



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenants applied for return of double the security deposit. The landlord applied for monetary compensation for damage to the rental unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord named three co-tenants in filing her Application for Dispute Resolution and sent the hearing documents to each named tenant via registered mail. One tenant (referred to by initials KR) received the documents and shared them with the other tenant (referred to by initials ER). ER stated that she had provided the landlord with a forwarding address in Ontario but that she had not been residing in Ontario in November 2013 when the landlord sent the documents. ER acknowledged that she had not provided the landlord with an updated service address. Since ER had seen and was aware of the landlord's claims against her I deemed ER to be sufficiently served with the landlord's Application and evidence.

The third named tenant (referred to by initials JN) is ER's mother and had co-signed the tenancy agreement but did not reside in the rental unit. JN refused to accept the registered mail sent by the landlord. Section 90 of the Act deems a person to have received documents five days after mailing so that a party cannot avoid service by refusing to accept or pick up registered mail. Accordingly, I found JN was deemed served and remains named as a party to this dispute.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Is the landlord entitled to monetary compensation for damage, unpaid rent or utilities; and, other damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The landlord and four co-tenants executed a tenancy agreement for a tenancy set to commence August 21, 2012. The monthly rent of \$1,800.00 was due on the 1st day of each month and a security deposit of \$900.00 was paid.

Clause 4 of the tenancy agreement indicates the tenancy was for a fixed term ending August 31, 2013 and that the tenants would have to vacate the unit by that date; however, clause 9 of a signed addendum provides the following:

- 9) Time to Vacate: When the tenant wishes to vacate they will give the landlord a 6 week notification.

[reproduced as written]

It was undisputed that in the spring of 2013 the tenants gave the landlord verbal notice of their intention to vacate the rental unit by August 15, 2013. The tenants paid one-half of the rent for August 2013. The landlord did not request the tenants give written notice or pay the remainder of the rent due for August 2013.

On August 13, 2013 a move-out inspection was performed by the landlord and KR. KR authorized a deduction of \$85.00 from the security deposit and received a copy of the condition inspection report. A forwarding address was also provided to the landlord at that time.

On August 25, 2013 another co-tenant (referred to by initials KM) authorized the landlord to deduct \$650.00 from the security deposit, in writing.

On August 28, 2013 the landlord mailed three refund cheques totalling \$252.00 (representing a refund of the \$900.00 security deposit less \$650.00, rounded) to three of the co-tenants.

Tenant's Application

The tenants submitted that they did not agree with KM's decision to authorize the landlord to deduct \$650.00 from the security deposit as KM had moved out of the rental unit months before the end of tenancy and there had been a breakdown in their co-tenancy relationship.

The tenants were of the position that the deduction of \$85.00, as authorized by KR, should stand and the landlord ordered to return double the remaining balance of the security deposit.

The tenants also pointed out that the security deposit refund cheques were not received for more than 15 days after the tenancy ended.

The landlord was of the position that she complied with the Act by obtain the written authorization of a tenant to deduct \$650.00 from the security deposit and had mailed the balance of the security deposit to the tenants within 15 days of the tenancy ending.

Landlord's Application

During the hearing, the landlord withdrew portions of her claims and indicated she wished to pursue the following amounts which were not included in the \$650.00 she was authorized to deduct from the security deposit:

Unpaid rent

The landlord is seeking to recover the unpaid balance of \$900.00 for the month of August 2013. The landlord acknowledged receiving verbal notice to end tenancy from the tenants in the spring of 2013 and accepting one-half of the monthly rent for August 2013 without question but pointed to the lack of written notice as a basis for her claim against the tenants.

The landlord also submitted that the fixed term as reflected in clause 4 should supersede the enforceability of clause 9 of the addendum.

The tenants testified that the landlord accepted their verbal notice and their payment of one-half of the rent without any request that they pay rent for the remainder of the month until she filed her Application in November 2013.

Living room floor damage

The landlord submitted that the living floor was deeply scratched by the tenants although it was not noticed during the move-out inspection. Rather, the landlord's contractor pointed out the damage to the landlord on a later date. The landlord had the hardwood floor re-screened but that despite the deep scratches are still visible. The landlord explained that the re-screening process involves removing and re-applying the varnish on the floor. Since the scratches penetrated the underlying wood the only way to remove the scratches is to sand down the wood. As a result, the area that was deeply scratched appears lighter than the rest of the floor under the new layer of varnish. The contractor who re-screened the floor had also provided the landlord with a quote of \$1,274.00 to re-finish the hardwood floor.

The landlord explained that she did not pursue re-sanding the floors in August 2013 because there was insufficient time to do so before new tenants were set to move in on September 1, 2013.

In December 2013, the landlord obtained two more estimates to re-finish the hardwood floor in the living room: \$1,215.00 and \$1,300.00 plus tax. Both estimates refer to scratches in the hardwood flooring; however, the landlord acknowledged that other tenants have been occupying the rental unit since September 1, 2013.

