Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOREENS PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF
MNDC

Preliminary Issues

Upon review of each application for Dispute Resolution I noted that the Tenant listed a business name as the respondent Landlord to her application and the Landlord had listed her personal name as the applicant on her application. The Landlord confirmed that she does business as (d.b.a.) in the name of the management company as a sole proprietor. Accordingly, I amended the style of cause on the front page of this Decision to reflect the Landlord d.b.a. the management company name, pursuant to section 64(3)(c) of the Act.

Section 2.12 of the Rules of Procedure (hereinafter referred to as the Rules) allows a respondent to file an application for dispute resolution to counter a related application. That counter application is referred to as a cross application. The Rules stipulate that the issues identified in the cross application **must** be related to the issues identified in the application being countered or responded to. When making a cross-application, a party must apply as soon as possible and so that the service provisions in Rule 3.15 are met. [My emphasis added with bold text].

In this case, the Tenant filed their application for dispute resolution on September 11, 2014, seeking monetary compensation relating to a 2 Month Notice to end tenancy; reimbursement of hydro costs, and use of a storage room. The Landlord acknowledged that she filed her application on October 15, 2014, seeking monetary compensation for loss of rent due to actions taken by the Tenant that were unrelated to the issues in the Tenant's application. The Landlord submitted a written statement with her application which included:

This action should be heard with [Tenant's name] claim file No. [number listed]

Upon review of the Landlord's application, I do not find the matters to be sufficiently related to the primary issues listed in the Tenant's application. I therefore concluded that the Landlord's application was not a cross application as contemplated and defined in

the Rules, and it was improperly scheduled as a cross application. Accordingly, I dismissed the Landlord's application, with leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on September 11, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $4,050.00.

The hearing was conducted via teleconference for 83 minutes and was attended by the Landlord, the Tenant, the Tenant's legal Advocate (the Advocate), and two witnesses for the Tenant. The Landlord and Tenant gave affirmed testimony and confirmed receipt of evidence served by each other.

The Advocate submitted that his presence was to assist the Tenant with responding to the Landlord's application, which has since been dismissed with leave to reapply. The Advocate was given the opportunity to remain in attendance to assist the Tenant with her application. That being said, the Advocate did not present arguments on behalf of the Tenant's application and neither the Advocate nor the Tenant called either witness to present testimony, despite being given the opportunity to do so.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks.

Issue(s) to be Decided

1. Was the rental unit used for the reasons stipulated on the 2 Month Notice to end tenancy?
2. If not, is the Tenant entitled to monetary compensation equal to two month's rent?
3. Has the Tenant proven entitlement to monetary compensation for an overpayment of hydro?

Background and Evidence

The undisputed evidence was that the parties entered into a month to month written tenancy agreement that began on August 1, 2012. Rent of $1,400.00 was payable on or before the first of each month and on July 6, 2012 the Tenant paid $700.00 as the security deposit. On October 16, 2013 the Landlord served the Tenant with a 2 Month Notice to end tenancy (2 Month Notice) which listed an effective date of January 1, 2014. Then on October 29, 2013, the Tenant issued the Landlord a Notice to End Tenancy Early effective November 8, 2013. The Tenant received compensation equal to one month's rent ($1,400.00), for being served the 2 Month Notice and vacated the property on or around November 8, 2013.

The rental unit was described as being an older upper and lower duplex heated by electric baseboard heaters. The Tenant noted that her rental unit also had a wood fireplace. The Tenant's rental unit consisted of the upper or main level plus a self-contained section of the lower level that included a laundry room, bedroom, and bathroom. Each duplex had its own address and separate utility meters and accounts. The Landlord owned both duplex units with each being occupied by different tenants under separate tenancy agreements.

The Tenant pointed to the 2 Month Notice provided in evidence and noted that the reason listed for issuing the 2 Month Notice was:

> *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

The Tenant now seeks compensation of $2,800.00 (2 x $1,400.00) and asserted that it was her position that the work the Landlord was to undertake did not require vacant position. She argued that the work was all cosmetic not requiring permits. She stated that she confirmed with the municipality that no permits were taken out to conduct the work and argued that almost all the painting had been completed by herself during her tenancy. She asserted that she did not believe the work required her family to move out.

