Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Manoher Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened to address a claim by the landlord for a monetary order and an order permitting him to retain the security deposit. Both parties participated in the conference call hearing with both tenants represented by DT.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord testified and the tenancy agreement states that the tenancy began on June 1, 2013 and was set to run for a fixed term ending on May 31, 2015. The tenant DT testified that the tenancy began on May 1, 2013 and was set to run for a 2 year fixed term ending May 1, 2015. The tenancy agreement provides that the parties agreed that the tenancy would become a month-to-month tenancy at the end of the fixed term. Rent was set at $900.00 per month and in 2014 was increased to $936.00. The tenants paid a $450.00 security deposit and a $450.00 pet deposit at the outset of the tenancy. On April 4, 2015 the tenants gave the landlord a written notice advising that they were ending the tenancy on May 1, 2015. The parties agreed that at the beginning of the tenancy they walked through the rental unit to inspect it but did not complete any paperwork to that effect and that they did not inspect the unit together at the end of the tenancy.

The landlord seeks to recover $936.00 in lost income for the month of May and testified that he advertised the unit online and through a sign in the window after the tenants gave their notice to end the tenancy, but was unable to secure a new tenant until June. DT argued that they had originally moved into a different unit where they lived for several days until they and the landlord agreed they should move due to a rodent infestation. DT claimed that he believed that he was on a month-to-month tenancy in a new unit.

The landlord seeks to recover $68.25 as the cost of cleaning the carpet on the stairs at the end of the tenancy and entered into evidence an invoice showing that he paid that amount for carpet

cleaning on May 13. DT acknowledged that he did not clean the carpet on the stairs at the end of the tenancy.

The landlord seeks to recover $347.20 as the cost of replacing a sliding glass door midway through the tenancy and entered into evidence an invoice showing that he paid this amount on May 26. The parties agreed that when the tenants reported that the door had broken, they discussed the issue and DT agreed that he would work for the landlord to pay for the door. DT performed 8 hours of labour for the landlord. The parties did not testify as to whether they agreed on an hourly value of DT's labour. DT argued that the door broke because the house had settled and that he did not offer to pay for the door because he believed he was responsible for the loss. He further testified that the lock had not worked on the old door.

The landlord seeks to recover $120.00 as the cost of cleaning the rental unit at the end of the tenancy and entered into evidence a receipt showing that he paid a neighbour $120.00 to clean the unit. The landlord testified that the unit had not been adequately cleaned at the end of the tenancy. DT testified that he cleaned the unit with the exception of the refrigerator and stove and claimed that he could not clean those appliances because the city shut off the water on the May 1.

The landlord seeks to recover the cost of taking items from the rental unit and yard to the landfill at the end of the tenancy. The landlord entered into evidence a receipt showing that he paid a neighbour $70.00 to remove items and paid $34.35 to deposit those items at the landfill. The landlord testified that there was a swing set in the back yard as well as wooden pallets and other items. He stated that at the beginning of the tenancy, the swing set was in the back yard and he asked the tenants whether they wanted it. When they indicated that they did, the landlord claimed that he told them that they would be responsible for it. DT agreed that the swing set was in the yard at the time the tenancy began but denied that the landlord told them they would be responsible for it. The tenant acknowledged that he left wooden pallets in the back yard but stated that he used the pallets to repair a fence that the landlord had not maintained. The landlord testified that had the tenant just left the pallets, it would have been "no big deal."

The landlord claimed $150.00 as the cost of drywall repairs performed at the end of the tenancy but offered no testimony regarding this claim.

The landlord also seeks to recover the $50.00 filing fee paid to bring his application.

Analysis

DT originally testified that he was in a 2 year lease expiring on May 1, 2015 until he discovered that the tenancy agreement stated that the tenancy began on June 1, 2013 and ended on May 31, 2015. DT then claimed that he believed he was in a month-to-month tenancy in the current rental unit. I do not accept DT's testimony as accurate as DT did not advance his argument that

he was in a month-to-month tenancy until he believed it was advantageous to do so. I find that the tenants were well aware and were in agreement with their tenancy agreement and fixed term for the previous unit transferring with them to the new unit. In any event, this does not affect the landlord's claim for lost income as the fixed term agreement provided that the tenancy would revert to a month-to-month tenancy at the end of the term and in any event, even if they were in a month-to-month tenancy, the tenants were required to give one full month's notice that they were vacating the unit. Section 45 of the Act provides that a notice takes effect the day before rent is due, so the tenants could not have given notice to end the tenancy on May 1, the day that rent was due; the tenancy would have to end on the day before rent is due. Any notice given on April 4 could not have taken effect until May 31 at the earliest.

