Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, MNSD, FF
Tenants: MNDC, MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Residential Tenancy Branch Rule of Procedure 3.4 states that an applicant must, to the extend possible, submit all of the evidence they intend to rely upon when they submit their Application for Dispute Resolution.

For evidence that is not available at the time they make their Application Rule of Procedure 3.5 states that they must submit that evidence **as soon as possible** and "at least" 5 days before the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between. [emphasis added]

Upon review of the landlord's evidence submitted on January 16, 2014 I note that all of the evidence, which included a copy of the tenancy agreement; text messages between the landlord and tenants; photographs from the end of the tenancy; receipts and bank statements all dated prior to October 13, 2013.

In addition the landlord has provided a typewritten response to the tenant's claim in which he indicates his losses are $1,015.03 despite his claim for $465.23. This typewritten response is not dated. Upon review of these statements I find there is no material covered in this response that required the landlord to hold on to this written statement until 5 days before the hearing.

The landlord submitted his Application for Dispute Resolution on October 15, 2013 and based on the dates of all of his evidence I find the landlord had all of his evidence available prior to the submission of Application. As he did not provide his evidence until the deadline of at least 5 days prior to the hearing I find that his action has prejudiced the tenants and I have not considered this documentary evidence in this decision.

At the outset of the hearing I informed the parties that I would not consider the landlord's evidence. The landlord disagreed with this ruling on the grounds that he had filed his evidence at least 5 days prior to the hearing.

By the end of the hearing the landlord submitted that his evidence was not related to his Application but rather it was in response to the tenants' Application. However the landlord did not provide any reason why he waited until 5 days prior to the hearing to submit his response and evidence. The tenants had submitted their Application for Dispute Resolution on October 17, 2013.

Even if I were to consider the evidence as the landlord's response to the tenants' Application Residential Tenancy Branch Rule of Procedure 4.1 requires a respondent, in this case the landlord, to serve all evidence they intend to rely upon to the applicant, in this case the tenants, **as soon as possible** and at least 5 days prior to the hearing. [emphasis added]. As such, I again would not consider the evidence as the landlord chose to hold on to his evidence without justification until the point where the tenants could not respond in accordance with the Rules of Procedure.

The landlord was again disagreed with this decision. I asked the landlord if wished to withdraw his Application so that he could re-apply at a future date. While the landlord insisted he had responded to my question I did not hear his response and I asked him to repeat his response. He refused to repeat his response and repeatedly told me it was up to me to decide.

I advised him it was his decision to make but he never provided an answer so I advised him that I would adjudicate his Application as it was presented.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage; cleaning; and failure to return keys and access devices; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to a monetary order for an overpayment of utility charges; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The tenancy began on September 1, 2012 as a 1 year fixed term tenancy that converted to a month to month tenancy on September 1, 2013 for a monthly rent of $1,300.00 due on the 1st of each month with a security deposit of $650.00 paid. The tenancy ended on September 30, 2013.

The landlord submits that at the end of the tenancy the tenants failed to leave their keys and remotes and as a result he was required to have a locksmith change locks at a cost of $84.00; replace two remote controls costing $80.78 and rekey the mailbox for $30.45.

The tenants agree that they had forgotten to provide the keys to the landlord because the landlord did not show up at the end of the tenancy to get the keys. The tenants submit that they did return the mailbox key later to another tenant in the property.

The landlord also seeks compensation for having to clean the house stating that it required 5 hours of cleaning at $30.00 per hour. The landlord seeks to recover the costs of 2 missing sink stoppers; 2 missing tub stoppers and missing caps from the bottom of the toilet for at total of $50.00.

The tenants submit that they cleaned the rental unit thoroughly and if they left anything behind it may have been a bottle of olive oil only but nothing else. The tenants are unaware why the landlord is claiming for replacement stoppers or caps from the bathroom.

The landlord stated the tenants had cut a hole in the weather stripping around the door to allow plugging in lights for Halloween and they had promised to repair it before the end of the tenancy. The landlord seeks $40.00. The tenants submit that they did not cut a hole in the weather stripping at any time.

The tenants submit that they believe they overpaid the landlord for utilities over the course of the tenancy but that they do not have the bills any longer as they have provided them to the landlord. They state the account was in their name and the landlord was to reimburse them for the other tenant's usage monthly and that this would be reconciled periodically. They stated they believe they have overpaid the amount by $174.64.

Analysis

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the tenants dispute the landlord's claim as to the condition of the rental unit at the end of the tenancy and the landlord has not provided into evidence a copy of a move in or move out Condition Inspection Report I find the landlord has failed to establish the tenants leave the rental unit reasonably clean or undamaged. I dismiss this portion of the landlord's claim.

However, as the tenants agree that they failed to return all of the keys and other means of access (remote controls) I find the tenants have failed to comply with this requirement

under Section 37. I also find that as a result of this non-compliance the landlord suffered a loss to have the rental unit and mailboxes re-keyed and replacement remotes.

I note that providing the mailbox keys to another tenant is not the same as returning them to the landlord. I also note that the Act does not require the tenants to hand the keys and access devices directly to the landlord but rather they could have left them in the rental unit at the end of the tenancy if the landlord was not available.

I find the claim put forward by the landlord for these costs totalling $195.23 to be reasonable for the services and items required.

In relation to the tenants' claim for compensation for an overpayment of utilities I find the tenants have failed to provide any evidence to support their claim. They have not provided any copies of utility bills; confirmation of what they had paid for utilities; or confirmation of any reimbursements they received from the landlord for utilities. I dismiss this portion of the tenants' claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$195.23** comprised of costs to replace keys and access devices.

I order the landlord may deduct this amount from the security deposit held in the amount of $650.00 in satisfaction of this claim. I grant a monetary order to the tenants in the amount of **$454.77** for return of the balance of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were at least partially successful, I find they are both entitled to recover their filing fees from the other party. However, as both parties paid the same amount for a filing fee this is a moot point and dismiss both parties claim to recover the filing fee.

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 29, 2014

Residential Tenancy Branch