Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, O, FF

Introduction

In the first application the tenant seeks to recover a $650.00 security deposit doubled under s.38 of the *Residential Tenancy Act* (the "*Act*") and for a monetary award for a share of utility costs, moving expenses and damages for a loss of services and facilities.

In the second application the landlord Ms. R.S.D. and Mr. T.H. seeks to recover damages for siding repair, a missing remote control, for physical damage to the premises, for moving costs and for expenses incurred in pursuing the claim.

Issue(s) to be Decided

Does the relevant evidence show, on a balance of probabilities, that either side is entitled to recover any of the relief claimed?

Background and Evidence

The rental unit is the upper, two bedroom portion of a house. There is an "in law" suite below, occupied by the applicant Mr. T.H.. Mr. T.H and Ms. R.S.D. are husband and wife. Throughout this tenancy they lived mostly apart as Ms. R.S.D. was attending school or training in another part of the province.

There is a written tenancy agreement indicating that only Ms. R.S.D., named as "S.D". in the agreement, is the landlord.

The tenancy started May 1, 2013. The rent was $1300.00 per month. The tenant paid a $650.00 security deposit. The tenant vacated the premises at the end of August 2013. The parties agree the landlord received the tenant's forwarding address in writing on August 31, 2013.

The tenant brought his application on September 18, 2013 and the landlord(s) brought their application on September 27, 2013.

The landlord Ms. R.S.D. served the tenant with a one month Notice to End Tenancy for cause on or about June 30 or July 1, 2013 citing tenant conduct and a failure to carry out repairs as the reason for the eviction. The Notice gave an effective date of September 1, 2013 for the tenant to move.

The tenant did not make an application to dispute the Notice. He testified that the landlord Ms. R.S. D. withdrew the Notice. She denies it. The tenant left by August 31.

The tenant's barbecue caused heat damage to some siding on the house. The parties disagree about a reasonable cost of repair.

The landlord Ms.R.S D. says the tenant did not return the remote control for the fan. She says he left a hole in a wall. The tenant implies the hole was reasonable wear and tear.

The landlord Ms. R.S.D. says that because the tenant refused her entry she was unable to re-rent the premises and had to move back in. She claims her costs for having to move from the interior back to the coast.

The tenant says he was wrongfully evicted; that the landlord Ms. R.S.D. acted in bad faith. He implies that it was her intention to move back in when she served the Notice for cause. He says that during the tenancy he was prevented from using a shed and driveway promised to him as well as a hot tub. He complains that he was required to pay for utility services used by Mr. T. H. in the in law suite and that it was not fair.

Analysis

In accordance with the written tenancy agreement, the landlord is Ms. R.S.D. alone.

I find that the tenancy ended as the result of the Notice to End Tenancy dated Jun 30, 2013 given for cause. The tenant has not proven on a balance of probabilities that the landlord withdrew it at any time. The tenant, having failed to challenge the Notice, was "conclusively deemed" under s.47 of the *Act* to have accepted the end of the tenancy. He cannot now claim otherwise.

The tenant's evidence does not establish that he suffered any particular loss of use of a shed and so I dismiss that portion of his claim.

The tenancy agreement provides "driveway will be available for tenant's use." That phrase can be interpreted to mean that the tenant was entitled to the use of all the driveway. But whether it does or not, I find that the tenant did not suffer any apparent loss or damage from a breach of that term. In my view the occasion where a truck needed to be moved was inconsequential. I dismiss this portion of the tenant's claim.

The parties had a disagreement about a hot tub. It appears that the tenant was permitted to use it but when, in the opinion of the landlord, he abused the privilege by allowing guests to use it, the hot tub was decommissioned. I find that the hot tub was not a service or facility provided in the tenancy agreement, nor was it one the tenant reasonably expected to be provided when the tenancy agreement was signed. His use of it was purely a gesture of goodwill from the landlord and he cannot claim loss from its withdrawal.

The tenancy agreement provides that electricity, water and heat are not included in rent. It appears that shortly after the start of the tenancy the tenant was required to place the utilities for the entire house, including the in law suite, in his own name. He has not been reimbursed for utilities used in the lower suite.

The landlord argues that the deal was that the tenant would pay for utilities used for the whole house, not just the tenant's portion. In my view, the plain reading of the tenancy agreement does not support that contention. Clear and specific language would be required to make the tenant responsible for the utility services consumed in another rental unit. Even then, such a clause might well be unenforceable.

Residential Tenancy Policy Guideline 1, "Landlord and Tenant; Responsibility for Residential Premises" provides (among other things):

> **SHARED UTILITY SERVICE**
> 1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
> 2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

I find the tenant is entitled to be compensated for utilities paid for the lower suite. Failing any evidence for me to better determine what a reasonable apportioning might be between the rental units, I set it at one-half. I grant the tenant $162.87 for Hydro, as claimed and $115.97 for gas, as claimed, for a total of $278.84.

The tenant seeks moving costs based on his allegation of wrongful eviction. I have found that the tenant was not wrongfully evicted and so I dismiss this item of his claim.

Lastly, the tenant seeks return of his $650.00 security deposit, doubled pursuant to s.38 of the *Act*. I find that he is entitled to be credited for $1300.00; double the deposit. Contrary to s.38, the landlord did not either repay the deposit or make application to keep it within fifteen days after the end of the tenancy and receipt of the tenant's forwarding address in writing. Those facts trigger the doubling penalty.

I award the landlord $425.00 for siding repairs, being the average of the two quotes she's obtained. The tenant may have had an opportunity to have it done for less, but he failed to do so while he occupied the premises.

I award the landlord $89.00 as claimed, for a new remote for the ceiling fan.

I award the landlord $75.00 as claimed, for repair of the hole in the wall. Even without a door stop at that door, the damage shown is consonant with a violent opening of the door, causing the knob to punch through a wall. In normal use that damage would not have happened.

I find I must dismiss the landlord's claim for moving costs (and a wage claim indicated in her materials but not referred to at hearing). She has not proved to me that the tenant obstructed her in any attempt to show the premises to prospective tenants. Nor has she shown that her having to move back in was a foreseeable consequence of any such conduct by the tenant. Had the tenant been shown to have unlawfully obstructed her or refused her access after being given a Notice of Entry to show prospective tenants, then the normal measure of damages would be the rent lost as a result. There was no rent loss here as far as the evidence presented at hearing shows.

I find I must also dismiss the landlord's claim for copying and photo expenses incurred in preparing for this hearing. They are in the nature of what are called "costs and disbursements" and it is my understanding from the Residential Tenancy Branch that my power to award a party "costs and disbursements" is limited to the filing fee.

Conclusion

The tenant is entitled to a monetary award of $1578.84 plus the $50.00 filing fee.

The landlord is entitled to a monetary award of $589.00 plus the $50.00 filing fee.

The tenant will have a monetary order against the landlord for the difference of $989.84.

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: November 15, 2013

Residential Tenancy Branch