Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; the tenant and her agent.

The landlord testified the tenant was served with his evidence on September 1, 2015 when his wife left it with the tenant's adult son and that this service was witnessed by the landlord himself.

The tenant stated that she had not received any evidence and that she is always with her son and she knew that he was not served with anything from the landlord.

In the absence of the tenant's son to provide direct testimony as to whether or not he received the landlord's evidence I find, on a balance of probabilities, that is unlikely that the tenant spends 24 hours per day with her son every day and as such, I find that the tenant cannot provide definitive testimony that her son did not receive the landlord's evidence.

As such, I have considered the landlord's documentary evidence submitted in support of his Application.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for fees imposed by the strata council; for damage to the rental unit; for cleaning of the rental; for failure of the tenants to return fobs; keys and passes for the residential property; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 25, 2014 for an 11 month and 14 day fixed term tenancy beginning on March 15, 2014 with a monthly rent of $2,700.00 due on the 15th of each month with a security deposit of $1,350.00 and a pet damage deposit of $675.00 paid. The tenancy agreement allowed the tenants to have two dogs.

The tenancy ended when the tenants vacated the rental unit on March 15, 2015 after receiving a 1 Month Notice to End Tenancy for Cause issued by the landlord on February 24, 2015 with an effective vacancy date of March 31, 2015. The landlord submits the tenants did not inform him that they were leaving the rental unit before the effective date of the 1 Month Notice and seeks rent for the period March 15, 2015 to March 31, 2015 in the amount of $1,350.00.

The landlord seeks compensation for the payment of 3 fines of $200.00 each from the strata council for the tenants having more than one dog. The landlord submits that because the tenants had three dogs the tenants are responsible for the fines. The landlord has submitted into evidence a copy of an invoice from the strata council confirming the fines.

The landlord stated the tenants were aware of the strata bylaws regarding dogs. The landlord did not submit into evidence any copies of the bylaws or a copy of a signed Form K confirming the tenants had received the bylaws at the start of the tenancy. The landlord submits that the concierge provided this to the tenants, but he has submitted no documentary evidence to confirm.

The landlord also states that the tenants failed to return the key, fobs, and passes for entry into the residential property; rental unit; and parking area. The landlord seeks compensation in the amount of $300.00 based on the following costs: $20.00 for each of 2 parking passes; $80.00 for each of 2 garage remotes; and $50.00 for each of 2 fobs. The landlord did not provide any receipts or record of payments for these replacements.

The landlord seeks compensation in the amount of $180.00 for cleaning the rental unit at the end of the tenancy. The landlord states he hired a professional cleaner to clean the unit but he did not provide a receipt or record of payment for any cleaning services. The landlord also did provide a copy of a Condition Inspection Report recording the condition of the rental unit at the end of the tenancy.

The landlord seeks compensation for ¼ of the cost to replace the flooring in the rental unit. As evidence to support his position that the tenants caused damage to the carpets that warranted the carpets should be replaced the landlord has submitted photographs taken of the condition of the carpets at the end of the tenancy; copies of invoices for the costs of purchasing and installing the replacement flooring totalling $3,030.51. The landlord claimed $1,050.00 for flooring replacement.

The landlord confirmed that he had not completed a move in Condition Inspection Report and he provided no other evidence of the condition of the flooring at the start of the tenancy. He testified, initially, that the carpets were 2 years old at the start of the tenancy and later stated that the carpets were new at the start of the tenancy. The landlord did not provide any documentary evidence to confirm the age of the carpets.

The landlord stated that he had been advised by a carpet cleaner that the carpets could not be cleaned based on the condition they were in at the end of the tenancy. The landlord did not provide any written statement or other documentary evidence from a professional carpet cleaner in support of this statement.

The tenant submitted that she was never provided with a copy of the strata bylaws and she does not recall signed a Form K at the start of the tenancy. The tenants acknowledge having a third dog after the tenancy began.

