Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction
This hearing dealt with an application by the landlords 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.

Issue(s) to be Decided
Are the landlords entitled to a monetary order and, if so, in what amount?

Background and Evidence
This one year fixed term tenancy commenced July 15, 2012. The monthly rent of $1500.00 was due on the first day of the month. The tenants paid a security deposit of $750.00. A move-in inspection was not conducted nor was a move-in condition report completed. The tenants rented the upper level of a house; there was another tenant in the lower level.

Loss of Rent
By a letter dated April 10, 2013, the tenants gave notice to end tenancy effective May 31, 2013. The landlord sent the tenants a text message that said: “Ok so we have no problem with the fact u guys wanna move put June 1st. We will be doing our best to get it rented in hopes that you will be co-operative and be willing to let us have showings when needed.” The message went on to talk about the arrangements for showing the unit.

The landlords testified that they immediately posted ads for the unit. They did not receive much of a response so they decided they would also try to sell the property. On May 13 they listed the property with a real estate agent. During the first week of the listing scheduled showings and an open house were held. During the last week of May there were some difficulties with the arrangements and the tenants were moving so seven requested showings and a second open house did not proceed. The house was taken off the market by mid-July.

The landlord testified that she continued to maintain the rental ads and the female tenant testified that she saw the ads for the rental unit in June. The landlords were not able to re-rent the unit until August 15, 2013.

The tenants argue that the landlords had accepted the early end to their tenancy and it was never communicated to them that the landlords would be claiming the rent to the end of the term. The landlord testified that they never agreed to an early end to the tenancy and that in oral conversation they told the tenants they would be responsible for the rent to the end of the term but they would do their best to re-rent the unit.

Hydro

The landlords claim $208.81 as the tenants' unpaid portion of the hydro account. The tenancy agreement contained the following clause: "Hydro is included in your rent however if it exceeds $300.00 you must any amount over this amount upon proof of usage (hydro invoice)".

The first invoice for the period September 19, 2012 to November 20, 2012 was $406.44. The landlord says she spoke to the tenants about this invoice but received no response. The tenants say they never received a copy of this invoice.

The next invoice was for the period November 20, 2012 to January 21, 2013 in the amount of $554.74. The landlords did not ask the tenants for any contribution towards this invoice because the wood burning fireplace had not been working for part of this period and the tenants had no opportunity to mitigate the cost of the electric heat.

When the invoice for the period January 21, 2013 to March 20, 2013 in the amount of $478.54 arrived, there was a dispute between the parties. The tenants took the position that since the rent was paid monthly, the reference to $300.00 was also a monthly amount. As the bill did not exceed $300.00 per month they were not liable for any payment. The landlords' position was they had discussed the fact that the invoice was sent every two months and the agreement was for $300.00 each billing period.

The tenants offered a payment of $90.00, half the amount the landlords were asking, as a settlement. The landlords accepted the payment which was made by cheque dated April 10, 2013. The landlord testified they were just happy to get a payment from the tenants because they needed the money.

The last invoice is for the period March 20, 2013 to May 21, 2013 in the amount of $313.93.

Yard Maintenance

The tenancy agreement included the following clause: “Please be aware that you do share a house with other tenants and it is expected that there is a mutual respect for one another’s living space. They have their designated yard area and you have yours, as well as you both have your own parking.”

The landlord testified that the yard is clearly divided into two zones; the tenants’ area was explained at the beginning of the tenancy; as was the expectation that the tenants would maintain the yard to the same standard they received it. The tenants testified that at the beginning of the tenancy there was discussion about access to particular areas but nothing was said about looking after the landscaping – they thought their only obligation was to cut the grass.

In May the male landlord did a lot of work in the yard to bring it to their standard. The landlords claim $450.00 (calculated at 18 hours of labour at $25.00/hour) for tasks such as pulling weeds and trimming trees. They say they spent many more hours than this on tasks such as moss removal but are not making any claim for these items. The tenants agree that the landlords did a lot of work in the yard in May but suggest that most of it was related to the landlords’ efforts to get the property ready for sale. They also argue that by doing this work before the end of the tenancy the landlords denied the tenants any opportunity to mitigate any damages.

Travel Expenses

The landlords live in a community approximately 40 kilometers from the community where the male landlord works and where the rental unit is located. Often the male landlords would drive home after work to pick up landscaping tools, including a lawnmower, and then drive back to work at the rental unit. The landlords claim $120.00 (calculated at $50.00 per trip) for the extra gas and travel.

Cleaning

On May 31 the male landlord and the male tenant met at the rental unit. The landlord identified a number of items that still needed to be cleaned. The tenant said he would be back the next morning to finish off the cleaning.

The female landlord sent the female tenant a message with a detailed list of the items that still needed to be cleaned. The tenants testified that they never received the list and the address shown on the e-mail is not the female tenant’s address. The male tenant testified that this list was longer than the verbal list given by the male tenant.

The male tenancy said he went back to the rental unit the next morning, which was a Saturday, and did everything requested by the male landlord except clean behind the washer and dryer. He had his mother help him. When he was done he left the keys in the mail box.

Both parties gave conflicting evidence about the arrangements for a move-out inspection. The end result was that there was no further communication between the landlords and the tenants.

The landlords had an open house scheduled for Sunday afternoon and were pressed for time so they had a cleaning service clean the house. The paid for 10 hours of cleaning at $25.00 per hour for a total of $250.00.

