



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

During the hearing the landlord withdrew any claim for the mirrored closet doors and the tenant admitted liability for the municipal utility bills in the amount of \$149.52 and \$127.75; replacement cost of keys and light bulbs in the amount of \$28.92; and rent up to March 15, 2013, in the amount of \$750.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced August 1, 2011. When the tenants agreed to rent this property they were living in another province. They had a relative look at the place for them before agreeing to rent the unit. After their relative reported to them, they entered into a one-year fixed term tenancy agreement with an expiry date of July 31, 2012.

The monthly rent of \$1500.00 was due on the first day of the month. The tenants were also responsible for all utilities. The hydro bill was in the name of the tenants but the local municipality requires the utility bill to remain in the name of the property owner. The tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00. The tenancy agreement had an addendum which included the following term: "Hot tub usage, maintenance and any repairs are the sole responsibility of the tenant."

When the first tenancy agreement expired the parties signed a second one-year fixed tenancy agreement on the same terms as the first.

The landlord lives in another province so his parents, who do live in this community, act as his agents.

The landlord's father testified that when he showed the unit to the tenants' relative he stressed that the hot tub was in "as is" condition. He testified that at the move-in inspection, which was done with the tenant husband, he again stressed that the hot tub was in "as is" condition. The father testified that they talked about the fact that the previous tenants had had an issue with the hot tub and had shut it off during the winter. On the move-in inspection the notation that "hot tub in working condition (to be tested 1 day prior to end of occupancy) was struck out and initialled. The tenant testified that in a subsequent exchange of e-mails about the hot tub the father said he did not inspect the hot tub after the last tenancy ended.

The tenant testified that about two weeks after they moved in they tested the hot tub and discovered there was a problem. The problem was that the hot tub would keep heating until it tripped the breaker. When the tenant contacted the landlord's father he told her to contact the previous tenant. The tenant did and heard that the previous tenant had experienced the same problem. As part of the evidence for this hearing the previous tenant submitted a letter describing the problems they had had with the hot tub and how they had to quit using it.

After some discussion the hot tub was repaired. The landlord paid part of the cost and the tenant paid the balance. The repair ensured that the hot tub would not heat past 100 degrees but the repairman told the tenant that in order to fix the problem a part should be replaced at a cost of \$500.00 to \$600.00.

The landlord testified that the hot tub is five to ten years old. He said the repair company says there are two alternatives for repairing the hot tub and, as of the date of the hearing, no repair had been made. The written estimate from the hot tub company, dated May 21, 2013, states there are two possible problems:

- The main control board does not accept input data. The estimated cost of replacing the main board is \$582.00 plus tax.
- The temperature and limit sensors are not calibrated correctly. The estimated cost of replacing these parts is \$161.00 plus tax.

The landlord claim for hot tub repairs is \$832.16.

The landlord argues that the tenancy agreement requires the tenant to pay for all repairs and maintenance; the tenant argues that the hot tub was not working properly at the start of the tenancy.

The tenants found the property too expensive for their situation and they found alternative accommodation. On February 2, 2013, the tenant e-mails the landlord

advising him of this. On February 16 the landlord advised the tenant by e-mail that "The only option that would be feasible would be for you to sublet the house to a tenant that I would approve of."

In the same e-mail he advised that his father would be coming to do an inspection the following day as they was the last day available before his parents left on a trip, not to return until the end of April.

The tenants tried to find a sub-tenant. The tenant testified that there were many inquiries but most parties decided the property was not suitable for them after viewing the property or seeing the photographs and three or four others refused to submit a written application. The tenants did find a couple who provided references and who were prepared to move in on March 15. The tenant checked their references and the reports were good. However, they refused to submit to a credit check, a requirement of the landlord, for a five month lease. These people filed a letter saying they would have agreed to a credit check for a longer term tenancy agreement. The tenant testified that when she raised the possibility of a longer term the landlord said he preferred to do a short term agreement and then renew for a year. The tenant also said she was prepared to assume responsibility for the sub-tenant's payments.

