Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and an order compelling the landlord to return their security and pet deposits. Both parties participated in the conference call hearing.

At the hearing, the tenants acknowledged that since filing their application for dispute resolution, they have received their security and pet deposits from the landlord. I therefore consider their claims for these deposits to have been withdrawn.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the rental unit is a townhouse to which a tandem garage is attached. They further agreed that the tenants viewed the unit in August 2014 and on August 19, signed a tenancy agreement which set the beginning of the tenancy as October 1, 2014 with monthly rent set at $1,600.00. The parties further agreed that the tenants did not move their belongings into the unit and that on October 6, they emailed the landlord advising that she had breached the Act, ending their tenancy "effective immediately" and demanding repayment of their rent and security and pet deposits.

The tenants testified that when they viewed the rental unit, there was a refrigerator and freezer in the garage. They indicated at that time that they would like to use the freezer, but stated that they did not want use of the refrigerator and asked the landlord to move it. In email exchanges following the initial viewing, the landlord stated that she would prefer that the appliances stay in the garage, but said that she "can be flexible on that if a deal breaker." The tenants testified that they understood the refrigerator would be removed from the garage.

The tenants stated that when they signed the tenancy agreement on August 19, there was some discussion as to whether the tenancy should end on the expiry of the one year fixed term or whether the tenancy should continue on a month-to-month basis. The parties eventually

agreed to check the box on the agreement indicating that the tenancy would continue on a month-to-month basis. The tenants took issue with the landlord mentioning several times afterward that she was uncomfortable with this agreement and objected to her mentioning that she discussed the issue with her son, whom the tenants had not met.

In their written submission, the tenants stated that on August 23, after discovering that the landlord had discussed tenancy issues with her son, they "decided that it would be wise, based on everything to date, that we would NOT give our official notice to our current landlord for September 30, 2014. We knew this would cost us another $1,500.00; however, we felt it was a necessary precaution."

The parties agreed that the tenants had originally provided cheques for their security and pet deposits which were post-dated for the beginning of the tenancy but at the request of the landlord, exchanged those cheques for instruments which were negotiable on September 24. The parties made that exchange on September 24. The tenants testified that when the landlord asked for cheques with an earlier date, she mentioned that her son had suggested that the cheques be negotiable earlier than the start date of the tenancy. The tenants testified that they believed at this point that the landlord was sharing their personal information with a party who did not have the right to receive that information. The tenants stated that they gave the landlord the opportunity to mutually agree to end their tenancy agreement before it began, but the landlord declined.

The tenants testified that on September 24, the landlord advised that another person who lived in the townhouse complex had a key to the rental unit because fire inspectors would require access to the unit prior to the beginning of the tenancy and the landlord was concerned that she would be subject to a fine if she was not available to grant them admittance. The tenants testified that this caused them concern, which they expressed in an email to th landlord on the same date. In that email, they said that if the other party had the key only for the purpose of admitting fire inspectors, that was not a problem, but "if she holds a key permanently for your unit then we do have a problem with that." The email then misquoted the *Residential Tenancy Act* (the "Act") and stated that "all locks are to be changed after a tenancy ends". The tenants provided a copy of the landlord's emailed response in which she said that she had only given her key to the third party for the purpose of a single fire inspection.

The parties agreed that they met at the rental unit on October 1 at which time the landlord provided keys and the parties inspected the unit together. They further agreed that the tenants expressed dissatisfaction with the condition of the carpet in the unit, saying that it had not been adequately cleaned. The parties agreed, and the condition inspection report reflects this agreement, that the landlord would not clean the carpet and the tenants would be permitted to return the unit at the end of the tenancy with the carpet in the same condition in which it was at the outset of the tenancy.

The tenants testified that upon taking possession of the unit, they found that in the garage, in addition to the refrigerator and freezer, they found a large dresser and two free standing closets.

They asked the landlord at that point to remove all of the items, including the freezer which they had previously thought they may be interested in using, because they had 2 vehicles which would not fit into the garage if the items remained. They testified that she said she would sell everything and the tenants offered to take photographs of the items so she could place advertisements on Craigslist.

