Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing.

The hearing was originally scheduled for August 6, 2014. On that date, the tenant advised that he had served the landlord with evidence just 5 days prior and the landlord advised that he had not received that evidence. I determined that it was appropriate to adjourn the hearing in order to ensure that the tenant's evidence was received and reviewed by the landlord and I instructed the landlord to contact the tenant if he did not receive the evidence in the mail within the next few days.

The hearing was reconvened on October 15 at which time the landlord advised that he had just received the tenant's evidence. When I asked the landlord why he had not followed my instructions to contact the tenant if the evidence did not arrive by post, he advised that he did not believe it was his responsibility to ensure that the evidence arrived. He claimed that he attempted one phone call to the tenant, but because the tenant did not have voicemail set up, he was unable to leave a message. The tenant testified that he did not have any record of the landlord having phoned and stated that he delivered a copy of the evidence in person just before the hearing out of an abundance of caution.

I determined that even if the landlord had not had adequate time to review the tenant's evidence, he was the author of his own misfortune as he deliberately ignored my instructions and chose not to advise the tenant that he had not received the package that was mailed. The hearing proceeded and a further adjournment was not considered.

The owner of the rental unit, M.Y., was represented by his agent J.Z. In this decision where I refer to the landlord, I refer to J.Z. who dealt exclusively with the tenant during the tenancy.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on or about July 1, 2013 at which time the tenant paid a $987.50 security deposit. Rent was set at $1,975.00 per month and the tenancy was set to run for a fixed term of one year, expiring on June 30, 2014. The tenant claimed that he vacated the rental unit in mid-March while the landlord claimed that the tenant did not vacate the unit until April 1, 2014.

Tenant's Claims

Cleaning: The tenant claimed that he took possession of the rental unit on July 1 and moved his belongings into the unit as the previous tenants were moving out. He said that when he viewed the unit, it was extremely dirty and the landlord had promised that he would hire a cleaning company to completely clean the unit. When the tenant arrived at the unit and saw its condition, he told the landlord that he wouldn't have a problem doing the cleaning, but would require compensation and would charge a fair rate. He claimed that the landlord said it was not a problem. The tenant seeks compensation at a rate of $30.00 per hour for 22 hours of cleaning. He claimed that he hired 5 people at that rate to assist him with cleaning.

The landlord testified that the tenant asked for early possession of the unit on June 30 and the landlord told him that if he waited until the tenancy was to begin on July 1, the landlord would have time to clean the unit. According to the landlord, the tenant was anxious to gain possession and said he would take care of cleaning in order to have early possession. The landlord denied having promised the tenant any compensation for cleaning.

Painting and Drywall Repair: The tenant testified that the walls of the rental unit were in poor condition when he moved in and that he felt the interior needed new paint. He said that he approached the landlord about painting, the landlord agreed that it was needed and told the tenant to put the price on paper. The tenant claimed that he

followed up by confirming whether it was OK to paint to which the landlord replied that it was. The tenant seeks compensation at a rate of $30.00 per hour for 30 hours of work.

The landlord testified that he made it very clear to the tenant that if he wanted to do improvements on the property, he would have to put his request in writing along with an estimate of costs so the landlord could gain approval from the owner. The parties agreed that the tenant did not at any time bring a work estimate to the landlord prior to performing work. The landlord denied having told the tenant that the landlord would compensate him for painting.

The tenant testified that he repeatedly requested that the landlord perform repairs of various types, including painting the unit, and when the landlord failed to perform repairs, the tenant eventually did the work. He suggested that the landlord was responsible in part for the cost of the tenant performing repairs and improving the property because the landlord did not respond to his repeated requests for repairs.

Landscaping: The tenant testified that he spoke with the landlord about the poor condition of the front and back yard at the rental unit and the landlord promised he would have someone come attend to landscaping, but never followed through on that promise. The tenant said that because the landlord didn't get around to doing the work, he went ahead and did it himself. The tenant seeks compensation at a rate of $30.00 per hour for 10 hours of work. The landlord testified that he never at any time said he would pay for landscaping work.

Swing removal: The tenant testified that at the outset of the tenancy, he discussed with the landlord an old swing in the back yard which he felt was a safety hazard. He said that he and the landlord agreed that the swing should be removed and the landlord agreed to compensate him at a fair rate. He said he removed the swing in late September or early October because after months of asking for approval, he decided to take matters into his own hands. The tenant seeks compensation at a rate of $30.00 per hour for 8 hours of labour.

The landlord testified that he agreed that the swing was rotten and a safety hazard and said that the owner didn't "have a problem with removing it" but he was waiting for the tenant to give him a cost estimate in writing, which he never did. He said that the tenant removed the swing early in the tenancy and the landlord did not have time to arrange for it to be done.

