Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, FF

Introduction

This hearing dealt with applications from both parties. The tenant applied for an order for the return of double her security deposit while the landlords applied for a monetary order and an order authorizing them to retain the security deposit. The hearing was originally convened on September 28, but at that time the tenant's advocate advised that he did not have a copy of the landlord's application for dispute resolution, which had been sent to the advocate's office. It had apparently been misfiled. I determined that an adjournment was appropriate and the hearing was reconvened on November 6.

Issues to be Decided

Is the tenant entitled to the return of double her security deposit?
Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in 2009 or 2010 and ended in early to mid-March 2015. They further agreed that the tenant paid a $250.00 security deposit and that on March 10, 2015, she mailed her forwarding address to the landlords at the address for service they provided to her.

The parties agreed that in November 2014, the landlords told the tenant that she would have to vacate the rental unit in approximately 3 months as the city bylaw officer had declared it uninhabitable. They further agreed that on February 9, 2015, the landlord gave the tenant a document entitled "Eviction Notice" in which he advised that her tenancy would end on February 28, 2015. They further agreed that on or about March 5, 2015, the landlords served on the tenant a 10 day notice to end tenancy for unpaid rent. They further agreed that landlord had received by way of cheque the entire amount of rent owing for the month of March and had negotiated that cheque, but had

returned $250.00 to the tenant to assist her in moving. The parties further agreed that the landlord turned off the electricity to the unit in mid-March, prior to the time the tenant had completed vacating the unit.

The landlords seek to recover $899.36 as the estimated cost of replacing the carpet in the rental unit as this was the price paid to install the carpet in 2009. The landlords provided photographs taken at the end of the tenancy showing that the carpets were extremely soiled, littered with cigarette butts and other garbage and containing numerous marks which appear to be burn marks. The landlords also seek to recover a total of $847.33 as the cost of removing garbage outside the cottage (representing receipts for $84.00, $88.83, $33.00, $16.50 and $625.00) as well as $200.00 paid to a relative to remove items.

The landlords testified that the interior of the unit will require a complete renovation, including removing and replacing drywall, insulation, cabinets and carpet and replacing all kitchen and bathroom fixtures as well as inspecting and repairing plumbing and electrical issues. The landlords provided two estimates for this work. One provided on May 26 was for $62,000.00 and another provided on May 14 was for $12,258.75. The landlords also entered into evidence an $1,176.00 estimate for removing drywall, carpet, garbage and the bathroom.

The tenant testified that she was not given enough time to clean the unit as she was illegally evicted and the landlord turned off the electricity, which prevented her from cleaning outside daylight hours. She claimed that the landlord also turned off the water, but the landlord denied this allegation. The tenant claimed that the rental unit is a utility shed which was never intended for occupancy and that the landlord's claim is an attempt to make up for a failure to maintain the unit. The tenant testified that when she first began her tenancy, the unit seemed suitable for habitation but she soon discovered that the unit was riddled with black mold, which she did not report to the landlord.

The tenant testified that when the landlord returned $250.00 of her rent, she rented a mobile storage unit in which to place her belongings. She stated that on March 15 she returned to the unit and found the female landlord at the unit with a police officer. She stated that she attempted to tell the landlord and the officer that she had already moved out, but the landlord brought the officer into the unit to purportedly show him "how a pig lives." When I asked the tenant why she had returned to the unit on March 15, she stated that she "was going to clean a little."

Analysis

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 and
2. Proof that the applicant suffered a quantifiable loss as a result of the respondent's action or inaction.

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenant paid a $250.00 security deposit and vacated the rental unit on or about March 15 and that she mailed her forwarding address to the landlords on March 10, 2015. Although the landlords claimed not to have received the forwarding address, because the tenant mailed it to the address for service provided by the landlord, I find that the landlords must be deemed to have received the address on March 15, 2015, 5 days after it was mailed. I find that the landlord did not return the deposit to the tenant and did not file their application for dispute resolution until May 20, which was more than 2 months after the tenancy ended and they are deemed to have received her address. I find that the landlords failed to comply with section 38(1) and are now liable to pay the tenant double the security deposit. I therefore award the tenant $500.00.

