



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAVEN MANAGEMENT CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's request for compensation for loss of rent; cleaning and repairs; and, authorization to make deductions from the security deposit. The landlord identified four co-tenants, of which three were present at the hearing. The tenants confirmed that were acting on behalf of the fourth co-tenant. Although the landlord did not serve each tenant with the hearing documents as required under the Act, the tenants confirmed receiving the documents and were prepared to respond to the claims against them. As such, I deemed the tenants to be sufficiently served with the landlord's hearing documents pursuant to the authority afforded me under section 71 of the Act.

Both parties 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

I noted the landlord's monetary claim was not clearly set out in the Application for Dispute Resolution, especially with respect to unpaid rent and damage to laminate flooring. I proceeded to ascertain the landlord's intended claim. The landlord clarified that the request for the Monetary Order in the amount of \$325.77 pertained to the cleaning costs and spill tray replacement; and, that the landlord sought to retain the security deposit in satisfaction of the unpaid and/or loss of rent for January 2014. The tenants stated they were prepared to deal with the above-described claims.

The landlord also sought to include a monetary claim for damaged flooring even though the Application for Dispute Resolution did not provide a specific amount being sought for this item. Nor, did the landlord file and serve an amended Application for Dispute Resolution so as to specify the amount being claim prior to the hearing. Rather, the landlord merely provided an email dated February 6, 2014 as to the replacement cost of laminate flooring. The tenants stated that they were uncertain as to what area of the

flooring required replacement, the material being proposed for the replacement; or, the amount the landlord was seeking to recover from them for damaged flooring. The tenants submitted that they required additional information with respect to this portion of the landlord's claim so as to adequately respond to it.

As the parties were informed, disputed resolution proceedings are based upon the principles of natural justice, meaning a respondent has the right to be notified of the claims being made against them and an opportunity to respond to those claims.

Upon consideration of the landlord's Application for Dispute Resolution, as filed, as the lack of particulars of the email dated February 6, 2014, I accepted that the tenants would be unfairly prejudiced if the landlord was permitted to amend the monetary claim to include an amount for flooring damage. Therefore, I refused to amend the claim to include an amount for flooring damage.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent and/or loss of rent from the tenants?
2. Is the landlord entitled to recover cleaning and repair costs from the tenants?
3. Disposition of the security deposit?

Background and Evidence

The tenants paid a security deposit of \$875.00 on December 3, 2010 and were provided occupation of the rental unit on December 15, 2010. The parties would enter into new tenancy agreements every year with the last one commencing January 1, 2013. The tenants notified the landlord in December 2013 that they would not be renewing their tenancy agreement.

The tenancy agreement submitted as evidence indicates the tenancy was for a fixed length of one year, expiring on December 31, 2013. The tenancy agreement indicates that upon the expiry date:

- ii) the tenancy ends and the tenant must move out of the residential unit

[herein referred to as "option ii)"]

The parties did not initial in the boxes provided next to option ii) despite the agreement indicating that initials were required next to this option. The landlord explained that

option ii) was intentionally not initialled so that the tenants had the option to renew the tenancy at their discretion.

The landlord is seeking to retain the security deposit in satisfaction of unpaid and/or loss of rent for the month of January 2014. The landlord was of the position that since the parties had not initialled in the boxes beside option ii) the tenancy was set to continue on a month-to-month basis upon expiration of the fixed term. The landlord submitted that this position is based upon a decision of an Arbitrator for a previous dispute resolution proceeding involving different tenants. Therefore, since the tenants failed to give one full month of written notice to end the tenancy, the landlord is of the position the tenants are obligated to pay rent for January 2014.

It was undisputed that the tenants retained the keys to the rental until well into January 2014 as the landlord had requested they perform more cleaning. The move-out inspection was conducted on January 21, 2014.

In addition to the claim for unpaid and/or loss of rent, the landlord requested compensation of \$152.25 for carpet cleaning, \$150.00 for general cleaning and \$23.52 for a missing spill tray on the stove. Initially, the tenants disputed these charges; however, after further enquiry, the tenants conceded and were agreeable to compensating the landlord for the amounts requested.

Analysis

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

Unpaid and/or loss of rent

Where parties enter into a fixed term tenancy, the Act requires that the tenancy agreement MUST indicate what is to happen at the end of the fixed term so that both parties understand what is required of them upon the expiry of the fixed term. The Act provides that if the tenancy is for a fixed term, the agreement must indicate which of the following is to happen at the end of the fixed term: i) that the tenancy continues on a periodic basis (ie: month to month) or another fixed length of time after that date; or ii) that the tenant must vacate the rental unit on that date.

The landlord has the obligation under the Act to draft the written tenancy agreement. Further, the terms reflected in the tenancy agreement must be expressed in a manner that clearly communicates the rights and obligations under it. The doctrine of contractual interpretation provides that where there is ambiguity in a contract, and the

written term could be interpreted in different ways, the term shall be interpreted so that the drafter suffers the consequences of the ambiguity. Since the landlord is the drafter of the tenancy agreement, I find that any lack of clarity as to what is to happen at the end of the fixed term shall be at the expense of the landlord.

The manner in which the subject tenancy agreement was completed does not clearly communicate to the tenants that this tenancy was to continue on a month-to-month basis upon the expiration of the fixed term. Rather, I find it reasonable that a person reading the tenancy agreement, as it written, would just as likely conclude that at the end of the fixed term the tenants would have to vacate the rental unit. Therefore, I reject the landlord's position that the tenancy was set to continue on a month-to-month basis, meaning the tenants were not obligated to give the landlord one full month of written notice to end the tenancy.

In light of the above, I dismiss the landlord's claim for unpaid and/or loss of rent on the basis the tenants failed to give sufficient notice to end the tenancy.

Cleaning and repairs

As the tenants were agreeable to the cleaning and spill tray replacement costs claimed by the landlord I award those amounts to the landlord. As such, I authorize the landlord to deduct \$325.77, as claimed, from the tenants' security deposit.

Filing fee

As the landlord was partially successful in this Application for Dispute Resolution I order the tenants to pay \$20.00 of the filing fee. Therefore, I authorize the landlord to deduct a further \$20.00 from the tenant's security deposit.

Security Deposit and Monetary Order

As the landlord is holding a security deposit of \$875.00 I order the landlord to return the balance of the security deposit, after making the above-authorized deductions, without further delay.

As provided under Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off*, I provide the tenants with a Monetary Order for the balance of the security deposit after deducting the amounts awarded to the landlord. As such, the tenants are provided a Monetary Order in the amount of \$529.23 to serve and enforce as necessary.

Conclusion

The landlord has been authorized to deduct \$325.77 and \$20.00 from the tenant's security deposit. The tenants have been provided a Monetary Order for the balance of their security deposit in the amount of \$529.23 to serve and enforce if necessary.

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: May 27, 2014

Residential Tenancy Branch