Gate and stairs repair: The tenant testified that the stairs leading to the back deck were unsafe as there were an inadequate number of pickets in the side rail. The tenant was concerned that his children would fall through the openings and installed a handrail

and more cross pickets. He further testified that the side gate on the property was rotten, falling off and could not be properly opened so he repaired the gate. The tenant seeks compensation at a rate of $30.00 per hour for 7 hours of work.

The landlord testified that he never discussed the gate and stairs with the tenant and denied that either posed a safety hazard.

Receipt reimbursement: The tenant seeks reimbursement for $555.00 for supplies purchased to accomplish the aforementioned tasks. He did not submit a copy of these receipts to the Residential Tenancy Branch but the parties agreed that he gave a copy to the landlord prior to having filed his application for dispute resolution.

Double security deposit: The tenant seeks the return of double his security deposit. He testified that he gave the landlord his forwarding address in writing on March 1, 2014 and entered a copy of that letter into evidence. He claimed to have handed the letter to the receptionist in the landlord's office. The landlord denied having received the letter and pointed out that the letter is not addressed to him and does not have the tenant's last name or the city in which the rental unit is located and stated that it may have been misdirected in his office as it had insufficient information to allow the office to identify who should receive the letter. He further testified that his office was closed on March 1 so the tenant could not have given the letter to his receptionist on that date. The landlord testified that he did not receive the tenant's forwarding address until he received the tenant's application for dispute resolution which was served on him in May.

Filing fee: The tenant seeks to recover the $50.00 filing fee paid to bring his application.

Landlord's Claims

Loss of income: The landlord testified that he did not receive notice from the tenant that he was vacating the rental unit prior to the end of the fixed term and did not discover that the tenant had vacated until the tenant failed to pay rent on April 1. He testified that he began advertising the rental unit on April 3 and provided a copy of that on line advertisement as well as a second advertisement dated May 3. The landlord was unable to re-rent the unit until June 1, 2014. The landlord seeks to recover lost income for the months of April and May 2014 at $1,975.00 per month.

The tenant testified that on February 1, 2014 he gave the landlord a written notice advising that he would be ending the tenancy 2 months after the date of that letter due to the poor condition of the rental unit. The tenant entered a copy of that letter into

evidence. He testified that he had to move out of the rental unit because the landlord had refused to address the mould problems in the unit and the tenant's son has a serious lung condition which was being exacerbated by exposure to mould. He further testified that throughout the tenancy, the front door would not close properly and that the landlord had failed to repair the door despite repeated requests.

The landlord denied having received the February 1 letter. The tenant also entered into evidence an email exchange between him and the landlord in which the landlord stated, "I suggest you reconsider your decision to break your lease" and argued that the landlord should have known at least by the March 13 date of that email that the tenant was moving out. The landlord replied that from the outset of the tenancy the tenant continually threatened to move out and in the March 13 email he was simply responding to the tenant's latest threat to end his tenancy.

Property Management Fees: The landlord seeks to recover $1,036.88 as the cost of property management fees paid to secure new tenants. The landlord testified that this fee is his standard charge for dealing with a rental and is part of the agreement he has with the owner to act as his agent.

Lock Replacement: The landlord seeks to recover $210.00 as the cost of replacing locks in the unit. The landlord did not allege that the tenant failed to return keys and did not offer any oral testimony to support this claim.

Misc. Repairs: The landlord made a claim for other repairs done to the property but did not provide invoices to show the losses incurred. The landlord did not provide any further testimony on this claim.

Filing fee: The landlord seeks to recover the $100.00 filing fee paid to bring his application.

Analysis

Each party bears the burden of proving their respective claims on the balance of probabilities.

First addressing the tenant's claim, as a general rule, tenants who make improvements to the landlord's property do so at their own expense unless the work done falls under the umbrella of emergency repairs or the tenant has the landlord's express promise to pay the tenant for expenses and/or labour.

With respect to the cleaning, the landlord claimed that the tenant agreed to clean in exchange for early possession of the rental unit while the tenant claimed that he told the landlord he would perform the cleaning in exchange for a reasonable wage. I find that the tenant has not proven on the balance of probabilities that the landlord promised him any money for cleaning and I find the landlord's version of events just as likely as that of the tenant. When both parties give equally probable testimony, the claimant has not proven his claim and the claim fails. I dismiss the claim for cleaning.

The parties agreed that the landlord told the tenant to put the price of painting on paper. This accords with the landlord's position that he told the tenant that he could not approve any work without first getting approval from the owner. While the tenant may have believed that the unit needed to be repainted, he needed express authorization from the landlord and a promise that the landlord would cover expenses *before* beginning the work. I find that the tenant has not proven that he had that prior promise and I therefore dismiss the claim for painting.

