Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF

Introduction

In the first application, A, the landlord applied for an order of possession and a monetary award for unpaid rent and for the cost of repairs to the rental unit and to keep the security and pet damage deposits in reduction of the award. That application was not served on either tenant. It appears that the landlord was informed by the Residential Tenancy Branch that her application had been "abandoned" and so she made another application, B, for the same relief. Nevertheless, the first matter came on for hearing before an Arbitrator on August 19, 2013, in conjunction with the tenants' application C for return of their deposits, doubled pursuant to penalty provision in s. 38 of the *Residential Tenancy Act* (the "*Act*").

The Arbitrator directed that all three files would be heard together on August 22, 2013. On that date the three matters came before me. The tenants had vacated the property by that time and so the order of possession sought by the landlord was redundant. The landlord's evidence, including a digital record of photographs had not yet reached the Residential Tenancy files and the tenants had not retrieved them from Canada Post. All matters were therefore adjourned to September 6, 2013.

At the September 6 hearing the landlord sought to amend her application by adding a claim for $111.00 for a recent water bill. The tenant Ms. D. agreed to the amendment and to the claim. She also agreed to the landlord's claim for the $98.00 cost of a remote control unit, apparently lost by one of the tenant's family members.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the landlord is entitled to any of the monetary relief she claims? Are the tenants entitled to the benefit of the doubling provision in s. 38 of the *Act*?

Background and Evidence

The rental unit is a three bedroom house. The tenancy started June 29, 2012 for a fixed term ending June 30, 2013 and then on a month to month basis. The tenants paid a $550.00 security deposit and a $550.00 pet damage deposit. The standard government form written tenancy agreement stated that the tenants "will pay the rent of $550 each (*check one*) _ day √ bi-week _ month to the landlord on the first day of the rental period which falls on the (*due date, e.g., 1st, 2nd, 3rd,...31st*) ____day of each (*check one*) _ day _ week _ month …." (the underlines are boxes in the original).

The tenants paid rent of $550.00 on June 29, 2012, the first day of their tenancy and they made direct deposits to the landlord's bank account ever two weeks thereafter for a total of 25 "bi-weekly" payments until May 2013. A payment was due May 17 but was not made. Similarly, a "bi-week" payment was scheduled to come due on May 31.

In April, after discussion, the parties agreed that the tenancy would end early at the end of May. This facilitated the landlord's anticipated effort to sell the property. The landlord's email confirmed that the early termination would be "without penalty."

The landlord attended the property on May 27 to find that the tenants had left. She noted that the garage door was bent and damaged and that a toilet was cracked. The repairman hired to fix the door stated that the damage was caused by trying to open the door (electrically, the door has no handles) when the manual lock was engaged. The cost of door replacement was $1032.43. The cost of a new toilet is $139.99.

The tenant says that her husband locked the manual lock on the inside of the garage door because otherwise the door could simply be lifted up. She says that the toilet was always cracked and that it did not show up on the move-in condition report because it cannot be seen when the toilet lid is down.

Regarding the rent, the tenant says that the rent was actually $1100.00 per month and that because she'd made a $550.00 payment every two weeks since June 29, 2012, she had a credit of payments by May 2013, justifying her in not paying any further

money. In support of that contention she refers to an email from the landlord referring to the $550.00 bi-weekly rent and to the figure of $1100.00. The tenant argues that it means the rent was $1100.00 per month, a lesser sum in the long run that $550.00 every two weeks.

Analysis

Given the wording of the tenancy agreement and most particularly the conduct of the tenants over the following eleven months, making $550.00 rent payments every two weeks, I find that the rent was $550.00 payable every two weeks and not $1100.00 per month. I think that if the agreement had been for a rent of $1100.00 per month payable in "bi-weekly" installments (which I think is what the tenant is really arguing) then it is most likely that the parties would have drafted the agreement to show that the payments were due certain dates, for example the fifteenth and the last day of each month.

The tenant fairly owes the $550.00 payment due May 17th and I award that amount to the landlord. I dismiss the landlord's claim for the payment due May 31st. It is clear from the facts and from the addendum that the first rent was paid June 29 and so the rent was due in advance. This tenancy was ending by agreement at the end of May and so there was no reason for the tenant to pay rent for a time after that.

Regarding the garage door, I have little doubt that the repairman is correct and that the door was damaged by someone attempting to use the electric garage door opener while the manual lock at the side of the door was engaged. Given the repairs and plywood reinforcement evident on the door (and predating this tenancy) it appears this was not the first time the time an attempt had been made to open the door while the lock was engaged.

In the modern world it should not be possible that a locked garage door should be so poorly engineered as to permit the motor to work in defiance of the lock and with such force and power as to actually bend and mishap the metal door. Imagine a person driving up the house and operating a remote to open the garage. Must that person first get out of the car, gain entry to the garage from another door and check to ensure the garage door has not been manually locked? I think that is unreasonable and if a tenant were required to follow such an unusual procedure by a landlord it would be clearly spelled out in the agreement.

I find that if the door was damaged as alleged by the landlord and the repairman, then the fault lies with it's design and not with any person who might attempt to open it while locked. For these reasons I dismiss the landlord's claim for repair to the garage door.

I allow the landlord's claim for replacing the cracked toilet bowl. While I agree with the tenant that the crack may not have been readily visible during the initial inspection because the seat was down, the tenant would certainly have noticed the crack shortly, as it is plainly visible when the seat is up. A tenant observing such a crack would normally be concerned about leaking and further cracking and would have contacted the landlord. That did not occur hear and I think it more likely that the crack occurred during the tenancy as a result of some action by the tenant, her family or an invitee into the rental unit. I award the landlord the amount of $139.00 for bowl replacement.

I dismiss the tenant's claim for double the deposits. Subsections 38(1) and (6) of the *Act* provide:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (6) If a landlord does not comply with subsection (1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord complied with subsection 38(1)(d) by making an application (A) claiming against the security deposit within 15 days after the end of the tenancy and so the doubling provision does not apply.

Conclusion

The landlord is entitled to a monetary award of $98.00 for the remote, $139.00 for the toilet bowl, $110.00 for the water bill and $550.00 for the May 17 rent payment, a total of $897.00 plus the $50.00 filing fee for one application. I authorize the landlord to retain the amount of $947.00 from the $1100.00 in deposits she is holding. The tenants will

have a monetary order against the landlord for the $203.00 remainder of the deposit money.

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: September 06, 2013

Residential Tenancy Branch