Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP, FF

Introduction

This hearing was to deal with an application by the tenants for orders returning personal property to them and granting them a monetary order, including return of the security deposit. The landlords filed evidence in support of a claim for a monetary order for one half month's rent and cleaning costs, for an order returning personal property to them, and an order permitting retention of the security deposit in full or partial satisfaction of the claim, but had not actually filed or served an application for dispute resolution. However, both parties expressed a desire to have all the issues between them resolved at this hearing. Accordingly, I heard evidence and will render a decision on the landlords' claims as well as the tenants' claims.

Issue(s) to be Decided

- Are either of the parties entitled to an order for the return of personal property and, if so, upon what terms?

- Are either of the parties entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced November 1, 2011 as a one year fixed term tenancy. When that term expired the parties agreed to another six-month fixed term tenancy. According to the landlords, the agreement provided that the tenancy would continue thereafter as month-to-month tenancy.

The monthly rent of $895.00 was due on the first day of the month. The tenants paid a security deposit of $450.00. A move-in inspection was conducted and a move-in condition inspection report was completed on November 3, 2011.

The tenants thought the tenancy was going to end automatically on April 30. It was not until they called on the landlord on April 25 to arrange a move-out inspection and the landlord told them they had not given proper notice that they realized their mistake. In addition to telling the tenants they had not given proper notice the landlord told the

tenants they were also responsible for the May rent, however, they would do their best to re-rent the unit as soon as possible to minimize the losses. The landlord also explained that it would be difficult to find a good tenant for the first of the month. Both parties promptly posted the unit for rent.

The landlord ES testified that on April 30 she spoke to the tenant about doing the move-out inspection. They told her they would be out late that night. They asked for a little flexibility as no one was moving in on May 1. ES said she and her husband called the tenants several times that day but their calls were not answered.

The tenant BR testified that when she asked ES for more time on April 30 ES said she would have to speak to her husband, KB. KB did call her and it was a very unpleasant conversation. BR was so upset that she handed the telephone to her friend, who happens to be a realtor. The realtor told KB that the tenants understood they were responsible for the May rent. BR testified that she told the landlord that since they were going to be paying the rent for May there was no need to do the move-out inspection that day and they had cancelled the moving truck they had booked for April 30.
Both landlords called the tenants many more times on April 30 but she testified that she did not answer because she did not want to get yelled at. She also called the police because she felt so unsafe after the calls.

The landlords attempted to show the unit on May 2. The landlords testified that the tenants were still in the unit and the showing did not proceed. They also testified that the place was packed but not cleaned or moved.

On May 4 the tenants moved their belongings out of the unit.

On May 5 the male landlord called the female tenant at her place of work. She told him that her husband would be calling him about payment of the May rent. She received five more calls from the landlord during her shift and when she and her husband got home there were several voice messages from the landlord. The calls were angry, threatening and laced with obscenities. The male landlord and the tenants did speak on the telephone that evening. The tenants say they tried to arrange a date for a move-out inspection but the conversation was very difficult and ended when the landlord hung up on them.

On May 6 the tenants left a letter for the landlords in the drop box at the apartment building. In that letter they gave official notice to end tenancy effective May 31. They said they understood they were responsible for the May rent and gave two proposals for payment of that rent.

The letter also said that since they were renting the unit until the end of May they were going to have the female tenant's parents stay in the unit from May 6 to May 18. The letter gave the parents' names and telephone number.

The tenants also dropped off cleaning supplies in the rental unit.

The landlords acknowledged receipt of the letter on May 6 as well as telephone message from the female tenant on the same date. In the hearing the male landlord described the letter as a notice to end tenancy effective May 31. He also testified that:

- Once they realized the tenants had moved out they opened up the suite. They found an air mattress, some food and some cleaning supplies. They concluded that the tenants had abandoned the unit and because the tenants still had the keys, they had the locks changed immediately.
- They have to approve any sub-tenants and he did not want the tenant's parents staying there unless he had met them and approved of them.

Later that evening the tenants returned to the rental unit to find the locks had been changed.

On May 8 the tenants left another letter for the landlords in the drop box. This letter said they had made arrangements with the police to be at the unit on May 10 at 7:00 pm to keep the peace while they picked up their items and asked the landlords to be there to unlock the door.

The landlords say they did not see this letter before the time set by the tenants. They explained that the drop box is primarily used for rent payments so they really only check it at the beginning of the month.

On May 10 the tenants and the police did attend the unit in the evening. When the landlords did not appear the police called the landlord. The male landlord was not very clear about the details of this conversation in his testimony. He said he argued with the officer about the rental laws. The tenants testified they could hear the whole conversation and the landlord told the police officer he was not prepared to allow entry or to return the items without going through the Residential Tenancy Branch.