The tenants provided evidence that on the evening of October 1, they emailed the landlord asking that she change the locks. The parties agreed that the locks were changed by the landlord's son on the evening of October 2. The tenants' evidence shows that on October 2, the tenants asked through an email that the landlord remove all of the items in the garage by October 5 and the freezer by October 8.

The tenants provided evidence that on October 3, they had the carpet professionally cleaned.

The tenants provided evidence that on October 4, they received an email from the landlord in which she advised that she had changed her mind and had decided not to remove any of the items from the garage. The tenants advised her by return email that the items in the garage were not part of the tenancy agreement and demanded that they expected the items to be removed by October 6 at 5:00 p.m. or the tenants would remove the items at the landlord's expense. They further stated in the email that if the items were not removed by October 6, on October 7 they would apply to the Residential Tenancy Branch to address the issues which the tenants claimed were "hampering our ability to move in".

The tenants provided evidence that on October 6 at 8:56 p.m., they emailed the landlord a letter advising that the tenancy was terminated immediately. The landlord responded to this email the following day and stated that she considered the property to be abandoned and invited them to a move-out inspection that evening. The tenants testified that when they arrived at the unit on October 7, they discovered that their keys did not work and fund that the landlord had changed the locks.

The tenants testified that they have always had a storage locker, but that they had to secure a larger storage locker because they had packed up many of their belongings and could not keep the boxes in their current home as they did not want to be forced to navigate around the boxes in their daily life and have guests in their home see the boxes.

The tenants seek the return of the rent paid for October, the cost of cleaning the carpet, the cost of moving and "stress related damages", the rent they paid at the rental unit in which they lived at the time they entered into the tenancy agreement with the landlord, the cost of storing their personal household items and the costs of reproducing photographs and sending documents related to this hearing via registered letter. The tenants also seek to recover the $50.00 filing fee paid to bring their application.

The landlord testified that her adult son acted as her advisor and agent with respect to the rental unit and stated that he was only given the information required in order to provide her with

advice. She acknowledged that her son delivered her evidence to the tenants. The landlord argued that the tenants did not ask her to clean the carpet, stated that she changed the locks to the unit as soon as the tenants made the request and that the free standing closets and dresser in the garage were the "storage" indicated on the tenancy agreement.

Analysis

The tenants bear the burden of proving their claim on the balance of probabilities. The Act establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (if applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Tenants who are in a fixed term tenancy must comply with the fixed term unless they have reason to end the tenancy early pursuant to section 45(3) of the Act, which provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

The tenants sent the landlord an email on October 4 in which they threatened to pursue arbitration because the landlord had allegedly breached the tenancy agreement, but they did not identify in that letter what the alleged breaches were. I therefore do not consider this letter to be a notice which complies with section 45(3).

The tenants sent the landlord a second letter on October 6 in which they claimed that the landlord had breached sections 14(1), 25(1)(a), 28(a) & (b) and 29(1)(b) of the Act.

Section 14(1) prohibits a landlord from changing or removing a standard term of the tenancy agreement. The tenants alleged that when the landlord expressed a desire to change what was to happen when the fixed term expired, she was changing a term of the tenancy agreement. The Act does not prohibit landlords from expressing a desire to change a term and I find that the landlord did not change that term. I find that the landlord has not breached the Act in this respect.

Section 25(1)(a) provides that *at the request of a tenant*, the landlord must rekey locks at the start of a new tenancy. The tenants' evidence shows that they did not make this request until October 1 and I find that the landlord acted promptly to comply with their request by changing the locks on October 2. I find that the landlord is not in breach of this section of the Act.

Section 28(a)(b) provides that tenants are entitled to reasonable privacy and freedom from unreasonable disturbance. There is no evidence whatsoever that the tenants were subject to any disturbance, unreasonable or otherwise. I understand the tenants' reference to their privacy having been violated to their belief that the landlord has given their personal information to her son. The landlord is entitled to appoint agents or retain advisors to assist her in performing her obligations as a landlord. I find that the landlord's adult son acted in the role of an agent and I find that the landlord has in no way violated the tenants' privacy rights. I find that the landlord is not in breach of this section of the Act.

Section 29(1)(b) of the Act provides that the landlord may not enter the rental unit without having first provided 24 hours written notice of entry. At the time the tenants authored the letter of October 6, there is no evidence that any illegal entry or failure to provide notice had taken place.