Turning to the landlords' claim, 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.

The tenant claimed that she was deprived of the opportunity to clean the unit. There is no question that the tenant was illegally evicted. The landlords did not give the tenant a legal notice to end tenancy. Rather, they relied on typed notes. In March, the landlords negotiated the tenant's rent cheque, voluntarily returned half of her rent money to her and then had the audacity to serve her with a notice to end tenancy for unpaid rent, which I find to be an illegal action as no rent was owing. The landlords also acted in contravention of the Act when they turned off the tenant's electricity, preventing her from working outside of daylight hours. The landlords' actions have been illegal and egregious in the extreme. However, I am not persuaded that had the tenant been given

adequate opportunity to pack her belongings that she would have cleaned the unit. Further, there is insufficient evidence to show that the water was turned off as was claimed by the tenant. The tenant said that on March 15 she returned to the unit to "clean a little" and also said that her belongings were all packed at that point. This statement indicates to me that the tenant had no intention of removing the significant amount of items which she left in the unit and that she did not intend to spend the many days it would have taken to leave the unit reasonably clean as cleaning "a little" would not have met the standard imposed by the Act. The landlords' photographs show that almost every inch of the unit was full of garbage and that the unit was filthy and clearly had not been cleaned for a significant period of time. I find that the tenant intentionally left behind some of her belongings which she did not wish to keep and that she failed to leave the unit in reasonably clean condition.

The tenant contended that the unit was never intended for occupancy as it was a utility shed. It may have begun its life as a utility shed, but the landlord had made it into something which was fit for occupancy as was proven by the tenant having occupied it for approximately 5 years.

The tenant did not deny that the carpet was new at the beginning of the tenancy and the landlords' invoice shows that carpet was purchased in November 2009. I find that the carpet was not salvageable at the end of the tenancy and that the tenant deprived the landlord of half the life of the carpet. I accept that it would cost $900.00 to replace the carpet and I award the landlord $450.00.

I find that the landlords had to remove the garbage inside and outside the unit at a cost of $847.33 paid to third parties and for landfill fees as well as $200.00 paid to a relative. The fact that a relative performed part of the work does not prevent the landlords from claiming that expense. I award the landlords $1,047.33 for the cost of removing and disposing of garbage at the end of the tenancy.

The landlords provided a wide range of estimates to perform a significant amount of work at the unit. Although it is clear that the unit requires a significant amount of cleaning, I am not persuaded that drywall and insulation have to be replaced, nor am I persuaded that all bathroom and kitchen fixtures require replacement. The landlords' invoices do not break down the cost of cleaning and as it is clear that the landlord intends to completely strip the interior finishes and replace all fixtures, it would appear that the landlords will not be out-of-pocket for cleaning as they intend to completely renovate the interior of the unit. I am only empowered under the Act to award quantifiable losses and as the cost of cleaning is not quantifiable and as the landlords intend to dispose of the walls, surface areas and fixtures which require cleaning, I find that I am unable to award the landlords anything for the cost of cleaning. The landlords

also claimed for the cost of replacing drapes, but did not provide an estimate of that cost or an invoice, so I am unable to award the landlord anything for the drapes.

I find that as the landlords have been only partially successful in their claim, they should recover just one half of the $50.00 filing fee paid to bring their application and I award them $50.00.

The landlords have been awarded $1,547.33 which represents $450.00 for carpet replacement, $1,047.33 for garbage removal and $50.00 of their filing fee and the tenant has been awarded $500.00. Setting off the claims as against each other leaves a balance of $1,047.33 owing by the tenant to the landlords. I grant the landlords a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is awarded $500.00 and the landlords are awarded $1,547.33. After set-off, the landlords are granted a monetary order for $1,047.33.

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: November 12, 2015

Residential Tenancy Branch