Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding East 16th Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, MNSD, OLC, RR, FF

Introduction

This hearing concerns the tenants' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / a reduction in rent for services and facilities agreed upon but not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from November 01, 2014 to October 31, 2015. Monthly rent of $1,450.00 is due and payable in advance on the first day of each month, and a security deposit of $725.00 was collected.

While the parties testified that a move-in condition inspection report was completed with the participation of both parties on November 01, 2014, a copy of the report is not in evidence, and the tenants claim they did not receive a copy from the landlord. In this regard the attention of the parties is drawn to section 18 of the Regulation which addresses **Condition inspection report**, and provides in part:

> 18(1) The landlord must give the tenant a copy of the signed condition inspection report
>
> (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and…

By email dated April 07, 2015 the tenants informed the landlord of “issues with mold / mildew since we moved in.” Following an exchange of emails between the parties, by April 27, 2015 the landlord had entered the unit and had begun exploratory cutting into certain walls, in order to determine the source of moisture in the unit. While this investigative work which also included removal of portions of the flooring continued, the tenants stayed elsewhere beginning from on or about May 09, 2015. The tenants testified that they never again returned to stay overnight in the unit.

During the hearing the parties agreed that by way of a mutual agreement, the tenancy effectively ended on July 07, 2015, at which time the unit keys were returned to the landlord. Thereafter, by letter dated July 08, 2015, the tenants provided the landlord with a forwarding address for the purposes of repayment of their security deposit. The tenants’ letter was sent by registered mail, and evidence submitted by the tenants includes a copy of information provided on the Canada Post website which informs that the landlord took delivery of their letter on July 10, 2015.

Subsequently, the landlord reimbursed the tenants in the total amount of $2,175.00 by cheque dated July 16, 2015. The landlord’s cheque reflects a reimbursement of May’s rent of $1,450.00, in addition to repayment of the original security deposit of $725.00. The landlord testified that the cheque was sent to the tenants’ forwarding address by registered mail, however, there is no Canada Post tracking number in evidence.

The tenants testified that the forwarding address they provided is not their place of residence, and that when Canada Post personnel attempted to deliver the cheque, a notice card was left at the forwarding address, informing that registered mail was available for pick up at the post office. When the tenants were notified by those living at the forwarding address that a notice card concerning registered mail had been left at the address, the tenants picked up the notice card and took it to the post office in order to take delivery of the cheque. The tenants testified that they took delivery of the cheque on July 27, 2015 and cashed it that same day.

During the hearing the landlord testified that the source of the moisture problem in the unit has still not been conclusively determined, and that since the tenants vacated the unit, it has not been re-rented.

Analysis

Based on the documentary evidence and testimony of the parties, the various aspects of the tenants’ application and my related findings are set out below.

$1,338.00: *replacement of mattress and box springs*

Relevant documentary evidence includes a receipt for purchase which is dated July 11, 2015. During the hearing the tenants testified that they thought the original mattress and box springs were approximately 5 years old at the time when tenancy began in November 2014. Further, the tenants acknowledged that they did not acquire "tenants' insurance" as specifically called for (and initialled by the parties) on the tenancy agreement. Despite this, the tenants argue that such insurance would likely not cover the costs which are the subject of this dispute, although there is no documentary evidence before me to support such a position.

In consideration of the likely contribution to the growth of mold / mildew by moisture in the unit, the timely response by the landlord to the tenants' report of mold / mildew, the estimated age of the original mattress and box springs, and the absence of an undertaking by the tenants to mitigate potential losses by purchasing tenants' insurance, I find that the tenants have established entitlement limited to **$250.00**.

$145.95: *cleaning of couch*

Relevant documentary evidence includes a receipt for cleaning dated July 17, 2015, which includes the following notation: "Mildew odor throughout cushions (treated / removed)." During the hearing the tenants testified that they thought the couch was approximately 2 years old at the time when tenancy began in November 2014. For reasons similar but not entirely identical to those set out immediately above, I find that the tenants have established entitlement limited to **$50.00**.

$57.60: *hydro for May & June 2015*

During the hearing the landlord testified that he does not dispute this aspect of the tenants' application. Accordingly, I find that the tenants have established entitlement to the full amount claimed.

$1,450.00: *reimbursement of rent for May 2015*

During the hearing the tenants testified that the landlord has already reimbursed them in full for May's rent by way of cheque dated July 16, 2015. In the result, I consider this aspect of the application to be withdrawn.

