Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF; MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for their application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application against landlord NL ("landlord") only, pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- authorization to recover the filing fee for her application from the landlord, pursuant to section 72.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlords called "witness JF" and the tenant called "witness TJ" to testify on their respective behalf at this hearing. Both parties had a full opportunity to question and cross-examine both witnesses. This hearing lasted approximately 105 minutes to allow both parties to fully present their submissions.

Both parties confirmed receipt of each other's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord confirmed that he did not receive the tenant's four-page typewritten summary evidence. The tenant confirmed that she served the landlord with this evidence by way of registered mail but she did not submit a receipt as proof of service with her application. In accordance with sections 89 and 90 of the Act, I find that the landlord was not served with the tenant's four-page typewritten summary evidence, as the tenant did not produce a receipt to confirm service, as required by section 14 of Residential Tenancy Policy Guideline 12. Therefore, I did not consider the above evidence in my decision or in this hearing. In any event, the tenant provided verbal testimony summarizing her position, which was similar to the written evidence.

The tenant requested an amendment to her application to correct the landlord's first name. The landlord consented to this amendment. In accordance with section 64(3)(c) of the *Act*, I amend the tenant's application to correct the landlord's first name, and this amendment is now reflected in the style of cause in this decision and the corresponding monetary order.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit and unpaid rent?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that this month-to-month tenancy began on February 1, 2014 and ended on May 1, 2015. Monthly rent in the amount of $1,100.00 was payable on the first day of each month. Both parties agreed that a security deposit of $550.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing. The landlord agreed that the tenant provided a forwarding address in writing by way of a letter to the landlord on May 8, 2015. A copy of this letter was provided for this hearing. Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. The landlord confirmed that the tenant did not provide written permission to the landlords to retain any amount from the security deposit. The landlord confirmed that the landlords filed their application for dispute resolution on September 15, 2015.

The landlord seeks a loss of rent for May 2015 in the amount of $1,100.00, during the time period when the rental unit was vacant. The tenant disputes that the landlord is entitled to May 2015 rental loss because he did not provide proof that he made reasonable efforts to re-rent the unit. Both parties agreed that the landlord received written notice from the tenant on April 1, 2015, for the tenant to vacate the rental unit on May 1, 2015. The landlord stated that he was unable to re-rent the unit for May 2015 because he had to enter the rental unit after the tenant vacated and clean the property. The landlord stated that he wanted to avoid confrontation with the tenant so he did not inspect the unit on May 1, 2015 or prior to this date. The landlord indicated that no tenants would rent the unit during the middle of a month, only from the first day of the month. The tenant disputes this fact, stating that the landlord could have re-rented the unit from the middle of the month, as she has done on other occasions with previous landlords. The landlord stated that the rental unit was re-rented to new tenants as of June 1, 2015.

The landlord stated that the rental unit was listed for rent online on one website "a couple days" after April 1, 2015. The landlord indicated that a "for rent" sign was also posted in window of the rental unit. The landlord did not provide a copy of any advertisements. The landlord testified that the online advertisement offered the rental unit at the same rent as the tenant paid and that no reduction in the rental price was made on the advertisement. The landlord indicated that the rental unit is now being rented for $50.00 less per month, at a total of $1,050.00 each month. The landlord

stated that the rental unit was not renovated in the five years that he has owned it and that it was built around the mid-1970 years. The landlord testified that the rental unit was shown approximately 2-3 times before it was re-rented. The tenant stated that between March 28 and 31, 2015, after she had first given verbal notice to vacate to the landlord, he began showing the rental unit to prospective tenants. The tenant provided text messages between the parties to demonstrate this fact.

The landlord also seeks $200.00 for cleaning costs after the tenant vacated the rental unit. The landlord did not provide a receipt for the above cost. The landlord stated that he personally cleaned the rental unit together with witness JF on May 2, 2015. The landlord confirmed that a total of 10 hours of cleaning was completed at $20.00 per hour for 2 people, totalling $200.00. Witness JF testified that he cleaned the rental unit with the landlord on May 2, 2015 and that the rental unit was very dirty when he first inspected it with the landlord. He stated that he spent approximately 5 hours on the cleaning himself, while the landlord probably completed more hours. He indicated that the landlord paid him $100.00 for 5 hours of cleaning at a rate of $20.00 per hour.