Some days later that tenant received a telephone call from someone shown on call display as S####. When she answered the telephone it was the male landlord. She

reported this to the police. The police contacted the landlord and told him not to contact the tenants directly.

As of the date of the first hearing the landlords had made no effort to re-rent the unit since taking possession of it. The male landlord, who was very upset that the police had been called, said he was treating the unit as a crime scene. After the first hearing the landlords did clean the unit and started advertising it. At the continuation of the hearing they reported they had only had a couple of showings but had not yet re-rented it.

Analysis

The landlords argues that the tenants had abandoned the rental unit and, accordingly, they were entitled to take possession of it and the personal property left in it.

Section 24 of the *Residential Tenancy Regulation* states that a landlord may consider that a tenant has abandoned personal property if:

a. the tenant leaves the personal property in the rental unit that he or she has vacated after the tenancy agreement has ended; or,
b. the tenant leaves personal property in the rental unit:
    - that he or she has not ordinarily occupied for a continuous period of one month and for which he or she has not paid rent; or,
    - from which the tenant has removed substantially all of his or her personal property;

    and,
    - the landlord received an express written or oral notice of the tenant's intention not to return to the rental unit, or;
    - the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the rental unit.

The landlord described the letter of May 6 as a notice to end tenancy for May 31 and the tenants' arrangement with the parents as a sub-let of the rental unit, both of which implied a continuation of the tenancy until May 31,not "an express written notice" that they had vacated the rental unit without any intention of returning to it. Further, the letter makes it clear that the tenants intend to remain in possession of the rental unit until May 31 and to accept responsibility for the rent until the end of that month. Although the rental unit did not have very much in it on May 6 the presence of cleaning supplies is consistent with the parties' conversation on May 5 that the tenants intended on cleaning the unit, and the presence of what was essentially camping supplies was consistent with the tenants' letter that said the parents were going to stay in the unit for twelve days.

The tenant had not abandoned the unit and the landlords had no right to change the locks or seize the tenants' personal items on May 6 on that ground.

The landlords also argued that the tenants were overholding tenants. Section 57(2) of the Residential Tenancy Act states that the landlord must not take possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Rules. The landlord did not have a writ of possession.

If this tenancy ended on April 30 and the tenants were overholding, subsection 57(3) states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. If the tenancy had been extended to May 31 it was ended when the landlord changed the locks. Either way, the tenants are only responsible for the rent up to and including May 6 in the amount of $173.23 ($895.00 divided by 31 days, multiplied by 6 days).

The landlords had no right to seize the property of these tenants. I accept the tenants' evidence that the total value of the items seized was $377.99 calculated as follows:

- bottle of AG shampoo - $28.00;
- assorted groceries - $40.00;
- assorted cleaning supplies - $30.00;and,
- "Bed-in-a-Box" air mattress and stand - $279.99;

and I award the tenants this amount.

The landlord says they have all these items, except the shampoo, and want to return them to the tenants. However, they did not want the return to take place in the presence of the police. The tenants do want the police present in order to maintain the peace. Having observed the male landlord's demeanour in the hearing and considered the evidence given by all four witnesses about his demeanour on the telephone with the tenants, I think the tenants' request is reasonable. If the landlords returns the items seized to the tenants at a time and place that is convenient to all parties and the local police, the landlords will be credited with the amount specified for each item(s), as listed above.

The landlords asked for return of the keys. Although the landlords have already changed the locks thus making this claim unnecessary, in the hearing the tenants said they are prepared to return the keys to the landlords. If the parties are able to arrange a

return of the tenants' items to them, the tenants may return the keys to the landlord at that time. However, no order will be made with respect to the keys.

The landlords claim $100.00 for cleaning. By taking possession of the rental unit in the manner in which they did, they made it impossible for the tenants to clean the unit as they had clearly planned to do. No order for cleaning will be made.

With respect to the security deposit section 38 of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In their letters to the landlord the tenants had not provided their forwarding address but the application for dispute resolution served on the landlord did contain their forwarding address in writing.

The landlords never did file an application for dispute resolution claiming against the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue. Accordingly, I find that the tenants are entitled to an order that the landlords pay them the sum of $900.00, representing double the security deposit.

I further order that as the tenants were successful on their application they are entitled to reimbursement from the landlord of the $50.00 fee they paid to file it.

I have found that the landlord is entitled to payment of $173.23 from the tenants for a portion of the May rent. I have also found that the tenants are entitled to payment from the landlord of $1327.99 comprised of compensation for improperly seized personal property in the amount of $377.99, double the security deposit in the amount of $900.00, and the $50.00 fee paid by the tenants for this application. Setting one amount off against the other I award the tenants a monetary order in the amount of $1154.76.

Conclusion

A monetary order in favour of the tenants has been made. If necessary, this order may be filed in the Provincial 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: July 22, 2013

Residential Tenancy Branch