Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cheung Estates Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND, MNDC, FF
Tenants: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord's agent; both tenants and their legal counsel. I note that at the outset of the hearing the tenant's legal counsel advised that he would not be participating but was attending as an observer and as support for the tenants.

Also at the outset of the hearing the tenants identified that they had not received any documents from the landlord at all, including evidence and his Application for Dispute Resolution.

The landlord testified that he had served the tenants with his Application for Dispute Resolution by registered mail to the service address provided by the tenants on their Application for Dispute Resolution. The landlord referred to the registered mail receipts he had submitted into evidence confirming this service on June 16, 2015.

Upon review of the tenants' Application for Dispute Resolution I note that the address provided was the same as the dispute address. The tenants submitted their Application on March 26, 2015 at which point they were no longer living at the dispute address. The tenant testified that she thought that was supposed to be the address of where the issues arose. I pointed out that at the bottom of the page was the location where the tenant was to identify the dispute address (this section was completed).

I advised the parties that because the landlord had served the tenants with his package to an address provided by the tenants as a service address for this dispute the landlord had sufficiently served the tenants with his Application, pursuant to Section 72(2)(b) of the *Residential Tenancy Act (Act)*. The tenants did not request an adjournment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for carpet replacement and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Act.*

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

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on December 8, 2011 for a 1 year fixed term tenancy that began on January 1, 2012 and converted to a month to month tenancy on January 1, 2013 for the monthly rent of $750.00 due on the 1st of each month with a security deposit of $375.00 and a pet damage deposit paid.

The tenancy ended after the landlord issued a 1 Month Notice to End Tenancy for Cause on November 26, 2014 with an effective vacancy date of December 31, 2014. The parties had a hearing on matters related to this Notice on January 8, 2015 and an order of possession was granted to the landlord on February 2, 2015. The tenants vacated the rental unit on or before January 31, 2015.

The tenants submitted that they provided the landlord with their forward address by mail on February 28, 2015. The landlord states that the date of the letter was February 28, 2015 but that the post mark on the envelope was March 5, 2015. The landlord confirmed that they have not filed an Application for Dispute Resolution to claim against the deposits.

The parties agree the landlord did provide a cheque to the tenants dated March 17, 2015 in the amount of $428.81. The landlord's cheque included an explanation that the landlord withheld $262.50 for carpet cleaning; $9.37 deodorizer; and $49.32 for rent. The tenants testified they received the cheque on March 19, 2015.

The tenant submits that even though they had moved out the landlord attempted to collect rent through electric transfer and that as a result they had to pay NSF and other bank fees. They submit they had to pay $1.84 for February and $90.21 for March. The bank statements submitted by the tenants confirm a total of $30.00 was collect from the tenants for these charges.

The landlord submitted that it was not until he advised his onsite manager that he had obtained the order of possession in February 2015 that the onsite manager informed him that the tenants had vacated prior to the start of February 2015. As such, he believed the tenants were still in the rental unit and he attempted to collect the February rent when it was due on the 1st. The landlord stated that because the tenants did not

give him a 1 month notice that they were leaving the rental unit he attempted to collect rent for March 2015 as well.

The landlord seeks compensation for carpet replacement. The landlord submits that after having the carpets cleaned there continued to be the odour of dog urine and feces. The landlord did not submit Condition Inspection Reports for either the start of the tenancy or the end of the tenancy.

In support of his claim the landlord has submitted copies of correspondence between the two parties during the tenancy including:

- A letter dated October 14, 2014 from the landlord to the tenants that states: "I have seen the apartment with dog urine on the carpet and feces on the bathroom floor on a previous visit when I updated a smoke alarm in the apartment.";
- A letter dated October 20, 2014 from the landlord to the tenants that states: "We did however notice a stained "pet pad" on the bathroom floor presumably for one of your dogs. It would appear that you continue to allow your dogs to defecate and urinate inside your apartment.";
- A letter from the tenant to the landlord dated November 10, 2014 that states: "Third, you have absolutely no authority to tell us where to put our dog food, or pee pad. We can put that anywhere in our apartment as we see fit. What I want to put in my apartment and where, is my business, not yours. And the fact that you saw pee on the pee pad just goes to show you that if the dogs have to go to the bathroom, that's where they'd go. Nowhere else. And if there are any other issues related to my pets, that's what the pet damage deposit is for."

The landlord also provided a written statement from his onsite manager that states, in part, that the applicants allow their dogs to urinate and defecate in the apartment. Finally, the landlord has provided a letter from his carpet cleaner confirming they cleaned the carpet on February 12, 2015 and that a deodorizer was used to attempt to deal with the pet urine smell.

The letter continues and states the landlord called and said the odour persisted and that the writer recommended the landlord try using a deodorizer again and if that did not work replacement might be required. The landlord testified the carpets were approximately 10 years old.

The tenants submit that the reason the carpets smell was because of flood that had occurred in the rental unit last year. They testified that they had applied for compensation because of the flooding but that they were denied the compensation. I advised the party that I would review that decision after the hearing.

They also submitted that they take the dogs out several times a day and that they only had the pee pad in case of emergencies.

Analysis

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.

I accept the tenants did not mail their forwarding address to the landlord until March 5, 2015. Allowing 5 days for the letter to be received I find the landlord received the tenants' forwarding address on March 10, 2015. As a result, the landlord had until March 25, 2015 to either return the tenants' deposits, in full, or file and Application for Dispute Resolution to claim against the deposits.

As per the testimony and evidence of both parties I find the landlord provided the tenants with a portion of their deposits on March 19, 2015 but did not apply to retain any portion of the deposits. However, I find the landlord had no authourity to withhold any amount from the deposits. As such, I find the landlord has failed to comply with the requirements of Section 38(1) and the tenants are entitled to double the amount of both deposits less they amount they have already received.

As to the tenant's claim for compensation for NSF and bank fees I find the tenants have established the landlord attempted to receive funds for rent when he had no authourity to do so and that as a result the tenants suffered a loss. As to the value of that loss, I find the tenants have established, by way of their bank statements, an amount of $30.00.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Upon review of the previous decision that dismissed the tenants' claim for compensation for flooding of the rental unit and consideration of the testimony and documentary evidence submitted for this hearing, I find that on a balance of probabilities the cause of the odour in the carpets was due to dog urine and feces. I find the letter from the landlord's carpet cleaner to be particularly persuasive.

I find the landlord has established the value of the carpet replacement to be $1,207.50 as per the invoice submitted into evidence. However, I find as the carpets were at least 10 years old, per the landlord's testimony, this amount must be discounted to account for the age and natural deterioration of the carpet. Residential Tenancy Policy Guideline #40 lists the useful life of building elements and identifies the useful life for carpeting to be 10 years. As such, I discount the landlord's claim by 100%.

Conclusion

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$1,151.19** comprised of $1,500.00 double both deposits; $30.00 bank fees less $428.81 already returned to the tenants; and the $50.00 fee paid by the tenant's for this Application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

Also based on the above, I dismiss the landlord's Application for Dispute Resolution 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: September 03, 2015

Residential Tenancy Branch