Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with applications from both parties. The landlords applied for a monetary order and an order authorizing them to retain the security deposit while the tenants applied for an order for the return of double their deposit. Both parties participated in the conference call hearing with the tenants being represented by the tenant DC. In this decision where I refer to the tenants in the singular form, it is DC to whom I refer.

Issues to be Decided

Are the landlords entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on October 9, 2013 and ended on February 28, 2015. They further agreed that the tenants paid a $550.00 security deposit and that rent was set at $1,100.00 per month.

The tenant testified that on February 28, he gave the landlords his forwarding address in writing. The landlords initially denied having received the address from the tenants. The parties agreed that within 2 weeks of the end of the tenancy, the landlords returned to the tenants $145.00 of their security deposit by way of a cheque sent to the tenants' forwarding address. When I asked the landlords how they knew where to send that cheque, they acknowledged that the tenants had given them an address, but the tenants had listed an incorrect city. The parties agreed that the tenants received the mailed cheque despite the incorrect city having been stated on the forwarding address received on February 28. The tenant testified that he has not yet negotiated the cheque sent by the landlords.

The parties agreed that at the end of the tenancy, they did not fill out a condition inspection report. The landlords claimed that the parties conducted an inspection together while the tenants claimed they did not.

The parties agreed that at the outset of the tenancy, the unit was freshly painted. The landlords seek to recover $175.00 in labour for repainting the rental unit at the end of the tenancy, which represents 6 hours of labour at a rate of $20.00 per hour, and the cost of supplies. The landlords submitted 2 receipts, one for $63.32 and the other for $139.21and testified that most of those items were related to painting. The landlords testified that there were areas in which the tenants had filled holes but not sanded and other areas in which they had filled and sanded but painted over the holes with paint that did not match. The tenant testified that when he moved into the rental unit, he removed the handrail from the stairs to allow room to move his furniture upstairs, but it was not possible to move the furniture without damaging the walls.

The landlords seek to recover $150.00 as the cost of repairing the lawn at the end of the tenancy. The landlords testified that the sum claimed represents the cost of 5 hours of their own labour as well as costs associated with dumping items at the landfill. The landlords testified that they gave the tenant permission to install a compost bin, but specified that it had to be built properly and allow airspace between the bin and the fence to avoid causing the fence to rot. The landlords maintained that the bin was not properly constructed and that it rested against the fence and therefore had to be removed. They further testified that the lawn was left in poor condition and had dog feces and debris thereon. The landlords provided a photograph showing a photograph of the lawn area and the compost bin.

The tenant testified that the previous occupants of the unit had an above ground pool in the backyard which damaged the grass. He stated that the landlords had re-seeded the area prior to the time the tenants moved into the unit, but the reseeding “didn’t take” and the tenants reseeded again, but in the winter, water pooled in the backyard due to improper drainage and the grass did not recover. He maintained that the landlords had told him nothing about leaving an air gap between the compost bin and the fence and argued that he built the bin of wooden pallets and that it was properly constructed.

The landlords insisted that the back yard drains well and there was no reason for previous reseeding to not have taken hold.

The landlords seek to recover $80.00 as the cost of their labour to clean the rental unit. The landlords testified that at the end of the tenancy, the tenants left the unit in an unclean condition and that they had to spend 4 hours of their time cleaning windows, the toilet and appliances and said that the tenants had left socks and a work name tag

by the washing machine. The tenant testified that the clothing beside the washing machine had always been there and stated that he cleaned the unit at the end of the tenancy. The landlords provided photographs showing the condition of the unit at the end of the tenancy.

The landlords seek to recover $1,100.00 in lost income, claiming that although they had new tenants who planned to move into the unit on March 1, they refused to move in because the unit had not been adequately cleaned and repainting was required, so the landlords had to advertise to re-rent the unit and were unable to find new tenants until April 1.

Both parties seek to recover the $50.00 filing fees paid to bring their respective applications.

Analysis

Section 38(1) of the *Residential Tenancy Act* (the "Act") provides that within 15 days of the later of the last day of the tenancy and the date the landlords receive the tenants' forwarding address in writing, the landlords must either return the deposit in full to the tenants or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenants double the security deposit.

I find that the tenants paid a $550.00 security deposit and vacated the rental unit on February 28. I find that the tenants provided their forwarding address to the landlords in writing on February 28. Although they may have written the wrong city on that address, since the landlord used the address and the tenants' received the partial refund, it is clear that the address was sufficiently accurate to allow Canada Post to deliver mail to that address. I find that the landlords failed to comply with section 38(1) and are now liable to pay the tenants double the security deposit. I therefore award the tenants $1,100.00. I note that the tenants still hold the landlords' cheque for $145.00. If the tenants choose to negotiate that cheque, it will serve to reduce the enforceable amount of the award to $955.00.