The tenants subsequently provided their forwarding address to the landlords by text message. The landlords filed this application on July 8, 2013.

Analysis

Claim for Rent

As explained in *Residential Tenancy Policy Guideline 30:Fixed Term Tenancies,* during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by an agreement in writing. If the tenancy is not ended in this manner, the tenants are responsible for the rent to the end of the term, subject to the landlord's statutory duty to mitigate the loss by re-renting the unit as soon as possible.

I am satisfied that the landlords did their best to mitigate their losses, either by re-renting or selling the property as soon as possible. The evidence is that even though the house was listed for sale the landlords maintained their efforts to rent the unit.

The only question is did the landlords lead the tenants to believe that they were agreeing to the early end of this tenancy and would not be pursuing any claim for the rent to the end of the term?

There is a principle of law known as promissory estoppel, which basically means that when a promise is made to another party to a contract that all or a part of the contract will not be enforced, and the other party acted upon that promise, the party who made the promise cannot take subsequent proceedings to enforce the contract.

The challenge for the landlords is the informal nature of their communications. The text message sent by the landlord is not clear that they will be relying on the terms of the tenancy agreement and will be claiming for loss of rent to the end of the term. A

reasonable person could interpret the text message sent to the tenants as a statement that the landlords were okay with the tenancy ending early. Had they sent one more letter, e-mail or text message explicitly stating they would be relying on the terms of the tenancy agreement there would be no ambiguity. Further, if the landlords had explicitly stated they were going to rely on the contract the tenants may have changed their plans and not moved until the end of the fixed term.

I find that the tenants did rely on a reasonable interpretation of the text message sent to them by the landlords and acted upon it to their detriment. As a result, the landlords are estopped from claiming for the loss of rental income to the end of the term.

Claim for Hydro

When the landlords accepted the $90.00 payment from the tenants that resulted in the final settlement of any claims the landlord may have had against the tenants for the hydro up to that date. Any claim for unpaid hydro to March 20, 2013, is dismissed.

A rule of contract law is that when there is any ambiguity in the wording of a contract, the ambiguity is interpreted in favour of the party who did not draft the document. In this case, the contract was written by the landlords. It is not clear whether the contract is referring to $300.00 for each month or $300.00 for each billing period. The ambiguity must be interpreted in favour of the tenants so the landlords' claim for $13.93 for the period March 20 to May 21 is dismissed.

Claim for Yard Maintenance

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises sets out the standards to be applied by arbitrators. The guideline explains that generally the tenant living in a multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass and clearing snow. The landlord is generally responsible to major projects such as tree cutting, pruning and insect control. If the rental unit is a single-family dwelling, in addition to cutting grass and clearing snow, a tenant is also responsible for a reasonable amount of weeding of flower beds if the tenancy agreement specifically requires the tenant to maintain the flower beds.

If the agreement was that the tenants were to do more than cut the grass or clear the snow those requirements should have been set out in the written tenancy agreement.

Further, if the landlords thought the tenants had not complied with the tenancy agreement, they should have given the tenants written notice of the deficiencies claimed

and given them an opportunity to minimize any damages by doing the work themselves, before incurring the costs by doing the work themselves.

The claim for yard work is dismissed.

Claim for Travel Expenses
The tenants were under no legal obligation to share their landscaping equipment with the landlords. Further, tenants are not responsible for travel costs incurred by a landlord who chooses to live some distance from their rental property. Although the travel costs may be a tax deductible expense for the landlords, they are not an expense for which the tenants are responsible.

Claim for Cleaning
After looking at the landlords' photographs I am satisfied that the unit was not cleaned to the standard described in *Guideline 1.* The hourly rate claimed is the usual amount charged by cleaning services and the time claimed is reasonable. This claim is allowed in full.

Security Deposit
Section 23 of the *Residential Tenancy Act* provides that at the beginning of every tenancy the landlord and tenant must complete a move-in condition inspection report in accordance with the regulation. The evidence is clear this was not done at the beginning of this tenancy.

Section 24 sets out the consequences for both parties if the report is not completed. For landlords the consequence is that a landlord's right to claim against a security deposit or pet damage deposit is extinguished; however, it does not prevent a landlord from applying for a monetary order for damages. Pursuant to section 72 if any amount is ordered to be paid by a tenant to a landlord, that amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Section 38 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, or if the landlord has the legal right to do so, file an application for dispute resolution claiming against the security deposit.

The *Act* prescribes the methods by which any notice in writing may be delivered by one party to another. Text message is not one of them. As a result, the clock on the 15 day time limit never started and the landlord is not subject to the penalty imposed by section 38(6) – payment of double the security deposit- for failing to comply with section 38(1).

Filing Fee

As the landlords were partially successful on their application I find they are entitled to reimbursement from the tenants of the $50.00 fee they paid to file it.

Conclusion

I find that the landlords have established a total monetary claim of $300.00 comprised of cleaning costs in the amount of $250.00 and the $50.00 fee paid by the landlords for this application. I order that the landlords retain $300.00 from the security deposit in full satisfaction of the claim. I order that the balance of the security deposit, $450.00 be returned to the tenants and I grant the tenants a monetary order in that amount. 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: September 16, 2013

Residential Tenancy Branch