Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNSD, MNDC, FF
Tenants: MNR, MNDC, 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 both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; 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 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 emergency repairs; for the return of a portion of utility charges; for the return of ½ month's rent; 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 33, 38, 67, and 72 of the *Act.*

Background and Evidence

The tenants submitted a copy of a tenancy agreement signed by them on September 19, 2013 for a 1 year fixed term tenancy beginning on August 1, 2013 for a monthly rent of $975.00 due on the 1st of each month. The agreement does not stipulate how much was paid for a security deposit and a pet damage deposit but the parties agree that the tenants paid $487.50 for a security deposit and $487.50 for a pet damage deposit. The tenancy ended when the tenants vacated the rental unit on April 15, 2014.

Both parties provided testimony indicating how they came to enter into a second fixed term tenancy. The landlord submits the tenants wanted a fixed term tenancy and the tenants submit it was the landlord who insisted on the fixed term. The landlord submits the tenants were informed about the "illegality" of the rental unit at the start of the 1st fixed term tenancy. The tenants submit they had no idea the unit was an illegal rental unit according to local municipal bylaws.

The tenants have submitted into evidence the following relevant correspondence:

- A copy of an email dated March 6, 2014 from the tenants to the landlord indicating the landlord's son had been at the rental property and was shown a crack in the bathroom tile and damage caused by a water problem in the upstairs unit. The email also requests if the landlord would consider allowing the tenants out of their fixed term tenancy agreement;
- A copy of a follow up email from the tenants to the landlord dated March 12, 2014 asking for his response to their request to end the fixed term tenancy early and the landlord's response dated March 15, 2014 stating that if the tenants wanted to move out they could but that they would be responsible for the payment of rent until the end of the fixed term;
- A copy of a letter dated March 18, 2014 from the tenants to the landlord listing a number of items that require repair or attention from the landlord. The letter states that if the landlord does not address these issues within 10 days the tenant will file an Application for Dispute Resolution with the Residential Tenancy Branch. In this letter the tenants again seek the landlord's approval for a mutual agreement to end the tenancy on April 30, 2014;
- A copy of a letter dated April 1, 2014 advising the landlord that they intend to vacate the property by April 15, 2014 because the landlord has failed to reply to their letter of March 18, 2014 and because they had approached the local municipal health inspector who had informed them that the landlord had been ordered to have the unit vacated by April 18, 2014;
- A copy of a letter from the local municipality dated March 17, 2014 advising the owner of the dispute address that he must have the unit vacated and specific modifications made to the unit no later than April 18, 2014; and
- Email correspondence between the parties between December 20, 2013 and December 21, 2013 regarding the need to have a plumber come and repair the kitchen sink. In the correspondence the landlord agrees to cover the costs of the emergency repair. The tenants have also submitted an invoice for this work in the amount of $114.45.

The tenants submit that there were a number of repairs that they had been asking for, some since the start of the tenancy. The tenants submit that on March 18, 2014 they sent the landlord a letter outlining a number of items that required repairs and that the letter was not responded to.

The tenants submit that prior to this letter they also attended the local municipality office to consult with the health officer regarding the possibility of mould in the rental unit. They state at that time the bylaw enforcement officer overheard them and advised them that he had spoken with the owner of the residential property in the past and advised him that he was not to have a secondary rental unit on the property.

The parties agree the landlord had been advised that he must end the tenancy and dismantle the rental unit. The tenants submitted a copy of the letter from the municipality dated March 17, 2014.

The landlord submits the tenants had found alternate accommodation and that they were just looking for ways to end the tenancy. The landlord submits the tenants deliberately informed the municipal authourities in an attempt to justify their ending of the fixed term tenancy early.

The landlord seeks compensation in the amount of $2,925.00 for the equivalent of 3 months lost rent. The landlord testified that as a result of the tenants approaching the municipal authourities he cannot re-rent the unit and it has been dismantled in accordance with the local order.