Turning to the landlords' claim, 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 (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 37(2) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear.

I find that the tenants caused damage to the walls of the rental unit which goes beyond what may be characterized as reasonable wear and tear. Although the tenants claimed that furniture could not be moved without damaging the walls, this does not give the tenants the right to leave the damaged walls unrepaired or to repair them haphazardly, by filling holes and not sanding and painting or by painting patches with a paint that does not match the rest of the walls. I accept that the landlords had to expend labour to repair the walls and I find that the landlords' claim with respect to the time spent is reasonable.

Residential Tenancy Policy Guideline #40 lists the useful life of building elements and identifies the useful life of interior paint as 4 years. I find the tenants deprived the landlords of 2.5 years or 63% of the useful life of the paint and I find that the landlords should recover 63% of the costs of repainting. I award the landlords $75.60 which represents 63% of the $120.00 value of their labour. One of the receipts submitted by the landlord, totaling $63.32, is clearly for painting supplies and I award the landlord $39.89 which represents 63% of the value of those supplies. The second receipt submitted by the landlord has just 4 items which are clearly related to painting: a putty knife for $1.17, brushes for $19.97, a tray liner for $4.56 and a plastic tray for $8.27 which totals $33.97. Adding $1.70 GST and $2.38 PST to these purchases leads to a total of $38.05. I award the landlord $23.97 which represents 63% of the value of those supplies. The total award for painting and supplies is $139.46.

I find on the balance of probabilities that the tenants also breached section 37(2) of the Act by failing to maintain the yard. Although the tenants claimed that the grass was damaged by the pool owned by earlier occupants, the landlords' photographs show patchy damage which is more consistent with damage from a pet than the damage a pool would cause. Further, there is no indication that the tenants reported to the landlord that his re-seeding efforts were unsuccessful and I find it more likely than not that the re-seeding did not fail throughout the entire yard as claimed by the tenants. Although the landlords did not submit a receipt for the cost of grass seed, I accept that this is a reasonable cost for grass seed. I award the landlords $50.00 for grass seed

and $40.00 which represents 2 hours of labour to re-seed the lawn for a total of $90.00. I dismiss the claim for the cost of removing the compost, raking leaves and removing feces at the end of the tenancy. The photographs do not show an unreasonable build up of leaves and the tenants were not required to leave the yard completely leaf free. The photographs also do not demonstrate that any significant time would have had to have been spent removing feces. As for the compost, the landlords gave the tenants permission to build a compost bin and did not provide them with specific requirements. In the absence of specific direction, I am unable to find that the tenants breached any kind of agreement and therefore find that with respect to the bin, the landlords have not satisfied the first element of the test set out above. The landlords are awarded $90.00 as the cost of lawn repair.

The photographs show that the tenants did not sufficiently clean the appliances or the windows and that they left a residue on the toilet and shower. They were obligated to leave the unit reasonably clean, but not in pristine condition and I am unable find that 4 hours of additional cleaning were required to bring the unit to an acceptable standard. I find that 2 hours of cleaning would have been sufficient and I award the landlords $40.00.

In order to establish their claim for $1100.00 lost rental income, the landlords must prove that the tenants caused them to suffer a loss and that they acted reasonably to minimize their losses. I accept that the repainting, re-seeding and some minor cleaning was required, but it seems that the home would have been ready for occupancy fairly quickly. The landlords claimed that a tenant refused to rent when they could not move into the unit on March 1, but provided no evidence such as a tenancy agreement or statement from the prospective tenants to corroborate that claim. I am not satisfied that the landlords acted reasonably to mitigate their losses as they provided insufficient evidence to show that they acted reasonably to re-rent the unit or secure tenants who could have moved into the unit in March. I find that the landlords have not met the last element of the test outlined above and I dismiss this part of the claim.

I note that the landlords' monetary order worksheet outlined separate claims for labour costs, supplies, lawn seed and dumping fees. At the hearing, the landlords confirmed that these costs were mistakenly listed twice. I have dealt with these claims in the claims for painting, lawn repair and cleaning.

As both parties have enjoyed some success in their claims, I find they should each bear their own filing fees.

Conclusion

The tenants have been awarded $1,100.00 and the landlords have been awarded $266.46. Setting off these awards as against each other leaves a balance of $833.54 owing by the landlords to the tenants. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial 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: August 31, 2015

Residential Tenancy Branch