Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, MNR, MND,MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for monetary compensation for water utilities, garbage removal and repairs. The hearing was also to deal with a cross application by the tenant seeking a refund of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony submitted and properly served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for clean up and repairs?

Is the tenant entitled to a refund of double the tenant's security deposit?

Preliminary Issue(s)

Request for adjournment

> At the commencement of the hearing the landlord, made a request for an adjournment of the hearing because the landlord was out-of-province on the date of the hearing and these circumstances prevented attendance at the hearing. The landlord's agent did attend, but stated that his knowledge of what transpired with this tenancy is limited. However, the landlord had submitted and served a substantial amount of documentary evidence in support of the landlord's monetary claims.

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if "*written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the hearing*."

In this instance, the landlord had made application on September 6, 2013 and the hearing was scheduled for December 16, 2013. The landlord testified that they attempted to obtain the tenant's consent for an adjournment without success.

In some circumstances proceedings can be adjourned after the hearing has commenced. However, the Rules of Procedure contain a mandatory requirement that the Dispute Resolution Officer must look at the oral or written submissions of the parties; consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose]; consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; and weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and assess the possible prejudice to each party.

At the hearing, the tenant was asked whether or not they would consent to the landlord's request that the matter be adjourned and the tenants stated that they were not amenable to the dispute resolution hearing being adjourned and reconvened at a later date.

I found that:

- the cross-applicant tenant was not in agreement with an adjournment,
- the landlord had over two months to prepare for the application to be heard and to submit the necessary evidence,
- the landlord did have a representative at the hearing and did submit evidentiary material to support the claims, and
- a delay would unfairly prejudice the tenants who were awaiting the disposition of their security and pet damage deposits.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other unwilling

party and the landlord's request for an adjournment was denied. The hearing then proceeded as scheduled.

Late Service of Hearing Package to Tenant

The tenant testified that they were not served with the hearing package within 3 days as required by the Act. The evidence confirms that the landlord's application was filed on September 6, 2013. Proof of service of the application, including the receipt and tracking slips from Canada Post, show that the landlord mailed the hearing package to the tenants on October 11, 2013. The hearing Notices were signed for by the tenants on October 17, 2013.

The tenant objected to receiving the hearing Notice more than a month after the landlord made the application. The tenant stated that they suspected that the landlord had no intention of serving them with the application and only did so once the landlord became aware that the tenants had filed their own application.

The tenant's cross application was dated October 4, 2013 and, according to the tenant, they filed their dispute application seeking a refund of the security deposit on October 4, 2013 before they had any knowledge that the landlord had also made an application seeking to keep a portion of the deposit for damages and loss.

Section 89 of the Act states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, must be given to one party by another, in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Section 59 states that an application for dispute resolution must be in the approved form, include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and be accompanied by the fee prescribed in the regulations. The Act states that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it. (my emphasis)

I find that the landlord did not comply with the Act in the serving of the application. However, I find that this did not substantially prejudice the tenants because they had already filed their own application. I find that, once the tenants finally received the landlord's late notice of the hearing, they still had sufficient time to submit and serve their defence against the landlord's claims.

Accordingly, the hearing proceeded despite the late service of the landlord's hearing package.

Background and Evidence

The tenancy began on October 1, 2012 and the rent was $1,610.00. The tenancy agreement indicated that water utilities were included in the rent. A security deposit of $800.00 was paid by the tenant. The tenancy ended on August 3, 2013.

The landlord testified that the tenant left owing $183.37 in arrears for the water utilities and the landlord is claiming this amount. The claim was supported by a copy of an invoice from the utility company.

The tenant disputed the charges on the basis that water was included in the rent. The tenant pointed out that the tenancy agreement confirms this to be the case.

The landlord is also seeking compensation of $100.00 for repairs of scratched flooring. Submitted into evidence were photos of the unit taken by the landlord showing a scratched wooden floor. The landlord' agent testified that the labour charges to refinish the damaged areas are documented in the invoice for the work, which is in evidence.

