



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, MNDC, FF
Tenants: MNSD, 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 her agent and the female tenant and her agent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for advertising costs; for damage of the rental property; 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, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for return 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 *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on December 31, 2011 for a 1 year fixed term tenancy beginning on January 1, 2012 for a monthly rent of \$1,700.00 due on the 1st of each month with a security deposit of \$850.00 paid.

The landlord also submitted copies of three handwritten “extensions” to the original lease signed by both parties. The extensions were for the periods: January 1, 2013 to June 30, 2013; July 1, 2013 to December 31, 2013; and January 1, 2014 to June 30, 2014. These extensions did not change any of the other terms of the original tenancy agreement.

The parties agree the tenants ended the tenancy after they had provided the landlord with a letter dated February 12, 2014 stating that they would be vacating the rental unit on March 28, 2014. The letter explains several reasons for ending the tenancy that

including theft from their car; thefts in other apartments; and a number of repairs requested but not completed.

The landlord submits despite advertising online and in local papers she was not able to re-rent the unit until just recently with new occupants moving into the rental unit on August 1, 2014. The landlord has submitted receipts for some advertising of something during the relevant period but has not provided copies of any of the advertisements. The landlord submits that she had been advertising the rent at \$2,200.00 for the first month and then reduced it the second month to \$2,100.00.

The landlords explained that this is the usual amount that they have rented this unit for in the past but that when the tenants had entered into their original tenancy agreement with the landlord the landlord gave them a deal of \$1,700.00 because the residential property was undergoing substantial external repairs and renovations.

The landlord seeks compensation for lost revenue to the end of the fixed term or June 30, 2014 or \$5,100.00. The landlord also seeks compensation in the amount of \$355.15.

The landlord submits that while they did not complete a move in condition inspection report they have provided photographs of the rental unit that were taken just after the previous tenants had vacated the rental unit (October/November 2011).

The landlord has submitted a copy of a Condition Inspection Report recording the condition of the unit at both the start and end of the tenancy. However, as noted above the move in condition inspection report was not completed at the time of move in.

The landlords claim for replacement of a vacuum cover plate; tile adhesive; halogen and incandescent bulbs; and for carpet replacement. The landlord has submitted receipts totalling \$43.65 for the cover plate; tile adhesive; and bulbs. The landlord has submitted two estimates for carpet replacement but testified that they have since had the carpet changed by an installer that was not one of the installers who had provided estimates. The landlord submits that they are only seeking \$954.00 in recognition of the age and condition of the carpet prior to the start of the tenancy.

The tenant submits that the condition of the rental unit was simply a result of reasonable wear and tear and that they should not be held responsible for any repairs.

The landlord also seeks \$150.00 for the replacement of two key fobs that had been provided at the start of the tenancy. The tenants submit that the fobs were damaged when they received them from the landlord.

The parties confirmed the tenants provided their forwarding address to the landlord by registered mail on April 1, 2014.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While I acknowledge that the tenants did provide the landlord with a letter explaining the reasons they were ending their tenancy early I do not find that the tenants had provided the landlord with a written notification that the landlord was in breach of a material term of the tenancy or that they gave the landlord a reasonable time to correct the breach.

As such, I find the tenants are responsible for the payment of rent until the end of the fixed term subject only to the landlord's obligation to mitigate her losses.

I find that while the landlord provided copies of receipts from local papers there is nothing in those receipts that tells me what they are for. The landlord did not provide copies of any advertisements either from online or the papers. As such, I find the landlord has failed to provide evidence sufficient to establish she began advertising right away or at all.

Even if I were to consider the receipts as sufficient evidence to establish the landlord did begin advertising the availability of the rental unit, I find that the landlord's testimony that they were originally seeking \$2,200.00 when they began advertising instead of the \$1,700.00 that the tenants were responsibility negated the landlord's efforts. I consider seeking this amount was definitely not taken reasonable steps towards mitigation.

As such, I find the landlord failed to mitigate the lost revenue and I dismiss this portion of her claim.

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 to the landlord's claim for damage to the rental unit I find the landlord has failed to provide any evidence of the condition of the rental unit, including the vacuum cover; the light bulbs; the tiles; and the carpet at the start of the tenancy. While I accept the landlord's photographic evidence of the condition of the carpet at the end of the previous tenancy I note that these were taken at least 2 months before the tenants took possession of the unit and there is no record of the condition at that time.

As such, I find as the landlord cannot confirm the condition of the rental unit at the start of the tenancy she cannot confirm that any of the issues she is seeking compensation for were caused by the tenants. I dismiss this portion of the landlord's Application.

As the tenants dispute the condition of the key fobs that were provided to them at the start of the tenancy and the landlord has provided no additional evidence to confirm the fobs were not damaged at the start of the tenancy I find the landlord has failed to establish the tenants have caused any damage to the fobs. I dismiss this portion of the landlord's claim.

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The Section goes to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 24 stipulates that the landlord extinguishes her right to claim against a security deposit if the landlord does not provide the tenants with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenants.

As the landlord failed to complete a move in Condition Inspection Report and provide it to the tenants at the start of the tenancy as required under Section 23 of the *Act*, I find the landlord has extinguished her right to claim against the deposit and I order it be returned to the tenants.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$900.00** comprised of

\$850.00 return of their security deposit and the \$50.00 fee paid by the tenants for this application.

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.

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: July 28, 2014

Residential Tenancy Branch