The tenant stated that the landlord is only entitled to $100.00 for cleaning expenses, as this is the only amount that he paid witness JF. She indicated that she did not thoroughly clean every part of the rental unit but that she did a sufficient job. Witness TJ, the tenant's mother, testified that she cleaned the rental unit together with her sister and the tenant around April 29 or 30, 2015. Witness TJ stated that she began cleaning around 9:00 or 9:30 a.m. until approximately 5:00 or 5:30 p.m. on the day that she performed the cleaning.

Analysis

Landlords' Claims

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show efforts to minimize this loss. In this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenant caused damages that were beyond reasonable wear and tear that could be expected for

a rental unit of this age. The landlords must also show that the tenant caused a rental loss for May 2015.

In summary, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act, Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 of the *Act* requires a tenant to provide one month's written notice to the landlord to end a tenancy. The notice must be given and is effective on the day before the day in the month when rent is due. Both parties agreed that rent is due on first day of each month, as noted in the tenancy agreement. The tenant gave written notice on April 1, 2015 to leave on May 1, 2015. The tenant's notice was due by March 31, 2015 and should have been effective on April 30, 2015, and was therefore one day late.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlords did attempt to the extent that was reasonable, to re-rent the premises after receiving notice of the tenant's intention to vacate the rental unit. The landlords posted an online rental advertisement and a sign in the window of the rental unit. However, the landlords did not provide copies of any advertisements or the specific dates of when the advertisements were posted. I find that the landlords have not attempted to fully minimize their losses. The landlords only advertised on one website. The landlords did not reduce the rental price of the rental unit as an incentive to try to attract potential tenants, despite renting the unit for a lower price to a new tenant at this time. As such, I find that the landlords have failed to fully mitigate their losses under section 7(2) of the *Act*.

Accordingly, I find that the landlords are only entitled to half a month's rent, totaling $550.00, for May 2015. I find that the tenant's notice to vacate was only one day late. I find that the landlords had the entire month of April 2015 to advertise and show the

rental unit, and that the additional half month of May 2015, is a reasonable period of time to have the rental unit re-rented.

I award $100.00 to the landlords for rental unit cleaning. Witness JF testified that he was paid this amount by the landlord to clean the rental unit after the tenant vacated. The tenant agreed that this was a reasonable amount for cleaning, as she did not clean every area of the rental unit thoroughly. As per Residential Tenancy Policy Guideline 1, the tenant is required to maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit during the tenancy and the tenant is also "generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard." I find that the tenant did not fully abide by the above guideline at the end of this tenancy and that the above amount is a reasonable amount for cleaning.

As the landlords were partially successful in their application, I find that they are entitled to the $50.00 filing fee paid for their application.

Tenant's Claims

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenant seeks the return of double the value of the security deposit of $550.00, totalling $1,100.00, from the landlord. The tenant provided her written forwarding address to the landlord, who acknowledged receipt on May 8, 2015. The tenancy ended on May 1, 2015. The tenant did not give the landlord written permission to retain any amount from the deposit. The landlord did not return the deposit to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of the later date of May 8, 2015. The landlords filed their application months later on September 15, 2015. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with section 38(6)(b) of the *Act,* I find that the tenant is entitled to double the value of her security deposit totalling $1,100.00.

As the tenant was successful in her application, she is entitled to recover the $50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of $450.00 against the landlord NL only, as the tenant has only applied against the one landlord. The monetary order is made under the following terms:

Item	Amount
Return of Double Security Deposit to Tenant as per section 38 of the *Act* ($550.00 x 2 = $1,100.00)	$1,100.00
Recovery of Filing Fee for Tenant's Application	50.00
Less Loss of Rent for May 2015 awarded to Landlords	-550.00
Less Cleaning Fees awarded to Landlords	-100.00
Less Recovery of Filing Fee awarded for Landlords' Application	-50.00
Total Monetary Order	**$450.00**

The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply, as this tenancy has ended.

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: October 02, 2015

Residential Tenancy Branch