The tenant pointed out that the move-in condition inspection report confirms that the wood floors were already marred by scratches when they moved in. The tenant made reference to a copy of the move-in inspection report with a notation that the flooring was scratched in one of the bedrooms before these tenants took possession.

The tenant testified that the move-out condition inspection report, done jointly with the landlord, verified that the floors were not damaged further. The tenant stated that they read and signed the report. However, according to the tenant, no copy of the move-out condition inspection report was ever given to the tenant, as required under the Act. In addition, the landlord failed to submit a copy of this Move-Out Condition Inspection Report into evidence.

The landlord is claiming $110.00 for garbage clean-up and removal and submitted photos into evidence showing items for recycling and bags of garbage.

The tenant disputes this claim on the basis that they paid an extra $10.00 per month to cover garbage collection. The tenant had submitted copies of rental payment receipts

each including a notation on them that $10.00 was included as payment for garbage collection and utilities.

The landlord is also claiming reimbursement for the $35.00 costs of postage and the $50.00 filing fee for the application.

Analysis

In regard to the landlord's claim for utilities, I find that section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine any disputes in relation to matters that arise under the Act or a tenancy agreement.

Determining what the parties had agreed upon with respect to what utilities were to be included in the rent, would be a dispute that involves identifying exactly what terms should be enforced under the particular tenancy agreement between this landlord and this tenant.

In this instance I find that the tenancy agreement clearly indicates that the tenant's rent includes utilities. Accordingly, I find that this portion of the landlord's application must be dismissed.

In regard to the claims for repairs, I find that an Applicant's right to claim damages from another party, is dealt with by section 7 of the Act. Section 7 states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the landlord.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

In this instance, the landlord has alleged that the tenant left the floors of the unit damaged, while the tenant's position was that the unit was left in a similar condition as it was when they took possession, subject to additional normal wear and tearc during the tenancy.

I find that the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

I find that both a move-in condition inspection report was done and a move-out condition inspection report was also completed. I find that the move-in inspection report does indicate that there was already some pre-existing damage to the floors of one bedroom.

I find because there was pre-existing damage to the floor of one of the rooms and no copy of the move-out condition inspection report was placed in evidence, the landlord has not adequately met all elements of the test for damages to prove that the tenant caused additional scratches, beyond normal wear and tear, to the floors.

With respect to the claim for garbage removal, based on notations on the copies of the tenant's rent cheques, I accept the tenant's testimony that the landlord had added $10.00 per month to their rent to pay for garbage collection. While I find that extra bags of refuse were left on the premises, I also find that this could have been collected by the municipality for a modest cost.

Given that all four elements of the test for damages have not been met, I find that the landlord's claim for damages must be dismissed.

In regard to the landlord's claim for reimbursement for mailing costs, I find that, with the exception of the cost of filing the application, reimbursement for any other costs incurred

in preparing for the Dispute Resolution Hearing, are not compensable expenditures covered under any provision of the Act and will not be considered.

Given the evidence before me, I find that the monetary claims made by the landlord have no merit and must be dismissed. I hereby dismiss the landlord's application in its entirety without leave.

I find that the tenant is entitled to a refund of the tenant's security deposit, but not for double the amount of the deposit. I find that the landlord's application seeking to retain the tenant's security deposit was made within the 15-day statutory deadline and therefore is not subject to be doubled under section 38 of the Act.

I grant the tenant a monetary order for $850.00 comprised of $800.00 for the security deposit and the $50.00 cost of the cross application.

This order must be served on the landlord and may be enforced through an application to Small Claims Court if unpaid.

Conclusion

The landlord is not successful in the application and the monetary claims are dismissed without leave. The tenant is successful in the application and is granted a monetary order for the refund of the tenant's security deposit.

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: December 16, 2013

Residential Tenancy Branch