The landlord provided photographs of the living room floor before it was re-screened and during the re-screening process but did not include any photographs of the scratched area after it was re-screened.

The tenants pointed to the fact that the landlord had noted many scuffs were apparent on the move-out inspection report but that none of the scuffs were noted to be deep. Rather, the landlord did not notice deep scratches in the living room at the end of the tenancy as evidenced by her own testimony and the move-out inspection report. Accordingly, the tenants questioned that they are responsible for deeply scratching the living room floor.

Bedroom flooring damage

The landlord submitted that the tenants damaged the flooring in one of the bedrooms by what appears to be bleach stains. The move-out inspection report has a notation of "stain on wood" that is crossed out and replaced with "scuffed".

In December 2013 the landlord obtained quotes of \$435.00 and \$450.00 plus tax to refinish the bedroom flooring. The landlord acknowledged the flooring had some pre-existing damage so the claim was limited to \$200.00.

The tenant testified that she did not notice any staining on the floor at the time of the move-out inspection but acknowledged there were scuff marks.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each application.

Tenants' Application

I find the landlord complied with her requirements of the Act by completing and providing a copy of a move-out inspection report to the tenant. As such, I am satisfied the landlord was entitled to obtain authorization to make deductions from the security deposit for damage, among other things. I am satisfied the landlord obtained the written authorization of one of the co-tenants to make a deduction of \$650.00 from the security deposit within 15 days of the tenancy ending.

As explained to the parties during the hearing, co-tenants have joint and several rights and obligations under the Act. As such, the landlord only needs the written authorization from one of the co-tenants. Although KR and ER disagreed with the authorization given to the landlord by KM, KM's authorization is no less valid or binding under the Act.

Based upon the post mark date on the envelope containing the refund cheques, I find the landlord complied with the Act by paying the balance of the security deposit to the tenants within 15 days of the tenancy ending.

For the above reasons, I dismiss the tenant's request for return of double of the security deposit.

Landlord's Application

The landlord presented a tenancy agreement that includes an executed addendum. I find the addendum is an integral part of the tenancy agreement and, as such, the terms of tenancy are reflected in all of the pages that comprise the tenancy agreement and addendum. In reading the tenancy agreement and addendum together, I find there is a conflict within the agreement as to when the tenancy ends. In other words, clause 4 and 9 provide for two different ways the tenancy ends and to end the tenancy pursuant to one of the terms may result in a violation of the other term.

Where there is ambiguity in a contract, it will be interpreted in the manner least favourable to the maker of the contract. In this case, the landlord prepared the tenancy agreement and its addendum (collectively referred to as the contract) thus the consequence of have conflicting terms must be assigned to the landlord. The tenants relied upon clause 9 in giving the landlord several months of notice to end the tenancy; therefore, I reject the landlord's position that clause 9 should be ignored in favour of enforcing clause 4.

With respect to the landlord's position that the tenant's notice was verbal and not valid, I note that the landlord did not put the tenants on any notice that she did not accept the tenant's verbal notice or payment of one-half of the rent for August 2013 and intended to hold the tenants responsible for paying rent until August 31, 2013. Thus, I find her actions indicated that she accepted the tenancy would end August 15, 2013 and waived any entitlement to receive written notice.

In light of the above, I dismiss the landlord's request to recover unpaid rent for August 2013.

Living room flooring damage

I accept the photographic evidence before me that the living room flooring was deeply scratched and that the landlord had the flooring re-screened. However, I find the evidence does not establish when the floor was deeply scratched, since it is not noticed by the landlord at the time of the move-out inspection. Nor, am I satisfied that the condition of the floor remained unsatisfactory after the re-screening process in the absence of any photographs taken after re-screening

Although the estimates obtained by the landlord in December 2013 referred to scratches in the flooring I found the estimates to be of little or no evidentiary value since

the rental unit had been occupied by other tenants for several months when the estimates were prepared.

In light of the above, I find the landlord failed to establish that the tenants deeply scratched the floor or that the floor required re-finishing as a result of the tenant's actions. Therefore, I dismiss the landlord's claim for refinishing the living room flooring.

Bedroom flooring damage

Upon review of the landlord's photographs, I find the bedroom flooring to be in rather poor condition due to numerous scratches, discolouration and gapping between the boards. The house is several years old and it would appear the bedroom flooring has not been refinished in a very long time, if ever. Further, I found the landlord's submissions regarding damage to be unclear. She had submitted there were stains on the floor but on the move-out inspection report the notation of staining was scratched out and replaced with "scuffed". If the tenant did scuff the floors it would appear to be inconsequential compared to the overall condition of the floor. Therefore, I make no award for bedroom floor damage.

In summary, I have dismissed all of the landlord's claims against the tenants.

Conclusion

Both applications have been dismissed in their entirety. The landlord has been authorized to retain \$650.00 of the security deposit by one of the co-tenants and I have not interfered with that authorization. I have found that the retention of \$650.00 has sufficiently compensated the landlord for her losses.

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: January 07, 2014

Residential Tenancy Branch

