Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF; MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit and pet damage deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit and pet damage deposit / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the 1 year fixed term of tenancy is from July 15, 2014 to July 14, 2015. Monthly rent of $1,750.00 is due and payable in advance on the 15th day of each month. A security deposit of $875.00 and a pet damage deposit of $875.00 were collected. A move-in condition inspection report was completed with the participation of both parties; however, while there is limited reference to “repairs to be completed at start of tenancy” (documented, in part, “2 – side Panel for Furnace” and “Lawn Mower”) the inspection report is virtually devoid of detail.

The tenants began moving into the unit on or about July 23, 2014, at which time they claim to have become aware of an “odd smell.” By email dated July 31, 2014, the tenants informed the landlord that the unit “is full of black mold.” Further, in their email they requested that the landlord “have this fixed at your earliest convenience but not later than August 8th as we will have to take up residence elsewhere in the meantime.” Thereafter, the tenants vacated the unit, removing their possessions during the period from August 09 to 12, 2014. A move-out condition inspection report was not completed.

Subsequently, by letter dated August 26, 2014, in addition to addressing other matters, the tenants' agent informed the landlord of the tenants' forwarding address, and requested the repayment of the security and pet damage deposits. To date, these deposits have not been repaid.

The tenants' application for dispute resolution was filed on September 09, 2014, while the landlord's application was filed on February 25, 2015. In summary, the parties seek miscellaneous compensation from each other arising from what became a tenancy limited to approximately 1 month.

Analysis

The attention of the parties is drawn to the following particular sections of the legislation:

ACT
Section 23: **Condition inspection: start of tenancy or new pet**
Section 24: **Consequences for tenant and landlord if report requirements not met**
Section 32: **Landlord and tenant obligations to repair and maintain**
Section 35: **Condition inspection: end of tenancy**
Section 36: **Consequences for tenant and landlord if report requirements not met**
Section 38: **Return of security deposit and pet damage deposit**
Section 45: **Tenant's notice**
Section 7: **Liability for not complying with this Act or a tenancy agreement**

REGULATION
Part 3 – **Condition Inspections** (sections 14 to 21)

The attention of the parties is also drawn to Residential Tenancy Policy Guideline # 34, which addresses "Frustration."

Further to consideration of the relevant statutory provisions, based on the affirmed testimony of the parties, and the considerable documentary evidence which includes, but is not limited to, emails, invoices, receipts, and photographs, the various aspects of both applications and my related findings are set out below. While all of the testimony and documentary evidence has been considered, an exhaustive detailing of arguments set out in support of the respective claims is not included here.

LANDLORD

$200.00: *reimbursement of contribution toward purchase of used lawnmower*

It appears that the tenants do not dispute this aspect of the landlord's application, however, they claim to have indirectly compensated him already by reducing, by approximately the same amount, compensation sought by them in their application for "added moving costs." I prefer to address the tenants' claim for "added moving costs" as a separate and distinct matter from this particular aspect of the landlord's claim. As the tenants do not dispute it, I find that the landlord has established entitlement to the full amount claimed.

$1,400.00: *($500.00 + $500.00 + $400.00) repairs, clean up and garbage disposal*

The tenants challenged the authenticity of invoices submitted into evidence by the landlord which are manually written; 2 of these apply to tasks said to be completed by a "handyman," while 1 applies to tasks claimed to have been undertaken by the landlord himself. Further, the tenants allege that the landlord declined to permit them onto the property in order to complete any unfinished repairs and / or cleanup following the removal of their main possessions.

However, it is principally in view of the absence of any comparative results of move-in and move-out condition inspection reports that this aspect of the landlord's application must be dismissed.

$1,000.00: *costs associated with "illegal dumping:"*

The landlord testified that the cost claimed has not presently been incurred, either by way of labour and materials, or by way of any fine assessed by the applicable local government authority. Accordingly, this aspect of the claim is hereby dismissed.

$1,750.00: *loss of rental income from August 15 to September 14, 2014*

The landlord testified that following the departure of the tenants from the unit, he advertised online for new renters via craigslist. The landlord further testified that new renters moved into the unit on or about September 18, 2014, although they began paying rent effective from October 01, 2014.

Section 45 of the Act speaks to the manner in which tenants may end a fixed term tenancy:

> 45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenants ended the fixed term tenancy by vacating the unit in advance of the "date specified in the tenancy agreement as the end of the tenancy." I also find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlord has established entitlement to the full amount claimed.