The letter also stated that the landlord's refusal to acknowledge that the carpet was unclean was a breach of the Act. The condition inspection report indicates that the edges of the carpet in the bedroom was not properly cleaned and had dust but also indicated that the tenants could return the unit with the carpet in the same condition as they were received. I find that by insisting on this notation and signing the condition inspection report, the tenants accepted the carpet in the condition in which they were provided. I find that the landlord did not breach the Act with respect to the condition of the carpet.

The October 6 letter further states that the landlord's failure to remove the items in the garage prevented them from moving into the unit on October 1. I find insufficient evidence to show that items left in a garage prevented the tenants from moving their belongings into the rental unit. I find that if this was a breach of the Act or tenancy agreement, it was minor and cannot be characterized as a material term of the tenancy agreement, which is required by section 45(3) to permit tenants to end their tenancy.

I find that the tenants have not proven that the landlord breached the Act or a material term of the tenancy agreement and I find that the tenants therefore had no right to end their tenancy pursuant to section 45(3). I find that the tenants were obligated to remain in the tenancy until the expiry of the fixed term on September 30, 2015.

Section 53 of the Act provides that if party gives a notice with an effective date that does not comply with the Act, the effective date is automatically changed to comply with the Act. I find that the tenants' notice therefore self-corrected to reflect an effective date of September 30, 2015. I therefore dismiss the tenants' claim for recovery of their rent for the month of October 2014 as rent was due and payable for that period.

The tenants agreed to accept the carpet in the condition in which they were provided on the condition that they could return the unit with the carpet in the same condition. Had the tenants not agreed to accept the condition of the carpets, they could have asked the landlord to clean the carpet and if she refused, they could have put her on notice that they would clean the carpet

and seek to recoup the cost through arbitration. The tenants cannot claim for the cost of carpet cleaning simply because they did not reside in the unit long enough after cleaning the carpet to soil them to the point at which they were in the same condition as when they moved in. I dismiss the claim for carpet cleaning.

Because I have not accepted the tenants' argument that they were prevented from moving into the unit because of the furniture in the garage, the costs associated with their choice to end their tenancy and move their belongings are not recoverable and I dismiss that claim. Had the tenants believed they were deprived of some of the use of the garage, they could have made an application for dispute resolution and sought compensation or an order that the landlord remove the offending items, which is what they had initially threatened to do.

I also dismiss the claim for duplicate rent. Long before the tenants discovered that the carpets were not cleaned to their satisfaction and long before they discovered that the landlord did not wish to remove items from the garage, the tenants made an active choice on August 23 that they would pay rent for 2 separate rental units for the month of October. In other written evidence, the tenants indicated that they made this choice in part because they wanted additional time to move. I find that the landlord cannot be held responsible for this choice as her actions apparently had no impact on the tenants' choice to retain their previous housing.

The claim for the cost of storage is dismissed as the tenants have not met the first part of the test outlined above to prove their claim for a monetary award and have not proven that the landlord was in breach of the Act or tenancy agreement.

I dismiss the tenants' claim to recover the cost of registered mail and reproduction of photographs as under the Act, the only litigation-related expenses I am empowered to award is the cost of the filing fee.

I note that the tenants alleged that the landlord illegally changed the locks to the unit on October 6 and illegally entered their unit on October 7. I have found that the effective date on the tenants' notice to end their tenancy automatically changed to September 30, 2015 and I find that the landlord should have given the tenants notice of entry and was not entitled to change the locks until they had given her the keys to the unit and completely surrendered possession. However, the tenants have not proven or even alleged that any loss resulted from that action and as they have suffered no loss, I find that they are not entitled to an award.

With respect to the tenants' concern that a neighbour had a key to the unit, I note that the landlord reassured them that she had the key only for the period of time required to grant entry to the fire inspectors and that time pre-dated the beginning of the tenancy. I find that no violation of the Act took place with respect to the neighbour having the key.

As the tenants have been entirely unsuccessful in their claim, I dismiss their claim for recovery of the filing fee.

Conclusion

The tenants' claim is dismissed in its entirety.

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: May 27, 2015

Residential Tenancy Branch