The tenant himself acknowledged that the landlord did not promise to pay him for landscaping work. Rather, he did the work because the landlord was not doing it. The tenant chose to do this work rather than pursue an application for dispute resolution asking an arbitrator to order the landlord to repair the landscaping and he cannot after the fact expect that the landlord is obligated to pay for his labour. I dismiss this claim.

The parties agreed that the swing needed to be removed and that it posed a safety hazard. The landlord believed that the tenant removed the swing right away after moving into the unit while the tenant claimed that he did not remove the swing for several months. As the landlord does not seem to have kept careful watch over what occurred at the rental unit, I find the tenant's version of events more likely and I find that the tenant removed the swing in the fall. Although the landlord should have had the opportunity to hire a contractor to remove the swing, I find that the tenant delayed long enough to give the landlord that opportunity and because the parties agreed that the swing was a safety hazard and the landlord would have had to pay someone to remove the swing, I find it reasonable that the landlord should repay the tenant. I find the tenant's claim for the swing removal to be reasonable and I award the tenant $240.00.

The landlord did not agree that the gate or stairs posed a safety hazard and in the absence of that agreement, I find that the tenant was obligated to obtain the landlord's express authorization to perform that repair and a promise to pay the tenant before commencing the work. I dismiss the claim for the cost of repairing the gate and stairs.

Because the tenant did not submit to the Residential Tenancy Branch a copy of the receipts for which he seeks reimbursement, it is impossible for me to determine whether

any of those charges relates to the one repair I have found the landlord responsible for. For this reason I dismiss the claim for reimbursement for receipts.

In order to be successful in his claim for double the security deposit, the tenant must prove on the balance of probabilities that he provided his forwarding address in writing to the landlord in advance of having filed his claim. I am not persuaded that the landlord received that letter as it is not addressed to the landlord, it does not have the tenant's full name and it does not have the city in which the rental unit is situated. I therefore find that the tenant did not provide his forwarding address in writing in advance of the hearing and therefore the landlord was not obligated to make a claim against the deposit within a certain time frame. I dismiss the claim for double the security deposit.

As the tenant has been only partially successful in his claim, I find it appropriate to grant him one half of his filing fee. I award the tenant $25.00.

Turning to the landlord's claim, I find that the tenant did not have the right to end the tenancy prior to the end of the fixed term. In order to do this, the tenant would have had to follow the steps outlined in section 45(3) of the Act, which was to (1) advise the landlord in writing that he had breached a material term of the tenancy and identify that term; (2) give the landlord a reasonable period to repair the breach; and (3) end the tenancy only *after* the landlord had failed to correct the breach.

I find it more likely than not that the landlord did not receive the tenant's notice dated February 1 that he was vacating in 2 months time. As was the case with the letter containing the forwarding address, the letter was not addressed to the landlord, it did not contain the tenant's full name and it did not contain the city in which the rental unit is situated. I find that the landlord only discovered that the tenants had actually vacated the unit when the tenants failed to pay rent in April.

The landlord was obligated to act reasonably to minimize his losses pursuant to section 7(2) of the Act. I find that the landlord acted quickly to advertise the rental unit and posted an advertisement on April 3. I find that the landlord acted reasonably to minimize his losses for the month of April and find that the tenant must be held liable for income lost for that month. I award the landlord $1,975.00.

The landlord waited until May 3 to post a second advertisement and I find that this was an unreasonable delay as I would have expected the advertisement to be renewed at least weekly. I find that the landlord did not act reasonably to minimize losses for the month of May and therefore the tenant cannot be held responsible for lost income for that month. I dismiss the claim for May's lost income.

I also dismiss the landlord's claim for the cost of the property management fees to re-rent the property. While these fees had to be paid pursuant to the agreement between the owner and the property management agency, the tenant was not part of that agreement and absent a specific provision in the tenancy agreement such as a liquidated damages clause, would not have reasonably known that these costs would flow from a breach of the agreement.

I dismiss the landlord's claim for the cost of lock replacement. The only circumstances under which I would grant such fees are when the tenant fails to return keys or damages the locks to the degree that they require replacement.

The balance of the landlord's claim for repairs is dismissed as he has not quantified or proven his losses.

As the landlord has been only partially successful in his claim, I find it appropriate to grant him one half of his filing fee. I award the landlord $50.00.

Conclusion

The tenant has been awarded $265.00 which consists of the cost of removing the swing and $25.00 of the filing fee and the landlord has been awarded $2,025.00 which represents $1,975.00 in lost income and $50.00 of his filing fee. Setting off these awards against each other leaves $1,760.00 payable by the tenant to the landlord. I order the landlord to retain the $987.50 security deposit in partial satisfaction of the claim and grant him a monetary order under section 67 for the balance of $772.50. This order may be filed in the Small Claims Division of the Provincial Court and 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: October 21, 2014

Residential Tenancy Branch