Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- a monetary order for unpaid rent and for damage pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants confirmed that they were both served with the landlord's copy of their dispute resolution hearing package on November 25, 2014 and the landlord confirmed receipt of the tenants' dispute resolution hearing package on May 21, 2015. I accept that both parties were sufficiently served with the other party's dispute resolution hearing package.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and/or damage or loss as a result of this tenancy?

Are the tenants entitled to the return of all of their security deposit or is the landlord entitled to retain all or a portion of the tenant's security deposit to satisfy any monetary order?
Is either party entitled to recover the cost of the filing fee for these applications from the other party?

Background and Evidence

This tenancy began on June 21, 2014 for a 12 month fixed term. The rental amount of $1600.00 was payable on the first of each month. The landlord testified that she continues to hold an $800.00 security deposit paid by the tenants on June 21, 2014. The landlord testified that the tenants "abandoned" the rental unit while she was on holidays, at the end of October 2014. The tenants testified that they vacated the residence based on notice provided of a breach of their tenancy agreement and that they provided their forwarding address on November 20, 2014. The landlord submitted a copy of her airplane ticket showing flights on October 21, 2014 and return on October 31, 2014.

The landlord submitted a copy of the residential tenancy agreement and the condition inspection report as evidence for this hearing. The tenancy agreement includes an addendum signed by the tenants agreeing to comply with all strata laws. She points to the portion of the residential tenancy agreement that states 'what is included in the rent'. That portion of the agreement has boxes ticked showing the inclusion of; a stove; dishwasher; refrigerator; laundry; storage; and garbage collection. The landlord highlighted "parking", noting in her testimony that the box beside 'parking' was not marked as included as part of the tenancy. She also submitted a copy of her advertisement to rent the unit prior to the tenants moving in. The online advertisement states "street parking" in the details section.

The landlord also submitted text message correspondence with the tenants. They include messages that warn the tenants that continued parking in the visitors parking area may result in their car being towed for not abiding by strata laws for the building.

The landlord also submitted photographs with respect to the condition of the unit when the tenants vacated the rental unit. The landlord submitted that the photographs illustrate substantial damage to the carpets, requiring that she clean them professionally after the tenants vacated. She sought $136.50 with respect to carpet cleaning costs.

The landlord submitted what she described as unpaid utility bills totalling $74.88. One bill dated October 16, 2014 was labelled, "disconnection notice" and provided an outstanding amount of $71.72. The other bill dated November 18, 2014 showed the payment of $71.72 and an outstanding balance of $3.16. She sought to recover this amount from the tenants, claiming that they were responsible for these utility payments. She was unable to point to a provision in the residential tenancy agreement where the tenants had agreed to pay utilities.

The tenants submitted that the landlord had failed to comply with a material term of the tenancy. Tenant HM testified, referring to a letter from the tenants in evidence that the tenants had written to the landlord to advise her that they believed she was in breach of the tenancy agreement by failing to provide a free parking stall as part of their tenancy.

The tenants testified that, on move-in, the landlord had advised them that they were able to park in visitor parking near their rental unit. The tenants testified that, shortly after moving in, they began to receive complaints and notices regarding strata by-laws. The tenants testified that, even if they parked in the visitor parking spots temporarily to unload their groceries, they were provided with violation notices.

The tenants submitted a map in evidence to show that they were required to park on the street during their tenancy. They submitted that the map showed the unreasonable distance and slope of hill that they were required to overcome when traveling from their vehicle to their home. They described a "substantial hike" for a multi-car family. The tenants sought recovery of their $800.00 security deposit, testifying that the landlord had no grounds or evidence to support her claim that she suffered a loss as a result of this tenancy.

The tenants submitted a copy of email correspondence from the landlord dated July 6, 2014. That email, sent in response to a message from Tenant HM regarding parking and other tenancy related issues, stated,

> *Very sorry to bother you but the building manager has just informed me that your car might get towed away if it is parked in the guest lot…Just wanted to give you heads up.*
>
> *This is my first time renting the unit out and I didn't think they will be so quick to figure out that the car belongs to the tenants. … Are you able to find a parking spot down the hill?*

The tenants rely on this email message as well as their testimony to support their claim that the landlord told them that there would be parking available by using the visitor's parking stalls.