The tenants seek the return of ½ month's rent for the month of April as they vacated the rental unit on the 15th and did not stay the full month despite paying the full month's rent. The landlord could not recall if the tenants had paid a full month's rent for the month of April 2014.

The tenants submit that as a result of inefficient appliances, including heating, and because of faulty seals on the entrance doors they should have a reduction in the amount of their hydro costs in the amount of 10% of what they had paid or $43.78 over the course of the tenancy.

The tenants provided detailed calculations of this amount, however, they have provided no information on the basis on which they are making this claim such as a baseline to compare to had they had efficient appliances or proper weather stripping. In addition the tenants have provided no evidence that they raised the hydro cost issues with the landlord at any time during the tenancy.

The tenants seek compensation for plumbing repairs that they had completed after given instruction from the landlord to do so. The tenants have submitted an invoice for work related in the amount of $114.45. The landlord agrees that he had given approval but he thought the upstairs tenants had paid this bill and not these tenants.

Analysis

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.

Despite the tenant's submissions that they had sought repairs from the landlord I find the only evidence that the tenants informed the landlord of any repairs was in the letter dated March 18, 2014. In that letter, I find that the tenants are only seeking for the landlord to make some repairs, they are not notifying him of a breach of a material term of the tenancy.

In addition, I find the even if the tenants were information the landlord of a breach of material term, they did not indicate in the letter of March 18, 2014 that they intended to end the tenancy if he did not correct the breach within a reasonable time. As such, I find the tenants did not provide notice to end the tenancy that was compliant with Section 45 of the *Act*.

I also find that despite the landlord being sent a letter from the local municipal bylaw enforcement officer requiring the rental unit be vacated by April 30, 2014 the municipal officer has no authourity to end a tenancy, only a party to the tenancy agreement can do so. As such, if a landlord receives an order from a local municipality that he must vacate a rental unit that does not comply with local bylaws it is the landlord who can end the tenancy by issuing the tenants with a 1 Month Notice to End Tenancy for Cause under Section 47(1)(k) of the *Act*.

Further, even if a landlord does receive such a letter from a local municipality he may decide to dispute the order from the local authourity or take other actions that may have allowed him to have the tenancy continue until the full fixed term had been completed.

As such, I find tenant's action of vacating the rental unit prior to the end of the fixed term tenancy was a breach of the tenancy agreement and the *Act* and the landlord has suffered the loss of 3 month's rent. I also find that since the landlord was no longer able to re-rent the unit to new tenants as a result of the municipality being informed of the illegal suite he had no ability to mitigate any of this loss.

As I have found the tenants were in breach of the tenancy agreement and the *Act* by failing to give a notice to end tenancy that complied with the *Act* and tenancy agreement I find they are not entitled to the return of ½ month's rent for the month of April 2014. I dismiss this portion of the tenant's Application.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety or anyone or for the preservation or use of the residential property, and are made for the purpose or repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

Based on the testimony of both parties I find the landlord did give the tenants authourity to have a plumber complete repairs on the rental unit for which the tenants paid. I also find the landlord has failed to pay the tenants the amount of $114.45. I find the tenants are entitled to receive this amount of the landlord.

As to additional hydro costs, I find the tenants have failed to provide any evidence to establish that their hydro costs were increased as a result of any deficiencies in the rental unit; its appliances; or weather protection.

I also find that even if there were issues related to hydro costs the tenants have failed to provide any evidence that they informed the landlord of any problems that either required repairs or that they suffered a loss of extra hydro other than the identification of required repairs in the letter dated March 18, 2014, after the tenants had been

attempting to end the tenancy prior to the end of the fixed term. As such, I dismiss the portion of the tenant's claim for additional hydro costs.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$2,975.00** comprised of $2,925.00 rent owed and the $50.00 fee paid by the landlord for this application.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **$139.45** comprised of $114.45 for repairs completed and $25.00 of the $50.00 fee paid for this application as the tenants were only partially successful in their claim.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of $975.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$1,860.55**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord 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: September 15, 2014

Residential Tenancy Branch