I explained to the Tenant that her application which was before me was not to determine the validity of the 2 Month Notice or to dispute her having to vacate the rental unit in accordance with the 2 Month Notice. Rather, this matter was to determine if the rental unit had been used for the reasons listed in the 2 Month Notice, such as was the rental unit renovated after she vacated. In response, the Tenant confirmed she had not filed an application to dispute the 2 Month Notice prior to vacating the rental unit. She asserted that she is entitled to the $2,800.00 monetary compensation, the amount equal

to two month's rent, because the unit did not need to be vacant to complete the work that was done.

The Landlord disputed the Tenant's claim for $2,800.00 and argued that they had completed the intended renovations which began shortly after the Tenant vacated in early November 2013 and which were not completed until mid-May 2014. She submitted that they did not re-rent the unit until June 1, 2014, because they had to wait until the renovations were completed.

The Landlord asserted that the renovation work that was performed did not require permits from their municipality, as supported by the emails submitted in her documentary evidence, but that the manner in which they performed the work required the unit to be empty. The Landlord argued that she and her spouse conducted all of the work themselves and because they were seniors who resided in a different municipality, the work was performed over a period of several months. She argued that there were several days when the washroom was not able to be used and several days when the entire kitchen was taken apart and refinished. She confirmed that the Tenant had initially painted walls during her tenancy; however, the Tenant did not paint in a manner that they liked and she did not paint every surface.

The Landlord submitted evidence that the renovations they completed included: painting every wall, ceiling, baseboard, trim and door; new tub, bathroom vanity and sink; new plumbing; new floors; and the kitchen cabinets were taken apart and painted over a period of several weeks. She argued that as property owners they have the right to conduct the repairs by themselves in a manner of their choosing. She submitted that there had been scaffolding set up everywhere in order to complete the work, which could not have been done with someone residing in the rental unit.

The Tenant testified that the remainder of her monetary claim was for $1,250.00 compensation for increased hydro charges she had to pay for a light in the storage room and for power used by the tenant from the lower duplex when she plugged in her electric scooter.

The Tenant argued that her tenancy agreement provided for storage and that she understood that she would have use of the exterior storage facility for her own enjoyment. The exterior storage consisted of an outside shed in the back yard which had one light and one electric outlet drawn from her electrical service. She argued that the previous tenant had left items in that storage shed and which was also being used by the tenant in the lower duplex.

The Tenant submitted that the storage became an issue sometime in May 2014 when she came home and noticed a light did not work. She also noticed that the lower duplex

tenant had started to store and recharge a scooter in her storage area with the use of her power. Upon further clarification the Tenant stated that she had noticed that her hydro bill had increased substantially so her and her son did some research by turning each electrical breaker off and on to determine what each breaker powered, which is when she found out that the tenant from the lower duplex had been using her power to charge her electric scooter and that the light in the shed was drawn from her power on the same breaker.

The Tenant stated that she did not know when the lower tenant brought the scooter to the rental unit or when she first began to recharge it with the use of her power. She pointed to her evidence which included copies of her hydro usage summary which clearly showed an increase of power usage starting from September 2012 and decreasing in January and February 2013.

The Landlord disputed the Tenants $1,250.00 monetary claim and argued that the Tenant had known from the beginning that the exterior storage shed was a shared space for all tenants. She pointed to the Tenant's evidence, page 21, which included an email issued by the Tenant which clearly referenced the exterior storage shed as "shared space". The Landlord asserted that the Tenant simply chose not to use the exterior storage as there was ample storage in her rental unit. She argued that the previous tenant only left a few cans of paint in the exterior storage shed, which could have easily been removed if the Tenant wanted them gone. The Landlord argued that the single light bulb in that exterior shed could not use over $1,200.00 in power.

The Landlord testified that that lower tenant did not plug or store her scooter in that storage shed; rather, she stored it right outside the Tenant's back door, and it was plugged into an exterior outlet, under the Tenant's deck. The Landlord asserted that this was a problem between the two tenants which had been resolved when the lower tenant gave the Tenant a cheque for $265.00 to cover her use of the power.

The Landlord submitted that when they retrieved possession of the rental unit they found that the power to the exterior outlet and the light in the shed had been disconnected, without her permission. She pointed to an email found at page 22 of the Tenant's evidence which included a discussion about the exterior storage room and outlet, where on September 12, 2013, the Tenant wrote:

> *There will be no further discussion with you or [lower tenant's name] about this, so she is soley responsible for all dealing with the room, once the breaker is disconnected from my breaker switch. [Reproduced as written].*

The Landlord argued that back in September 2013 the matter had been resolved between the Tenants and the forgoing email was confirmation of that resolution.

