with the landlords to discuss how utilities, laundry, and mail will work with the basement tenants and these tenants state in the email, among other things:

- “Although inconvenience to us we cannot object to your efforts to rent the suite, so please feel free to include it in the suite rental”;
- “It is however a bit disappointing that you were unable to find a single female renter, considering we insisted on that when we discussed our rental?”
- “I do understand that it is your suite and your house, to rent it to whoever you believe is the right person for you, yet I hope you understand how I feel about this.

The landlords submit that they did rent the basement rental unit to a male tenant who ended his tenancy after less than one month. The landlords provided into evidence copies of email correspondence with the basement tenant where he states that the reason he is ending the tenancy is related to not getting along with the upstairs tenants.

The parties agree that after the basement tenant moved out the landlords offered to rent the full house to the tenants for an additional rental charge. The tenants submit that they believed that they had rented the full house from the landlords when they started the tenancy and so they would not want to pay more for it at that time.

There was no additional correspondence provided in relation to these issues being discussed between the parties during the course of the year, other than the email sent to the landlords on January 28, 2013 providing the tenants’ notice of their intent to end the tenancy.

The tenants submit that they ended the tenancy in accordance with Section 45(3) of the *Act* that allows a tenant to end a tenancy after the provision of notice to the landlords that they have breached material term of the tenancy agreement and the landlords has not corrected the breach within a reasonable time.

The landlords testified that they began advertising the rental unit immediately upon receiving the tenants’ notice and they were able to rent the unit to new tenants effective March 1, 2013. The landlords seek rent for the rental period of February 15, 2013 to March 15, 2013.

The landlords also seek $90.40 for water, sewer and garbage removal utilities for the period of November 27, 2012 to February 15, 2013 and have included the bill from the city confirming these costs. The tenants provided no testimony regarding this bill.

The landlords seek compensation in the amount of $950.00 for cleaning; $121.76 for materials; $211.47 for mileage back and forth to the rental unit; and $14.87 for the costs of producing their photographic evidence.

The parties agree that a move out condition inspection was not completed with both the tenants and the landlords present. The landlords testified the tenants indicated that they would be leaving the rental unit at 1:00 p.m. on February 15, 2013 and as such the

landlords intended to attend the rental unit at that time to complete the move out inspection.

The tenants, in their written submission, stated that they left the rental unit at 1:05 p.m. on February 15, 2013. However the landlords testified they arrived at 12:40 p.m. on that date and the tenants, in their verbal testimony, stated they left at 12:30 p.m.

The tenants also submitted they left their forwarding address in the rental unit with the keys before they vacated the rental unit. The landlords testified they had not received a forwarding address from the tenants until they received an email from them on March 1, 2013. The landlords submitted their Application for Dispute Resolution to the Residential Tenancy Branch on March 7, 2013. The tenants seek return of double the security deposit for failure to return the deposit within 14 days.

The landlords have provided photographic evidence of the condition of the rental unit at the end of the tenancy. The tenants submitted verbally that they dispute the condition as represented by the photographs and that the pictures could have been taken any time as could be shown that the landlords altered the sets of pictures by dating the second set and not the first set.

The tenants seek $121.07 for 25% of their last hydro bill received for the rental unit. The bill was provided into evidence. The landlords do not dispute this claim.

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.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy 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.

Residential Tenancy Policy Guideline #8 defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. I accept that whether or not a party is renting an entire house or only 75% of the house might be considered a material term of the tenancy.

Based on the email from the tenants on February 21, 2012 I am not satisfied, however, that the tenants have established that they were unaware of the landlords' plan to rent the basement to another tenant prior to signing the tenancy agreement.

In fact, I find the email confirms that they were aware of the landlords' plan when they were discussing the tenants' preferred gender of the basement tenant when they were discussing their own rental.

As such, I find the tenants were aware of the landlords' plan to renovate and rent the basement rental unit prior to the signing of their tenancy agreement.

Even, if I were to accept this as a material term, I find the tenants took no action to rectify the situation or request that the landlords correct the material term. From the emails in February and March 2012, the tenants appear to have agreed to these terms and are trying to work out details with the landlords as to how things will work with the basement tenants.

I note the tenants have not provided any evidence of correspondence to the landlords telling the landlords that they felt the renovation and rental of the basement unit was a breach of a material term or asking the landlords to correct this situation. I also note that the tenants did not file any Applications for Dispute Resolution against the landlords in regard to any of these issues prior to their Application of May 22, 2013.

From the evidence submitted by the tenants I accept that there were issues between the landlords and the tenants relating to the rental unit in the basement and that the tenants identified these issues to the landlords in February 2012.

However as there were no additional emails, beyond March 21, 2012, regarding these issues and the tenants continued to rent the rental unit for almost a full year after the issues seemed to have been resolved, I find the tenants have provided no evidence that a material term had been breached.

As a result, I find the tenants were obligated to provide the landlords with notice of their intention to end their tenancy in accordance with Section 45(1) and based on the evidence before me they failed to do so. Therefore, I find the landlords are entitled to rent for the period between February 15, 2013 to March 14, 2013 subject only to the landlords' obligation to mitigate any losses. As the landlords re-rented the unit to a new tenant effective March 1, 2013 I find the amount owed by the tenants is reduced by the equivalent of ½ month's rent.

In the absence of any disputing testimony from the tenants and based on the landlords' documentary evidence I find the tenants owe the landlords $90.40 for water, sewer, and garbage disposal utilities.

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.

I accept the landlords' photographic evidence represents the condition of the rental unit at the end of the tenancy. I find the tenants failed to provide any evidence to confirm their assertions that the landlords could have taken these photographs at any time. I also find the tenants provided no corroborating evidence to establish the condition was different than that set out in the photographs.

I also accept, based on the photographic evidence and the landlords' submission of details of the work completed that labour costs are reasonable. However, in relation to the landlords' claim for materials, I find that since the landlords have not provided any evidence of these costs the landlords have failed to establish the value of these losses. I dismiss the portion of the landlords' claim in the amount of $121.76 for materials.

In relation to the landlords' claim for mileage costs, I find that these are a cost of doing business and not recoverable from the tenants. I also the landlords' claim for compensation for the printing of photographs for this hearing, is not recoverable from the tenants under the *Act*. I dismiss these portions of the landlords' claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenants have provided no evidence that they had provided the landlords with their forwarding address at any time prior to the email dated March 1, 2013 and the landlords submitted their Application for Dispute Resolution by March 7, 2013 I find the landlords have fulfilled their obligations under Section 38(1) and find the tenants are not entitled to return of double the deposit. I dismiss this portion of the tenants' claim.

I find, based on the agreement of the landlords that the tenants are entitled to $121.07 for hydro utilities.

As I found above, that the tenants were aware of the landlords' plans prior to agreeing to their own tenancy, I find the tenants have failed to establish the landlords have breached the *Act*, regulation or tenancy agreement that would warrant the compensation sought.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **$1,719.33** comprised of $750.00 rent owed; $90.40 water, sewer, garbage removal utilities; and the $50.00 fee paid by the landlords for this application, as they were mostly successful in their claim less $121.07 hydro utilities owed to the tenants.

I order the landlords may deduct the security deposit and interest held in the amount of $750.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$969.33**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As the tenants were mostly unsuccessful in their claim I dismiss their request to recover the filing fee from the landlords.

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: July 2, 2013

Residential Tenancy Branch