Section 53 of the Act provides that where a party gives an incorrect effective date on a notice to end tenancy, that date is automatically changed to comply with the earliest effective date. I therefore find that section 53 of the Act operated to change the effective date of the tenants' notice to May 31, 2015 and I find that the tenants were obligated to pay rent in the month of May. I find that the landlord acted reasonably to mitigate his losses by advertising the unit and I find that the landlord is entitled to recover from the tenants the income lost for the month of June. I award the landlord $936.00.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 37(2) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear.

DT acknowledged that he did not clean the carpet at the end of his 2 year tenancy. Residential Tenancy Policy Guideline #1 provides that when tenants have lived in a rental unit for 1 year, they are expected to shampoo the carpet when they leave. I find it more likely than not that the carpet required cleaning and I find that the tenants failed to comply with section 37(2) of the Act. I find that the landlord had to pay to have the carpet cleaned and I find he should be compensated for that loss. I award the landlord $68.25.

The sliding glass door was broken during the tenancy and I find it more likely than not that the tenants acknowledged responsibility for that damage when they agreed that DT would work for the landlord to pay him back for the cost of the repair. I find it very unlikely that the tenants would have made this offer had they believed they were not responsible. Section 32(3) of the Act provides as follows:

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the tenants caused the damage to the sliding glass door through their actions or neglect and I find that the landlord incurred a cost to repair that damage. I find that the landlord is entitled to recover the cost of the repair less the value of the work performed by DT. The landlord's invoice shows that he paid $347.20 for the door and the parties agreed that the tenant performed 8 hours of labour. In the absence of evidence showing that the parties agreed on a different valuation of the tenant's work, I find that a wage of $20.00 per hour is appropriate. I find that DT's labour was valued at $160.00 and I award the landlord the $187.20 balance of the cost of the repair.

Sections 23 and 35 of the Act require landlords to inspect the rental unit at both the beginning and the end of the tenancy and create a written report detailing the condition of the unit. The landlord failed to meet this obligation and I therefore have no report to which to refer which shows the condition of the unit at the end of the tenancy. The landlord did not provide photographs of the unit or provide any other evidence to corroborate his claim that the unit was unreasonably clean. The tenants were required to leave the unit in reasonably clean condition, which is an objective standard. The landlord's opinion that the unit was not reasonably clean is not sufficient to discharge his burden of proof. As the tenants claimed that they cleaned the unit with the exception of the refrigerator and stove and as the landlord has provided no persuasive evidence to prove that the entire unit required cleaning, I find that only the refrigerator and stove required cleaning. I find that an award of $20.00 which represents one hour of cleaning will adequately compensate the landlord for the tenants' failure to leave the refrigerator and stove in reasonably clean condition and I award the landlord that sum.

The landlord acknowledged that the swing set was in the back yard at the beginning of the tenancy and provided no evidence to corroborate his claim that the tenants agreed that they would be responsible for the removal of the swing set at the end of the tenancy. I find that the landlord has not proven that the tenants should be held responsible for the cost of removing the swing set. As the landlord acknowledged that he would not have charged the tenants for the cost of removing the wooden pallets and as he provided no evidence to show that other items required removal, I find that the landlord has failed to prove that the tenants failed to leave the back yard in reasonably clean condition and I dismiss the claim for the cost of removing debris.

I also dismiss the landlord's claim for the cost of drywall repairs. Again, because the landlord failed to provide a condition inspection report or photographs showing the condition of the unit, it is impossible for me to determine on an objective level whether the damage to the walls fell within the range of reasonable wear and tear.

As the landlord has been substantially successful in his claim, I find that he should recover the $50.00 filing fee and I award him this sum.

In summary, the landlord has been successful as follows:

Loss of income	$ 936.00
Carpet cleaning	$ 68.25
Glass door replacement	$ 187.20
Cleaning	$ 20.00
Filing fee	$ 50.00
Total:	**$1,261.45**

The landlord has been awarded $1,261.45. I order the landlord to retain the $450.00 security deposit and $450.00 pet damage deposit in partial satisfaction of the claim and I grant him a monetary order under section 67 for the balance of $361.45. I order the tenants to pay this sum to the landlord forthwith. Should the tenants fail to pay the amount owing, the monetary order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will retain the pet damage and security deposits and is granted a monetary order for $361.45.

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 29, 2015

Residential Tenancy Branch