Therefore, she should not be held responsible to pay the Tenant for the alleged hydro usage.

The Landlord pointed to her documentary evidence which included a business card from a battery supplier who told the Landlord that those types of scooters required a "typical charge" of 3 to 4 hours per day at a cost of 50 cents per day. As such she argued that the Tenant's claim was way out of line and that the Tenant had been more than compensated by the other tenant's payment of $265.00.

In closing the Tenant questioned how the Landlord knew about a cheque given to her by the lower tenant. The Landlord responded saying the lower tenant told her, to which the Tenant replied "she did not give me a cheque".

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The party making the claim for damages must satisfy **each** component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

Section 51(2) of the *Act* provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49, within a reasonable period after

the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In regards to the Tenant's claim for $2,800.00, pursuant to section 51(2) of the *Act* as listed above, the Tenant did not dispute that the rental unit had been renovated after she moved out; rather, the Tenant placed a lot of emphasis on arguing that no permits had been issued and that the work was primarily cosmetic which would not require the rental unit to be vacant. Such arguments would be pertinent if the Tenant's application was to dispute the 2 Month Notice to avoid having to move out. That was not at issue here, as the Tenant had moved out and received the compensation equal to one month's rent for being issued the 2 Month Notice.

What must be determined in response to the matter before me here is (a) whether renovations to the rental unit had been conducted within a reasonable period after the effective date of the notice; or (b) whether the rental unit was used for a different purpose than what was stated on the 2 Month Notice for at least 6 months beginning within a reasonable period after the effective date of the notice.

The undisputed facts were that the rental unit had undergone renovations for a period from November 2013 to May 2014 and because the rental unit had been vacated those renovations were conducted by the Landlord herself, in a manner which would not normally accommodate the unit being occupied (i.e. scaffolding left up in the rental unit, and the kitchen and bathroom left inoperable for several days or weeks). The rental unit was not re-rented to new tenants until June 1, 2014, six and half months after the Tenant vacated the property. Therefore, I conclude that the rental unit had been used for renovations, which was the stated purpose listed on the 2 Month Notice. Accordingly, I find the Tenant has provided insufficient evidence to support her claim for compensation pursuant to section 51(2) of the *Act,* and I dismiss the claim without leave to reapply.

In regards to the Tenant's claim for $1,250.00 compensation for increased hydro costs and loss of use of storage, I find the Tenant submitted insufficient evidence to meet all 4 criteria of the test for damage or loss as listed above. While I agree that on the surface it would be unconscionable for a landlord to have a tenant be required to pay for another tenant's hydro consumption, when determining the matter before me it must be remembered that this claim pertains to a lightbulb in a shared exterior shed and access to an exterior outlet located beside the Tenant's back door entrance.

Notwithstanding the allegations that the Tenant received payment of $265.00 from the other tenant as compensation for the use of the hydro, I find the Tenant submitted

insufficient evidence to prove that actual amount of her loss was $1,250.00. Although the hydro consumption reports clearly outline an increase of power consumption during the fall and winter months, those consumption reports cannot be considered evidence that the other tenant used that increased amount of hydro to charge her scooter. Furthermore, it must be remembered that the house was heated by electric baseboard heaters.

The evidence submitted by the Landlord would indicate that the scooter would use no more hydro than 50 cents per day. That being said, the Tenant submitted that she did not know when the scooter started to be charged with her power; therefore, she has not proven the time period or the actual cost of use of power by the other tenant. In addition, as noted in the Tenant's own evidence, the exterior shed was a shared or common storage space, and there was no evidence that would indicate the Tenant had notified the Landlord that she was prevent from equal access or use of the exterior storage shed. Nor was there sufficient evidence to prove the light bulb in the shed used a significant amount of hydro.

Based on the above, I conclude the Tenant provided insufficient evidence to support any times claimed on her application. Accordingly, I hereby dismiss the Tenant's application, in its entirety, without leave to reapply.

Conclusion

The Landlord's application was dismissed, with leave to reapply.

The Tenant's application was dismissed, without leave to reapply.

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: April 08, 2015

Residential Tenancy Branch