Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing them to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2013 at which time the tenant paid a $1,000.00 security deposit. The rental unit was owned by SBS who passed away during the tenancy. SBS's daughter, KS, acted as SBS's agent and was the party with whom the tenant signed the tenancy agreement which required the tenant to pay rent in the amount of $1,850.00 per month in advance on the first day of each month. When the owner of the rental unit passed away, the executor, who appeared at the hearing, took over administration of the rental unit. The parties did not perform an inspection of the unit together either at the beginning or end of the tenancy.

The landlord seeks to recover $1,850.00 in rental arrears as the tenant did not pay rent for the month of September. The tenant acknowledged that he did not pay rent in September, but testified that KS told him he would not have to pay rent. The tenant provided copies of text messages between him and KS in which copied him on a message she sent to the executor:

> Would like to tell [the tenant] just to stay in house with the same deal as before. Better to have him in the house for free rather than leave it empty. Good tenant having to couch surf for Sept with 2 boys until he can move into house … seems uncharitable. I would prefer not to have empty houses and would prefer to be known in retrospect as good landlords. Let me know what you think.

The executor responded to this text message as follows:

> He said he was already packed up. I don't care one way or the other as long as his junk all goes.

KS added this message to the tenant when she forwarded the above text message exchange:

> Please find above a message that I sent to [the executor] and a copy of his reply. Do not want you and boys "couch surfing" – not right and yes the same monies will appy. [*sic*]

The tenant testified that he understood this to mean that he did not have to pay rent for the month of September. The executor testified that he did not give the tenant permission to withhold rent, but had expected that the tenant might stay over a few days into October, for which the landlord would not have charged him rent. The executor stated that KS did not have any authority to act on behalf of the estate and excuse the tenant from paying rent.

The landlord seeks to recover $355.90 for water charges at the rental unit. The tenant took the position that he was not required under the tenancy agreement to pay for water charges, but during the tenancy he received notice from the utility that his water would be cut off, so he put the water bill into his own name and paid the bills up until the end of the tenancy. The tenant argued that he should not be responsible for these bills on that basis and also claimed that the landlord had left the water running continuously at one point in order to re-seed the lawn on a neighbouring property.

The landlord seeks to recover $270.00 as the cost of removing items and debris from the garage and exterior of the rental unit at the end of the tenancy. The landlord provided evidence that he paid $2,730.00 to have items removed from the residential property as well as several other neighbouring properties also owned by the estate and that he believed that it was fair to charge the tenant 10% of that bill as at least 10% of the items hauled away came from the residential property. The tenant acknowledged that there were a significant amount of items in the garage and outside the unit, but he stated that those items did not belong to him and were there when he moved into the property.

The landlord seeks to recover $500.00 as the estimated cost of filling the heating oil tank. The landlord testified that at the beginning of the tenancy, the tank was measured and the fuel was approximately 11" from the bottom of the 1,000 litre tank and that the tenant was obligated to refill the tank to the same level at the end of the tenancy. He stated that the tank was 11" from the bottom of the tank at the end of the tenancy, which

means it was approximately ¾ empty, and estimated that it required approximately 500 litres of fuel at a rate of $1.00 per litre to refill the tank. The landlord entered into evidence a copy of a document entitled "Application for Tenancy" and a second document which purports to be an addendum. The addendum provides in part as follows:

4. The tenant(s) understand that the fuel tank and propane will be full on move in day and must be filled by the tenant(s) on the day that the property is vacated.

The addendum is signed by KS and has also has a signature in the line for the tenant signature which the executor claimed is the signature of the tenant.

The tenant denied any knowledge of the addendum and stated that he had never seen the document and did not sign it. He further testified that there was no discussion in which he was told that he was required to refill the fuel tank at the end of the tenancy. The tenant entered into evidence a copy of a letter which he said he submitted to the police as part of a fraud investigation. In the letter, he stated that he did not see the document until February 2015 when he received it in the mail. The tenant testified that the police did not pursue a fraud investigation because it could not be proven who forged the document.