Analysis

The landlord sought to recover $136.50 in cleaning costs from the tenants as well as $74.88 in outstanding utility bills. Finally, the landlord sought to retain the tenant's security deposit of $800.00 to satisfy any monetary award with respect to cleaning costs and bills as well as $1600.00 rental loss for the month of November 2015.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord provided an invoice to reflect her testimony that she cleaned the carpets at the rental unit. However, the photographs provided do not support the claim that the carpets were excessively dirty. Further, the tenants testified they cleaned the carpets. Based on the burden of proof the landlord has to meet and the lack of evidence that carpet cleaning was required as a result of this tenancy, I do not find the landlord is entitled to recover the cost of cleaning the rental unit carpets.

The landlord submitted outstanding utility bills. The landlord provided some evidence in the way of correspondence that supported her claim. Furthermore, the tenants were candid in acknowledging that they were responsible for a portion of utilities. Given the admission of the tenant and the provision of the utility invoice indicating the period when the tenants resided in the rental unit, I find that the landlord is entitled to recover $71.72 towards utilities paid on behalf of the tenants. I find that the additional cost of $3.16 was not shown to reflect a period when the tenants resided in the rental unit.

The landlord testified that the tenants failed to provide notice and that therefore, she is entitled to $1600.00 rent for the month of November 2015. The tenants replied that their letter titled, “written notice for failure to comply with a material term” constitutes notice to the landlord. Their letter states, in part, that “the breach of a material term occurred on June 21, 2014. We feel that a reasonable amount of time to correct this breach has passed and you do not intend on fixing the problem… Therefore, we have decided to end our tenancy.” The tenants also quote section 45(3) of the Act that provides a tenant may end the tenancy after providing notice of a breach of a material term and a reasonable time period for the landlord to correct the breach.
Pursuant to sections 45 and 52 of the *Act*, the form and content of a notice to end tenancy by a tenant must meet the following criteria;

> **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.
>
> (3) 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.

I find that the tenants did not provide their notice in the proper timeline. Had they wished to vacate the rental unit October 31, 2014, the tenants would have been required to provide notice

to the landlord on or before September 30, 2014. However, they did not provide their notice until the following day.

In this tenancy matter, the tenants signed a rental agreement that clearly indicated that parking was not provided. Further to the unmarked “parking” box on the rental agreement, the tenants were provided with a full copy of the strata laws. The tenants were obliged to read and understand those laws. The tenants signed a form, attached to their rental agreement that indicated they were aware of the laws and that they were required to abide by those laws by choosing to reside in this rental unit.

I find that, despite the fact that the landlord may have suggested the tenants could work around the visitor parking system, she was clear in her written communications that she would not provide parking as a part of this tenancy. The tenants’ failure to accept the rules of the strata and the failure to carefully consider their available parking location before accepting this tenancy agreement does not create a breach of a material term by the landlord. Parking was not to be considered a material term of this contract, despite its growing importance to the tenants over the course of their tenancy.

With respect to the landlord’s claim, the landlord is required to mitigate any loss, including rental loss, even in the case of a fixed term tenancy. In this case, the landlord testified that she listed the rental unit online in the first two weeks of November. She testified that she was able to re-rent the unit for December 1, 2014. She provided sworn testimony that she had five viewings for the residence within November 2015.

Given the landlord’s efforts to re-rent the unit, and given the tenants lack of proper notice in accordance with the *Act*, I find that the landlord is entitled to $1600.00 for rental loss in the month of November 2015.

As the landlord has been successful in her application, I find that the landlord is also entitled to recover the filing fee for this application.

As the tenants’ application has been unsuccessful, I find the tenants are not entitled to the recovery of their filing fee.

Conclusion

I dismiss the tenants’ application in its entirety.

I grant a monetary order in favour of the landlord as follows;

Item	**Amount**
Loss of Rental Income – November 2015	$1600.00
Unpaid Utilities	$71.72
Less Security Deposit	-800.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$921.72**

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 22, 2015

Residential Tenancy Branch