Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. In the Application filed by the Tenants on March 30, 2015 they indicated they sought a monetary order for return of the security and pet damage deposit paid to the Landlord, return of the rent paid for March 2015 and for the return of the filing fee for the Application. The Landlord sought a Monetary Order for authorization to retain the deposits and the March rent as well as recovery of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issues to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenants to a Monetary Order for return of double the security and pet damage deposit paid?

2. Are the Tenants entitled to return of the rent paid for March 2015?

3. Is the Landlord entitled to a Monetary Order from the Tenant for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

4. Are either party entitled to recovery of the fee paid to file their application?

Background and Evidence

The parties entered into a one year fixed term tenancy on December 1, 2014 which was set to end on December 1, 2015. The Tenants paid the Landlord a security deposit of $2,750.00 and a pet damage deposit of $2,750.00 for a total deposit of $5,500.00. The Tenants vacated the premises on February 17, 2015.

The parties agreed that the Landlord did not perform, or provide the Tenant with opportunity to participate in, an incoming or outgoing condition inspection report.

The Tenants gave written notice to end their tenancy by letter dated February 2, 2015. In this letter, the Tenants wrote as follows:

> *"Due to unforeseen circumstances, it is with great regret that we must terminate the lease of the above-noted property. This shall, therefore, serve as written notice of such termination, which will be effective 1 March 2015. We understand that we forfeit our damage and pet deposits, totaling $5,500.00, and in the event that you have not secured a tenant for 1 March, we will provide you with a final payment for the rental for that month…"*

The Tenants vacated the rental unit on February 17, 2015. The Landlord accepted payment for rent for February 2015 as well as March 2015.

The Tenants testified that they took steps to secure a new tenant for the Landlord.

On February 16, 2015 the Landlord entered into a contract for purchase and sale of the rental property.

At the hearing the Tenants confirmed they did not know the Landlord had sold the property until and offered that the Landlord retain their deposits as they assumed she would incur rental losses. The Tenants submitted that by entering into the contract of purchase and sale, the Landlord precluded any rental in March of 2015, thereby failing to mitigate any alleged loss.

The Tenants sought return of double their security and pet damage deposits in the amount of $11,000.00 in addition to reimbursement of the March 2015 rent paid in the amount of $5,500.00 for a total of $16,500.00. The Tenants also sought recovery of the $100.00 filing fee.

The Landlord testified that as soon as she received the Tenants' notice to end tenancy she immediately advertised the rental on a local internet rental site. She also stated that she communicated with her social network about the fact that the property was available for rent.

The Landlord confirmed she advertised the property for rent at $6,000.00 per month; she stated the additional $500.00 was to cover the cost of monthly landscaping which was not included in the subject tenancy.

According to the Landlord, prior to the subject tenancy, the property was listed for sale for approximately one year. A prospective purchaser made an offer which was unaccepted by the Landlord. When the Tenants gave notice to end their tenancy, a third party within the Landlord's social network communicated with this prospective purchaser and informed them the property was no longer rented. The prospective purchaser then made a more favourable offer which was accepted by the Landlord. This offer was accepted on February 16, 2015 such that from the time the Tenants gave notice to end their tenancy and the time the offer was accepted only two weeks had passed. The Landlord testified that the sale completed on April 8, 2015 and the purchasers took possession on May 1, 2015.

The Landlord testified that although her application indicated she sought the sum of $11,000.00, what she was asking for was authorization to retain the security deposit in the amount of $2,750.00, the pet damage deposit in the amount of $2,750.00 and the March rent in the amount of $5,500.00. The Landlord stated that although she had receipts for painting in the amount of $4,200.00, she was willing to forgo compensation for these amounts.

In reply the Tenants submitted that they did not receive keys to the rental property until January 1, 2015 and as such were in the property for slightly over six weeks. The Tenants denied causing any damage to the rental property walls which would necessitate the $4,200.00 in painting expenses claimed by the Landlord. Further, the Tenants stated that they were not expected to pay for utilities or landscaping while they were out of the country, and as they only came to Canada on January 1, 2015, they fail to see how the Landlord could expect them to attend to landscaping at that time, nor did they believe this was necessary considering the season. The Tenants further submitted that in advertising the property at $6,000.00 per month, the Landlord failed to mitigate any alleged loss of rent for March 2015.

Finally, the Tenants stated that through their contacts they were able to find a suitable renter for March 6, 2015. The Tenants stated that the Landlord was not prepared to

rent to this person at that time and submitted that as the Landlord had already accepted an offer for sale of the property such a rental was not possible.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of section 38 of the Act.

While the February 2, 2015 letter from the Tenants to the Landlord might suggest they had agreed, in writing, that the Landlord could retain the security and pet damage deposit, I accept their evidence that they did so believing the Landlord would incur losses as a result of their breach of the fixed term tenancy, and the Landlord's continued attempts to rent the property.

The Landlord confirmed the Tenants vacated the rental on February 17, 2015. She also confirmed that on February 16, 2015 she had an accepted offer for the purchase of the rental property. Consequently, the property was no longer available for rent as of February 16, 2015. I find that the Landlord is not entitled to retain the rent for March 2015 as the property was not rentable at that time.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38. Arguably, the Landlord may have been relying on the letter from the Tenants dated February 2, 2015. However, on March 30, 2015 the Tenants applied for dispute resolution seeking return of their security and pet damage deposit. In doing so, the Tenants gave the Landlord notice they did not intend to be bound by the February 2, 2015 letter, and their "agreement" that the Landlord retain the deposits. The Landlord did not file her application until July 28, 2015, nearly four months later.

The Landlord confirmed she did not perform incoming or outgoing condition inspection reports in accordance with the Act. Consequently, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Residential Tenancy Policy Guideline 17 provides as follows:

SECURITY DEPOSIT

7. The right of a landlord to obtain the tenants consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or
- having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.

As a result, the Landlord was not entitled to obtain the Tenants consent to retain the security deposit as she had already extinguished her right to claim against it when she failed to perform the required inspections in accordance with the *Act.*

Therefore, in consideration of the above, I find the Landlord has breached section 38 of the Act. Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **$11,000.00**, comprised of double the security and pet damage deposit (2 x $5,5000.00).

The Tenants, having been successful, are entitled to recovery of the $100.00 fee paid to file their application.

The Landlord's application for a Monetary Order in the Amount of $11,000.00 is dismissed. Although the Monetary Order Worksheet submitted by the Landlord indicated she sought $4,200.00 for painting, she confirmed at the hearing she was not seeking compensation for this amount. In any case, I find it unlikely the painting related to any damage caused by the Tenants in their short tenancy; rather, I find it more likely the Landlord incurred this cost while readying the property for sale.

The Landlord confirmed at the hearing she was not asking for a Monetary Order that the Tenants pay her further sums, she simply wished to retain the deposits and the March rent. As noted above, I find that she is not entitled to retain the deposits, nor was she entitled to receive the March 2015 rent.

Conclusion

The Tenants are entitled to return of double the deposits paid in the amount of $11,000.00 in addition to compensation in the amount of $5,500.00 for rent they paid in

March 2015 and for recovery of the $100.00 filing fee. The Tenants are granted a Monetary Order in the amount of **$16,600.00** pursuant to section 67 of the Act. The Tenants must serve the Landlord with a copy of this Monetary Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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