Analysis

Because of his position administering the estate of the owner of the rental unit, I accept that the executor stood in the shoes of the landlord and had authority to deal with issues relating to the unit. The executor claimed that KS did not have authority to deal with the rental unit. Although KS clearly acted as the owner's agent at the beginning of the tenancy, it is possible that her authority with respect to the unit expired upon the owner's death, but it is clear from the text messages that the executor was very aware that KS was still acting as an agent and negotiating with the tenant his departure date. Because the executor did not make it clear to the tenant that KS had no actual authority to deal with the rental unit and because he was aware that KS was still acting as his agent and exerting apparent authority, I find that the executor accepted that she was acting as his agent and is therefore bound by her promises and representations to the tenant. I find that the only logical way to interpret the text message exchange reproduced above is to find that KS offered the tenant free rent for the month of September. Her initial text specifically refers to her discomfort with him "couch surfing" in September and it would not make sense that the period of time in which he was to not be charged would be for a different month. I find that KS waived the tenant's responsibility to pay rent in the month of September and I dismiss that claim.

The parties do not appear to have a written tenancy agreement between them as the document entitled “Application for Tenancy” does not contractually bind the parties into a tenancy relationship. The addendum, which I shall discuss in further detail below, does not purport to be an agreement but a supplement to another document. I find that the only tenancy agreement between the parties is verbal with the standard terms found in the Residential Tenancy Regulations applying. Ordinarily, I would find that absent a written agreement, the tenant was not responsible to pay for water. However, in this case, the tenant put the water utility into his own name and apparently made no complaint that he was suddenly required to pay for a utility which he now claims he was not responsible for. I find it highly unlikely that the tenant would willing and without complaint pay for a utility during the tenancy which he now insists he was not responsible for. I find it more likely than not that the parties agreed at the time they entered into their verbal contract that the tenant was responsible to pay for water. I therefore award the landlord $355.90. Although the tenant claimed that the landlord used a significant amount of water reseeding the lawn on another property, I find that the water would not have run continuously as common sense tells me that seeds which are flooded are likely to be washed away. While the landlord clearly used water being paid for by the tenant, I find they did so with the tenant’s silent assent and in any event, it has not been proven that they used an amount that significantly impacted the water bill.

The Act requires landlords to work together with the tenant to perform a condition inspection of a unit at the beginning and at the end of a tenancy and to create a report reflecting the condition of the rental unit and residential property at those times. This report is useful to both parties in the event of a dispute. In this case, the landlord did not perform a condition inspection of the unit at the beginning or end of the tenancy and therefore has deprived themselves of evidence which could have been used to prove that there were no items left in the garage or around the residential property at the beginning of the tenancy. The tenant claimed that the items hauled away by the landlord at the end of the tenancy were in place when his tenancy began and without proof to the contrary, I find that the landlord’s claim must fail as he bears the burden of proving his claim on the balance of probabilities. The claim is dismissed.

The landlord submitted a copy of a document which the executor claimed is an addendum to the tenancy agreement signed by the tenant. The executor was not present at the time the tenant allegedly signed this document and did not produce as a witness KS, who presumably was there as her signature appears on the document. The tenant claimed that the document is a forgery and as soon as he discovered the document, he took the matter to the police to report a fraud. The signature of the tenant on the addendum and on the Application for Tenancy do not match. I am not

persuaded that the addendum is a document which has been signed by the tenant. As the tenant has denied responsibility to pay for heating oil, as there was no behaviour by the tenant during the tenancy in which he indicated he took responsibility for that bill and as the landlord cannot prove that an agreement is in place making the tenant liable for that bill, I find that the landlord has failed to prove the claim for repayment of the heating oil and I dismiss the claim. I note that I would have dismissed it in any event as the landlord failed to prove that he actually suffered a loss in having to refill the tank and also failed to prove the value of that loss, providing only his own, non-expert guess that fuel was worth approximately $1.00 per litre and there was a 500 litre deficit.

As the landlord has been only partially successful in his claim, I find that he is entitled to recover one half of the $50.00 filing fee paid to bring his application and I award him $25.00 for a total award of $380.90. I order the landlord to retain this sum from the $1,000.00 security deposit and I order him to return the balance of $619.10 to the tenant forthwith. I grant the tenant a monetary order under section 67 for $619.10. This 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 $380.90 from the security deposit and the tenant is granted a monetary order for the $619.10 balance of the deposit.

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 20, 2015

Residential Tenancy Branch