The tenant submitted that they had moved their belongings moved out of the rental unit by the 14th of March, 2015 but that when they went back to clean up the landlord had had the concierge change all of the access fobs and they could no longer get in to complete any cleaning. The landlord did not dispute these statements.

The tenant stated they had obtained an estimate for cleaning in the amount of $395.00 and they are willing to compensate the landlord for that amount in acknowledgement that they had not cleaned the unit.

The tenant stated that they had attempted to return the fobs and passes but the landlord refused to accept them. The tenant stated that they still had these in their possession and were willing to return them whenever the landlord wanted them. The landlord did not dispute these statements.

As to the condition of the carpets the tenant submitted that the carpets were filthy when they moved into the rental unit and they had had to clean them at the time.

The tenant submitted that she had provided her forwarding address in writing to the landlord on March 13, 2015. The landlord did not dispute this statement.

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.

As per the tenant's agreement and statements in the hearing I accept the tenants wish to authourize the landlord to withhold $395.00 for cleaning of the rental unit.

In relation to the strata fees, based on the landlord's confirmation that the strata bylaw stated that there is a limit of one dog per unit and the tenancy agreement signed by the landlord authourizing the tenants to have two dogs, I find the landlord allowed the tenants to be in breach of the strata bylaws from the start of the tenancy.

Despite the landlord's position that the fine was only levied because the tenants had three dogs, I find the landlord's authourization that they could have two dogs was a choice made by the landlord and the tenant's cannot be held responsible because the landlord authourized them to have two dogs when the landlord knew the bylaws disallowed more than one. I dismiss this portion of the landlord's claim.

As to the landlord's claim for lost revenue, I accept that the tenant had removed their belongings from the rental unit prior to the effective date of the 1 Month Notice to End Tenancy for Cause. Normally, if the tenant wanted to this they would be required to give an adequate notice.

In the case before me the landlord did not dispute that he had changed the access to the rental unit after the tenant had moved their belongings out of the rental unit but prior to the effective date of the Notice that he had issued. As a result, I find that it was the landlord who ended the tenancy by changing the locks and terminating the tenant's access to the rental unit and the tenant cannot now be held responsible for the payment of rent for a rental unit to which she could no longer gain access. I dismiss this portion of the landlord's claim.

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.

From the tenant's testimony I find there was no reason the tenants could not have left the fob's and passes with the concierge or made some alternate arrangement to return these items. The tenant's obligation under Section 37 must be complied with regardless of whether or not the landlord has blocked access to the rental unit itself.

As a result, I find the landlord is entitled to compensation for the replacement of all access devices. However, the landlord has failed to provide any evidence to establish the value of this loss. I therefore grant only a nominal amount as compensation to the landlord of $50.00.

In regard to the landlord's claim for the replacement of the flooring I find the landlord has failed to provide any evidence of the condition or age of the carpet at the start of the tenancy. I further find that the landlord has failed to provide any other evidence that can establish that any damage to the flooring occurred as a result of this tenancy or even that the damage was sufficiently significant that it warranted replacement.

As such, I find the landlord has failed to establish he has suffered loss or if he did that it resulted from the tenancy. I therefore dismiss this portion of the landlord's claim.

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.

From the undisputed testimony of the tenant that they provided the landlord with their forwarding address on March 13, 2015 I find the landlord had until March 28, 2015 to either return the tenant's security and pet damage deposits in full or file his Application for Dispute Resolution seeking to claim against these deposits. The landlord's Application was received by the Residential Tenancy Branch on April 10, 2015.

As a result, I find the landlord has failed to comply with the requirements of Section 38(1) and the tenant is entitled return of double the amount of the security and pet damage deposits, pursuant to Section 38(6).

Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **$3,590.00** comprised of $4,050.00 double the security and pet damage deposits less the landlord's entitlement to $395.00 cleaning; $50.00 compensation for access device replacement; and $25.00 of the $50.00 fee paid by the landlord for this for this application, as he was only partially successful.

As such, I grant a monetary order in the amount of **$3,590.00** to the tenant. 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.

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 18, 2015

Residential Tenancy Branch