Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

The landlord applies for a monetary award for the tenant's share of unpaid utilities, for unpaid rent or loss of rental income and for cleaning and repair costs.

There is a related proceeding, referred to on the cover page of this decision. That matter involves an application by the tenant for damages for compensation and a rent reduction for a lack of heat in the premises, a rodent infestation, damage to furniture and for moving expenses. That matter was first heard January 13, 2015. The landlord did not attend that hearing and the tenant was granted an award. The landlord applied successfully for a review of that decision on the basis that he had not been served. The application has been rescheduled to be heard anew on May 4, 2015.

Issue(s) to be Decided

Does the relevant evidence presented at this hearing show on a balance of probabilities that the landlord is entitled to recover any monetary award for the items claimed? A secondary issue is whether or not the tenant is entitled to a doubling of his security deposit pursuant to s.38 of the *Residential Tenancy Act* (the "*Act*").

Background and Evidence

The rental unit is a one bedroom cabin. The tenancy started in October 2014. There is no written tenancy agreement, but the parties agree that the rent was $575.00 per month and that the landlord holds a $287.50 security deposit. There was an agreement that the tenant would pay a portion of Hydro costs but the terms of that agreement are in dispute.

Prior to December 2014, the tenant sent the landlord a note that he'd be moving before the end of February 2015.

In early December the landlord gave the tenant a typewritten document purporting to end the tenancy for cause effective December 31, 2014. The document was not in the approved form as required by s.45 of the *Act*.

The tenant vacated in early January 2015. The keys were returned to the landlord on January 8th.

The landlord neither conducted an inspection nor prepared a condition report at move-in or move-out.

The landlord testified that the tenant, or perhaps the tenant's agent Ms. K, misrepresented himself as a businessman and that he was a bad tenant.

The tenant testified that the landlord was a bad landlord, prone to displays of aggression. The tenant also wished to testify about matters like heat and rodents; matters more properly the subject of the other proceeding and not particularly relevant to the landlord's claim here.

The landlord testified that the tenant overused Hydro. In my view that allegation is not relevant given that the landlord is seeking what he claims to be the tenant's fixed proportion of the cost of hydro usage and not anymore than that.

The landlord says the tenant was obliged to pay 25% of Hydro and produces two accounts of $238.09 and 1122.06 for Hydro usage during the tenancy.

The tenant says that because a neighbouring house on the same account used a lot more power, he and the landlord agreed that he would only pay ½ of 25%.

The landlord claims that at the end of the tenancy the tenant failed to clean the cabin, removed the bathroom door and left a ceiling light/fan combination hanging by its wires. He claims $100.00 for these items. It appears that he did the work himself. No bills or invoices were produced to show that a third party did the work.

The tenant disputes the need to clean. He acknowledges that he may have removed the door to facilitate his move out. He says the fan/light simply came undone while Ms. K. was cleaning it.

The landlord says that since the tenant didn't return the keys until January 8th he is entitled to recovery January rent. The landlord has not re-rented the premises yet and indicates that though he may have a long running rental add, he hopes to sell the property instead.

Analysis

Section 6(3) of the *Act* provides:

> (3) A term of a tenancy agreement is not enforceable if
>
> (a) the term is inconsistent with this Act or the regulations,
>
> (b) the term is unconscionable, or
>
> (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The landlord has put himself at a distinct disadvantage by turning possession of the premises over to the tenant last October without first having a written and signed tenancy agreement.

The term of the tenancy agreement asserted by the landlord that the tenant was responsible for 25% of Hydro costs is not a term that has been "expressed in a manner that clearly communicates the rights and obligations under it" and so is not, on the face of it, a term that can be enforced.

However, the tenant acknowledges responsibility for half the 25% and I find that the landlord is entitled to that. I award the landlord $169.26 as the tenant's share of Hydro costs.

I dismiss the landlord's claim for cleaning. His evidence, in the form of fax copies of photographs and his minimal testimony about the state of the premises is not sufficient to show that the premises were less than the "reasonably clean" standard imposed on a tenant by s. 37(2)(a) of the *Act.*

I find that the tenant removed the bathroom door and didn't put it back on its hinges. I award the landlord $20.00 for having to re-install the door himself.

I find that the tenant disconnected the fan/light when cleaning the premises. He opines that maybe it was just some loose screws that allowed the fixture to come unfastened. From this evidence I find that the tenant made no attempt to reaffix it. I award the landlord $50.00 for having to do so.

The tenant continued in possession of the premises until the evening of January 8 when the keys were returned. The landlord has not lost the rent from any replacement tenant and so I award him only compensation for those eight days; an amount of $148.40.

In total I award the landlord $387.66. I allow the landlord recovery of only half the $50.00 filing fee. In my view, much of the dispute could possibly have been avoided had the landlord complied with his obligation to prepare a written tenancy agreement, conduct the mandatory inspections and prepare and submit the required reports.

The landlord holds the $287.50 security deposit. Section 38 of the *Act* imposes an obligation on a landlord that once a tenancy has ended and once the tenant has provided a forwarding address in writing to the landlord, then within the following 15 days, the landlord must either repay the deposit or make an application to keep it.

If a landlord fails to comply with s.38 he must account to his tenant for double the amount of the deposit.

The tenant's agent Ms. K. argues that she provided the landlord with the forwarding address in writing when she dropped of the keys with a note on January 8 h. I have seen the note and it does not contain a forwarding address.

The tenant argues that the address provided in his early application was his forwarding address. It has not been show that that application was actually ever served on the landlord. Indeed, that uncertainty was the basis for the landlord's successful review application.

The evidence does not show that the landlord had violated s.38 and incurred the doubling penalty.

I authorize the landlord to retain the $287.50 security deposit in reduction of the $412.66 award. There will be a monetary order against the tenant for the remainder of $125.16.

Conclusion

The landlord's application is allowed in part. A monetary order of $125.16 will issue against the tenant.

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 10, 2015

Residential Tenancy Branch