Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNR, FF
Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both landlords; one of the tenants; and an agent for the tenants.

Prior to the hearing the tenants had submitted into evidence faxed copies of photographs of the rental unit. However, as the copies had been faxed into the Residential Tenancy Branch they were undiscernible. The landlords acknowledged receipt of usable copies of these photographs. As such, I ordered the tenant to submit hardcopies of the photographs to the Residential Tenancy Branch no later than the end of business on August 26, 2015. The tenant submitted the photographs on August 24, 2015.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on April 5, 2015 for a month to month tenancy beginning on May 1, 2015 for a monthly rent of $1,200.00 due on the 1st of each month with a security deposit of $600.00 and a pet damage deposit of $350.00 paid.

The tenants took possession of the rental unit on May 1, 2015 and returned keys and possession to the landlords on May 4, 2015. The landlords stated they cannot confirm the exact date the tenants vacated the rental unit but they did see the tenant's vehicle at the rental unit on May 6, 2015. The tenants stated they did not return to the rental unit after May 4, 2015.

The tenants provided their forwarding address in writing to the landlords by registered mail sent on May 8, 2015. The landlords could not confirm the exact date they received the forwarding address but confirmed the time would have been shortly after May 8, 2015. The tenants acknowledge receipt of a cheque in the amount of $950.00 for the return of the deposits on June 15, 2015.

The landlords submit that the keys were provided to the tenants the day before the start of the tenancy and a walk through was completed at that time. The tenants submit that she was only with the female landlord for a couple of minutes the day before and that a walk through was not completed. The tenants submit that the keys were left in the mailbox on May 1, 2015 and that they did not see the landlords again until after they complained about the condition of the unit.

The tenants submit that they contacted the landlord on May 2, 2015 to advise them of the mould problems in the rental unit and they intended to move out of the unit by May 15, 2015. The tenants submit there was mould on every wall of the rental unit and the smell was unbearable. The tenant acknowledged noticing the smell when they first viewed the rental unit but thought it was because of the previous tenants and they believed it would dissipate after they moved in.

The landlords testified that when the tenants notified them of these problems they discussed it with the tenants and advised them that if they moved by the end of May 2015 the landlord would not charge them rent for the month of June. The landlords submit as a result they believed the tenancy ended on May 31, 2015.

The tenants submit that there was no agreement regarding the end of May but rather they wrote the landlords on May 3, 2015 and advised the landlord that they were vacating the rental unit immediately.

Since the tenants have moved out the landlords acknowledge that the rental unit did have a leak behind the cabinets and work was completed to make appropriate repairs by the end of June 2015. The landlords submit that they have also decided to no longer rent the unit out but rather a family member is now living in the unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the 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.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

Section 32 of the *Act* requires a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While I accept that failure to comply with Section 32 would constitute a breach of a material term of a tenancy agreement, I find there is insufficient evidence to establish that the rental unit was not suitable for occupation.

While the tenants submit there was black mould throughout the unit the landlords called it mildew. In any event, neither party provided any scientific documentation to confirm what compounds may have been in the unit or any medical documentation to confirm any ill effects of staying in the rental unit.

Even if I were to accept that the landlord failed to provide a rental unit that was suitable for occupation by a tenant Section 45(3) requires that the tenant provide the landlord with a reasonable time to correct the breach and if the landlord fails to correct the breach then the tenant may end the tenancy.

In the case before me, the tenants simply provided the landlord with the notice of their intent to end the tenancy and did not provide the landlord with any time to correct the breach. As such, I find the tenants cannot rely on Section 45(3) to justify ending the tenancy without the provision of a 1 month notice as pursuant to Section 45(1).

Therefore, I find the tenants, by giving their notice of their intention to end tenancy to the landlords on May 3, 2015 the earliest the tenants could ended their obligations under the tenancy agreement was June 30, 2015. As such, I find the landlords are entitled to rent for the months of May and June 2015 subject to the landlords' obligations to mitigate their losses.

In regard to rent for the month of May 2015, Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

As there is no evidence before me that the tenants had a right under the *Act* to withhold any amount of rent for the month of May 2015 I find the landlord is not required to mitigate this loss.

As the landlords have decided to no longer rent the unit and have reclaimed the rental unit as part of their family home, I find the landlord's took no steps to attempt to re-rent the unit I find the landlords have failed to mitigate the loss of rent for the month of June 2015 and as such, I find the landlords are not entitled compensation for lost revenue for this month.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

(a) The tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) Section 45 [tenant's notice];
(ii) Section 46 [landlord's notice: non-payment of rent];
(iii) Section 47 [landlord's notice: cause];
(iv) Section 48 [landlord's notice: end of employment];
(v) Section 49 [landlord's notice: landlord's use of property];
(vi) Section 49.1 [landlord's notice: tenant ceases to qualify];
(vii) Section 50 [tenant may end tenancy early];

(b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
(c) The landlord and tenant agree in writing to end the tenancy;
(d) The tenant vacates or abandons the rental unit;
(e) The tenancy agreement is frustrated;
(f) The director orders that the tenancy is ended.

Based on the testimony of both parties I find the tenants returned possession of the rental unit to the landlords on May 4, 2015 when they returned the keys to the landlords. As a result I find, pursuant to Section 44(1)(d), the tenancy ended on May 4, 2015.

Also based on the testimony of both parties I accept the tenants provided the landlords with their forwarding address by registered mail on May 8, 2015. Pursuant to Section 90 of the *Act* I find the mail is deemed to have been received by the landlords 5 days after it was mailed or May 13, 2015.

As such, I find the landlords had until May 28, 2015 to return to the tenants the full amount of the security and pet damage deposits to comply with Section 38(1). As the landlords did not return the deposits until June 15, 2015 I find the landlords have failed to comply with Section 38(1) of the *Act* and the tenants are entitled to return of double the security deposit pursuant to Section 38(6).

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **$1,250.00** comprised of $1,200.00 May 2015 rent owed and the $50.00 fee paid by the landlords for this application.

I also find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **$1,000.00** comprised of $1,900.00 double the security deposit and the $50.00 fee paid by the tenants for this application less $950.00 the amount already returned to the tenants.

Conclusion

I grant the landlords a monetary order pursuant to Section 67 in the amount of **$250.00** comprised of $1,250.00 owed to the landlord from the tenants less the $1,000.00 owe to the tenants from the landlord.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: August 27, 2015

Residential Tenancy Branch