$1,450.00: *reimbursement of rent for June 2015*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that while the tenants did not reside in the unit as their principal residence during the month of June 2015, neither had they relinquished possession. Further, there is no conclusive documentary evidence before me which serves to support the proposition that the unit was not suitable for occupation during that month. Neither is there sufficient evidence that the tenancy was frustrated, pursuant to the meaning of that term as set out in Residential Tenancy Policy Guideline #34 which speaks to "Frustration." And, as previously noted, it was not until July 07, 2015 when unit keys were returned to the landlord. Additionally, while the landlord had offered the option of relocating to alternative accommodation, for various reasons the tenants declined. However, I find that by virtue of the landlord's multiple entries to the unit, the required movement of furnishings / other possessions, in addition to removal of portions of wall and flooring in order to determine the source of the moisture, the resulting disruption to the tenants reflects a breach of their right to quiet enjoyment. In this regard, section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment:**

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Further, Residential Tenancy Policy Guideline # 6 speaks to “Right to Quiet Enjoyment.”

In consideration of all the foregoing, I find that the tenants have established entitlement to a reduction in rent limited to **$725.00**, or ½ month’s rent under the tenancy agreement.

$1,450.00: *“extra” month’s rent*

The tenants take the position that this entitlement flows from the provisions of sections 49 and 51 of the Act which address, respectively, **Landlord’s notice: landlord’s use of property**, and **Tenant’s compensation: section 49 notice**. In summary, issuance of a 2 month notice to end tenancy pursuant to section 49, leads to a compensatory entitlement by tenants to “the equivalent of one month’s rent payable under the tenancy agreement” pursuant to section 51. However, the parties do not dispute that no such notice was issued in this case. Rather, it is the position of the tenants that such a notice ought to have been issued under the circumstances.

Section 44 of the Act addresses **How a tenancy ends**, and provides in part:

44(1) A tenancy ends only if one or more of the following applies:

(f) the director orders that the tenancy is ended.

Following from the agreement reached between the parties prior to the hearing, and in view of the testimony given by the parties during the hearing itself that tenancy ended on July 07, 2015 (at which time the unit keys were also returned to the landlord), I hereby **ORDER** that the date when tenancy ended is July 07, 2015.

As tenancy ended in a manner which is clearly different from the mechanism for ending tenancy which is addressed in section 49 of the Act, I find that the tenants have not established entitlement to compensation “the equivalent of one month’s rent payable under the tenancy agreement” pursuant to section 51 of the Act. This aspect of the application must therefore be dismissed.

$1,450.00: *(2 x $725.00) the double return of security deposit*

As previously noted, the tenants testified that the landlord has already reimbursed them in the amount of the original security deposit by way of cheque dated July 16, 2015.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security / pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposit, and must pay the tenant double the amount of the security / pet damage deposit.

In the circumstances of this dispute, and as set out above, I find that the tenancy ended on July 07, 2015. As previously noted, the tenants provided their forwarding address in writing after tenancy ended by letter dated July 08, 2015 (sent by registered mail), which was received by the landlord on July 10, 2015. Pursuant to section 38, the landlord had 15 days after July 10, 2015 to either repay the security deposit, or file an application for dispute resolution. I find that day # 15 is July 25, 2015. While the landlord did not file an application for dispute resolution, the landlord issued a cheque to the tenants by date of July 16, 2015, accompanied by a letter also dated July 16, 2015, and sent both to the tenants' forwarding address by registered mail. Section 90 of the Act which addresses **When documents are considered to have been received**, provides that a document served by mail is deemed to be received "on the 5th day after it is mailed." However, there is no Canada Post tracking number for the registered mail used by the landlord, and the tenants can only confirm that they took delivery of the landlord's cheque and letter on July 27, 2015. There is no conclusive evidence before me concerning when the notice card regarding availability of registered mail was left at the forwarding address provided by the tenants (again, not the address at which the tenants resided), or how much delay there was between the date when the tenants were informed of the availability of the registered mail, and the date of actual pick up from the post office. In the result, I find that the tenants have not met the burden of proving that the landlord failed to repay their security deposit within 15 days after the landlord was informed of their forwarding address on July 10, 2015. Accordingly, this aspect of the application must be dismissed.

$8.16: *interest on security deposit*

During the hearing the tenants withdrew this aspect of their application.

$100.00: *filing fee*

As the tenants have achieved a measure of success with the principal aspects of their application, I find that they have also established entitlement to recovery of the filing fee.

Total entitlement: $1,182.60 ($250.00 + $50.00 + $57.60 + $725.00 + $100.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$1,182.60.** Should it be necessary, this order may be served on the tenant, filed in the Small Claims 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 26, 2015

Residential Tenancy Branch