Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD

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 landlords and one of the tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for cleaning of the rental unit for all or part of the security deposit and to recover the filing fee from the tenants 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 parties agreed the tenancy began in early 2013 for a monthly rent of $1,500.00 due on the 1st of each month with a security deposit of $700.00 paid. The parties agreed the tenancy ended August 1, 2014. The landlord submitted that they received the tenants' forwarding address in writing on April 13, 2015. The tenant confirmed that this would have been the date the landlord would likely have received it. I note the landlord filed their Application for Dispute Resolution on April 27, 2015.

Both parties confirmed that there had been a written tenancy agreement but neither could locate their copies and so did could not provide them as evidence. The landlord submitted the tenancy began as a 1 year fixed term that converted to a month to month tenancy at the end of the fixed term. The tenant does not believe that there was ever a fixed term component to the tenancy.

The parties also disagreed on what utilities the tenants were responsible for. The tenants believed they were only required to pay hydro and the landlord submitted the tenants were responsible for water, sewage, and garbage removal in addition to hydro.

The tenant testified that the first time the landlord indicated the tenants were responsible for the additional utilities was 6 months after the start of the tenancy when the landlord received a bill for them.

The tenants submit that because there was nothing in the tenancy agreement that stated they were required to pay these utilities they do not believe they must do so. They also submitted they understood hydro to be the only utility because they had never lived anywhere that did not include water, sewer or garbage removal as part of the rent.

The landlord sought $621.00 for the utilities of water, sewage, and garbage removal. In support of this claim the landlord submitted into evidence a computer printout for the period April 2013 to August 2014 with details of charges to the account. However, these printouts do not indicate and total amounts for any of the service period. The landlord submitted they obtained the total amount verbally from the municipal authourity.

The landlord sought $500.00 for the costs of cleaning the rental unit. In support of this claim the landlord submitted into evidence:

- A handwritten receipt in the amount of $500.00 for 20 hours of cleaning at $25 per hour;
- A copy of a Contract of Purchase and Sale Addendum providing that the buyer and seller (of the rental unit) agreed to have $1,000.00 held back “just in case the tenant has left the home with some damage and trash throughout” and that the seller agreed to have the house professionally cleaned before possession date. I note for the purposes of this hearing the landlord is the seller of the property; and
- Copies of a “Seller’s Statement of Adjustments” and a “Line of Credit – Discharge Statement” that confirm that a $1,000.00 holdback was enforced for “tenant damage” and “uncleared items”.

The landlord did not submit a Condition Inspection Report outlining what required cleaning or any damage to the rental unit. The tenant testified that the landlord came to complete an inspection on July 31, 2015 and that they were very happy with the condition of the rental unit.

The landlord also sought compensation in the amount of $400.00 for legal costs. The landlord submitted that when they informed the tenants that they had sold the property and the tenants would be required to vacate the property the tenants had their lawyer sent them a letter stating that the tenants would not be vacating the rental unit.

In response, the landlord submitted, they had to get a lawyer as they were concerned the tenants would put the sale of the rental unit in jeopardy. The landlord confirmed that at no time did they think to submit an Application for Dispute Resolution for a cost of $50.00 to obtain an order of possession to ensure the tenants would vacate the rental unit.

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.

In regard to the landlord's claim for compensation for hiring legal counsel to respond to the tenants' legal counsel on a threat to not move out of the rental unit I find that a *threat* to disregard a notice to end tenancy is not, in itself, a violation of the *Act*, regulation or tenancy agreement.

While I accept that had the tenants failed to move out in accordance with a landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property there may have been an impact on the landlord's sale of the rental unit, the landlord could have submitted an Application for Dispute Resolution seeking an order of possession that would require the tenants to vacate the rental unit at a cost of $50.00.

As a result, I find the landlord made a choice to respond to the tenants' threat by hiring a legal counsel and that at the time they had done so the tenants had not violated the *Act*, regulation or tenancy agreement. As such, I find the costs associated with hiring legal counsel do not represent a loss to the landlord from such a violation. As a result, I dismiss this portion of the landlord's claim.

When both parties to a dispute provide equally plausible interpretations of a term of the tenancy agreement, the party with the burden of proof must provide additional evidence to corroborate their claim. In the case before me, I find the landlord seeks recovery of the cost of utilities and the tenants have disputed responsibility for such payment.

As such, in the absence of any corroborating evidence such as a tenancy agreement, I find the landlord has failed to establish that the tenants had agreed to responsibility for the payment of water, sewer, and garbage collection. Therefore, I find the landlord has failed to establish a violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of the landlord's Application.

In addition, Section 6(3) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is inconsistent with this *Act* or regulations, the term is unconscionable, or the term is not expressed in a manner that clearly communicates the rights and obligations under it. As such, even if the landlords had provided a copy of the tenancy agreement if it did not clearly outline the tenant's obligation to pay specific utilities it may not be considered enforceable.

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.

Despite the confirmation submitted from the landlord that $1,000.00 had been held back by the purchaser for "tenant damage" and "uncleared items" the tenant disputes that they left the rental unit uncleaned or damaged. The landlord has failed to provide any documentary or photographic evidence to support the position that the tenants had failed to comply with their obligations under Section 37 to leave the rental unit reasonably cleaned and undamaged except for wear and tear.

The landlord has provided no evidence to establish how the purchaser and seller determined that the hold back should be enforced or how they determined the tenant had failed to leave the unit free from "tenant damage" and "uncleared items".

As such, I find the landlord has failed to provide sufficient evidence to establish the tenants failed to comply with the requirements under Section 37 of the *Act*. As a result, I find the landlord has failed to establish a violation of the *Act*, regulation or tenancy agreement on the part of the tenants and I dismiss this portion of the landlord's Application.

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.

As the landlord has been unsuccessful in their Application for Dispute Resolution I order the landlord must return the security deposit to the tenants. As the parties agree the landlord would have received the tenants' forwarding address on April 13, 2015 and the landlord filed their Application on April 27, 2015 I find the landlord has complied with the requirements of Section 38(1) and the tenants are not entitled to double the amount of the deposit.

Conclusion

As the landlord was unsuccessful in their claim I dismiss their request to recover the filing fee for this Application.

Based on the above, I find the tenants entitled to monetary compensation pursuant to Section 67 and I grant monetary order in the amount of **$700.00** comprised of the security deposit held.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: October 02, 2015

Residential Tenancy Branch