The landlord testified that because his parents act as his agents and they usually go away for the winter, he tries to arrange his tenancy agreement so the tenancy will end in the summer. He finds that he usually has good success renting in the summer as that is when this area and his property look its' best. The property is $\frac{3}{4}$ of an acre. Some people find the lot size very appealing but it is not for everyone.

The landlord also testified that based on previous experience he insists on a credit check of all potential tenants. The tenant responded that they did not have to submit to a credit check before entering into this tenancy.

On March 25, 2013, the tenants sent the landlord a letter by registered mail, actually received on March 28, saying they were ending their tenancy as of March 31 and providing their new address. In the same letter the tenants said they were not prepared to accept responsibility for any rent after March 15 because they had found someone prepared to rent the unit for that date and the landlord refused to accept them. The tenants took the same position in the hearing.

The tenants acknowledge that the landlord started advertising the unit immediately after receiving this letter.

The landlord said they held back showing until his parents returned but he did have family friends who could have shown the unit if necessary.

The landlord father said they returned on April 20 and the first showing was April 22. They were able to re-rent the unit as of May 1, 2013. The new tenant took over the hydro account as of April 30.

Analysis

a. Landlord's Claim for Rent and Utilities

Section 52 of the Residential Tenancy Act states that in order to be effective a notice to end tenancy from a tenant must be in writing and must, among other things, be signed and dated by the tenant. An e-mail does not satisfy this requirement. Further, section 88 prescribes the methods by which any notice in writing may be delivered by one party to another. E-mail is not one of them.

The tenants did not give proper notice to end tenancy until they sent their letter of March 25 to the landlord. Pursuant to section 45 the effective date of that notice was April 30, 2013.

The tenants are responsible for the March and April rent, subject to the landlord's legal duty pursuant to section 7(2) to mitigate his damages. The landlord could not advertise the unit until he had received the tenants' notice to end tenancy in writing. It is acknowledged that the landlord did start advertising the unit once the letter had been received. The landlord did find a new tenant for May 1 thereby successfully mitigating any losses for the balance of the fixed term. I find that the landlord met his section 7 obligations.

As the tenancy did not end until April 30 the tenants are responsible for the utilities up to that date. The outstanding hydro bill up to April 30 is \$40.13 and the tenants are responsible for that amount.

As of the date of the hearing the landlord had not yet received the utility bill for the period April 1 to June 30. The average monthly utility bill for the previous six months was \$46.21. These bills were incurred when two adults and two children lived in the house and would have included some months when the yard was being watered. The house was unoccupied in April and the water use would have been minimal. Accordingly, nothing will be allowed for this item.

b. Landlord's claim for Hot Tub Repairs

The tenancy agreement required the tenant to pay for maintenance and repairs incurred during the tenancy; it did not require the tenant to pay for the repair of any pre-existing problems.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Guideline 40: Useful Life of Building Elements* and is available online at the Residential Tenancy Branch web site.

The evidence does not establish that the hot tub was in good repair at the beginning of this tenancy or that the tenants' actions or inaction was the cause of the repairs that are now said to be required. The evidence is that the previous tenant had problems with the hot tub and did not get it fixed; the landlord's agent did not inspect the hot tub after the end of the last tenancy; the landlord's agent was very careful in his testimony to establish that no promises about the condition of the hot tub was made at the start of this tenancy; and the tenant reported the same problem as that experienced by the previous tenant within a few weeks of the start of this tenancy.

Accordingly, this claim is dismissed.

Conclusion

I find that the landlord established a total monetary claim of \$3446.32 comprised of the March and April rent in the amount of \$3000.00; municipal utility bills in the amount of \$277.27; April hydro bill in the amount of \$40.13; replacement of keys and light bulbs in the amount of \$28.27; and the \$100.00 paid by the landlord for this application. I order that the landlord retain the security deposit and pet damage deposits in the total amount of \$1500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance of \$1946.32. If necessary, this order may be filed in the Small Claims Court and 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 28, 2013

Residential Tenancy Branch