$50.00: *filing fee*

As the landlord has achieved a measure of success with the main aspects of his application, I find that he has also established entitlement to recovery of the filing fee.

Sub-total entitlement: $2,000.00

TENANTS

$1,750.00: *reimbursement of rent for the period from July 15 to August 14, 2014*

As noted above, section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While the tenants claim that the mold posed a threat to their well-being, they have provided no authoritative, documentary evidence specific to this unit to support this claim. Authoritative documentary evidence pertinent to mold found in the unit is limited to test results reported by a firm hired by the landlord. The report is dated January 16,

2015. There is no clear indication in the report that the existence of mold in the unit has created conditions that are hazardous to health. While the date of the report is several months after the time when the tenants first reported their concerns about mold, there is no other authoritative documentary evidence before me on this matter, such as a report from an appropriately qualified government official, for example. Documentation submitted by the tenants in this regard is limited to generic information published by Health Canada. In the result, I find there is no conclusive documentary evidence to support a claim that the unit which is the subject of this dispute failed to comply with "the health, safety and housing standards required by law," or that it was not "suitable for occupation by a tenant."

The tenants had possession of the unit for the better part of the period in question, and I find insufficient evidence that by virtue of the existence of mold, the tenancy was frustrated and could not therefore continue. Residential Tenancy Policy Guideline # 34 speaks to "Frustration," in part as follows:

> A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.
>
> ---
>
> The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned.

As a result of all of the foregoing, I find that the tenants have established no basis for entitlement to reimbursement of rent paid for the first month of a 12 month fixed term tenancy, and this aspect of their application is hereby dismissed.

$3,500.00: *[($875.00 + $875.00) x 2] compensation for double the amount of the security deposit and pet damage deposit*

As noted above, section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenants' forwarding

address in writing, the landlord must either repay the security deposit and pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit or pet damage deposit, and must pay the tenants double the amount of the security deposit and pet damage deposit.

In this case, I find that the landlord neither repaid the security deposit or pet damage deposit, nor filed an application for dispute resolution, within 15 days after being informed by the tenants of their forwarding address by letter from their agent dated August 26, 2014. As earlier noted, the tenants had vacated the unit by August 12, 2014, the forwarding address was provided in a letter dated August 26, 2014, and the landlord's application was filed many months later on February 25, 2015.

During the hearing the tenants declined to waive the doubling provisions of the Act. In the result, I find that the tenants have established entitlement to **$3,500.00**.

$850.00: *moving expenses*
$284.55: *costs associated with rental of a steel container*

As I have found no basis upon which the tenants established entitlement to end the fixed term tenancy prior to the "date specified in the tenancy agreement as the end of the tenancy," and determined that they have failed to meet the burden of proving that the unit failed to comply with the "health, safety and housing standards required by law," or that it was not "suitable for occupation," I find that these aspects of the tenants' application must be dismissed.

$615.30: *labour / materials for certain repairs within the unit*

I note that this aspect of the claim is not included on the monetary order worksheet attached to the tenants' original application filed on September 09, 2014. Rather, it is addressed in some detail at tab # 4 in the tenants' documentary binder submission, which was received by the Branch on March 13, 2015. Further, the tenants' original application for compensation of $4,634.55 in addition to recovery of the $50.00 filing fee, was not subsequently amended to include the $615.30 claimed above.

It is also noted that the tenants paid a $50.00 filing fee, entitling them to seek compensation under the legislation which is not in excess of $5,000.00. A $100.00 filing fee is required for claims in compensation in excess of $5,000.00. Inclusion of the claim for $615.30 increases the total compensation sought by the tenants to $5,299.85.

In addition to the above, other than the tenant's invoice, there are no related receipts in evidence, and the landlord disputes the tenants' claim to the extent that he considers that the work was incomplete and / or not satisfactory to him. As well, I am unable to conclude from the evidence that the parties entered into a clear agreement as to the scope of work to be undertaken and / or the quantum of costs that might be anticipated. As a result of all the foregoing, I find that certain repairs had been agreed to between the parties and that at least some of this work was completed by the tenants. In summary, I find that the tenants have established entitlement limited to **$200.00**.

$50.00: *filing fee*

As the tenants have achieved a measure of success with the main aspects of their application, I find that they have also established entitlement to recovery of the filing fee.

Sub-total entitlement: $3,750.00

Offsetting the respective entitlements, I find that the tenants have established a net claim of **$1,750.00** ($3,750.00 - $2,000.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$1,750.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims 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: April 14, 2015

Residential Tenancy Branch