



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent or utilities; and, damage or loss under the Act, regulations or tenancy agreement. Only the landlords appeared at the hearing.

The landlords had named two co-tenants in filing their application. The landlords submitted that the male tenant was personally served with the hearing documents at his new residence on July 6, 2015 in the presence of a witness. I was satisfied the male tenant was served with notification of this proceeding; however, I found the female tenant had not been sufficiently served since the Act requires that an application be served upon each respondent. Therefore, I proceeded to hear the landlords' claims against the male tenant and I excluded the female tenant as a named party to this dispute.

Issue(s) to be Decided

Have the landlords established an entitlement to compensation from the tenant for the amounts claimed?

Background and Evidence

The tenancy commenced October 1, 2013 for a fixed term set to expire October 1, 2015. The tenancy agreement provides that the monthly rent of \$1,900.00 was due on the first day of every month. A security deposit was not collected. The tenants vacated the rental unit June 30, 2015.

Below, I have summarized the landlords' claims against the tenant.

Unpaid Rent - \$2,000.00

The landlords submitted that the tenant failed to pay rent for June 2015. The landlord submitted that shortly after the tenancy began the rent was increased to \$2,000.00 per month because the tenant had one or two students move into the rental unit with the tenant's family. The landlords

stated that the increase in rent was done by way of verbal agreement but that it was not reflected in the written tenancy agreement.

As proof of the landlords' loss the landlords submitted a copy of a cheque dated May 29, 2015 in the amount of \$2,000.00 that was returned for the reason "payment stopped".

Unpaid utilities - \$1,686.71

The landlords submitted that the tenant was required to pay the water bill under the tenancy agreement and the tenant failed to do so for the last nine months of the tenancy. The utility bill is in the landlord's name and is issued by the City. The charges on the utility bill before me are for water, sewer and garbage.

The landlords explained that the tenant had stopped paying the City utility bills because he felt he had overpaid the previous bills since they included charges for sewer and garbage.

The landlords were of the position that the tenant was required to pay for the water, sewer and garbage charges that are included in the City utility bills.

Damage -- \$210.00

The landlords seek compensation of \$210.00 for damage. The landlords indicated in their written submission that receipts were included; however, I noted that no receipts were provided to me. The landlords acknowledged that receipts were not provided to the Residential Tenancy Branch. When asked as to the nature of the repairs performed for \$210.00, the landlord stated that it represented supplies for "lots of stuff".

Breaking the lease -- \$1,000.00

The landlords seek \$1,000.00 from the tenant for what the landlord described as a "penalty" for ending the tenancy before the end of the fixed term.

The landlord also stated that he had to end his own tenancy so as to move into the rental unit as of June 30, 2015, make repairs to the rental unit, and then sell the property in the first few days of July 2015.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons with respect to the landlords' claims against the tenant.

Unpaid Rent

Section 13 of the Act provides the requirements for tenancy agreements. One requirement is that the amount of rent must be specified and "if the rent varies with the number of occupants, the amount by which it varies".

Section 14 of the Act provides for changes to a tenancy agreement. Terms may be changed with mutual consent; except changes to certain specific terms must be accomplished in another manner. One such exception is an increase to rent which must be accomplished by way of the permissible rent increase provisions contained in Part 3 of the Act. Part 3 provides that all rent increases must be accomplished by way of a Notice of Rent Increase in the approved form and cannot take effect sooner than the first 12 months of tenancy.

The tenancy agreement before me provides that the monthly rent was to be \$1,900.00. The tenancy agreement does not provide for additional rent if there are additional occupants. The tenancy agreement also provides that the landlord may increase the rent by giving the tenant 360 days of notice.

In this case, the landlords collected an extra \$100.00 in rent, per month, shortly after the tenancy started. Since additional rent for additional occupants was not provided in the tenancy agreement, the only way to increase the rent would have been to enter into a new tenancy agreement or follow the rent increase provisions of the Act. I was not provided any evidence the parties entered into a new tenancy agreement that replaced the agreement before me. Nor, did the landlords increase the rent in accordance with the rent increase provisions of Part 3 since a Notice of Rent Increase was not used and less than 12 months had passed since the rent was established. Accordingly, I find the landlords were not legally entitled to collect additional rent from the tenant. Therefore, I find the rent due for June 2015 was \$1,900.00 as provided under the tenancy agreement.

Part 3 of the Act provides that if a tenant overpays rent because a rent increase does not comply with the Act, the tenant may recover the overpayment by deducting the overpayment from rent otherwise payable. The tenant withheld \$1,900.00 in rent owed for June 2015 and having found the tenant had been overpaying rent by \$100.00 since shortly after the tenancy started in October 2013 I find it likely the tenant overpaid rent by approximately \$1,900.00 between October 2013 and May 2015. Therefore, I find the tenant was entitled to withhold rent for June 2015 and I make no award to the landlords for unpaid rent.

Unpaid utilities

Clause 20 of the tenancy agreement provides that the tenant was responsible for paying electricity, natural gas, water, telephone, internet and cable. The tenancy agreement is silent with respect to sewer and garbage collection.

The utility bill provided to me by the landlords includes charges for water, sewer and garbage for the period of October 22, 2014 through February 18, 2015; and, February 19, 2015 through June 19, 2015.

Since the tenancy agreement does not require the tenant to pay for sewer or garbage charges I find the landlords have not established an entitlement to recover the charges for these services from the tenant.

While the landlord is entitled to recover any unpaid water charges, when I look at the most recent billing period of February 2015 through June 2015 I note that of the \$494.49 in total charges \$193.16 relates to water whereas a greater portion of the bill, \$301.33, relates to sewer and garbage. The landlord described how the tenant had been paying the total charges up to October 2014 which would mean the tenant had been overpaying utilities by the amounts attributable to sewer and garbage. Without the previous bills before me, I find I am unable to determine the amount of the overpayment. Therefore, I find I cannot determine the landlords' actual losses, if any, with respect to the utility bills.

I also note that the billing for October 2014 through February 2015 included a very large water charge of \$1,580.00. The landlord explained that it was due to a water leak but that the City subsequently reduced the charge by \$697.51. Despite the adjustment, the net water charge of nearly \$900.00 still seems high compared to the water bill for February 2015 through June 2015. Since the tenant would not be held responsible for paying for a water leak, I find I have significant reservations about the amount of water the tenant owes for October 2014 through June 2015.

In light of all of the above, I make no award to the landlords for further compensation from the tenants with respect to the City utilities.

Damage

In the absence of receipts or photographs to demonstrate damage caused by the tenant, coupled with the landlords' lack of particulars as to the nature of the damage, I find the landlords have not met their burden to prove this portion of their claim and it is denied.

Breaking the lease

The landlords established that the tenants breached the fixed term tenancy by ending the tenancy before the expiry date; however, the landlords' losses that resulted from the breach, if any, were not supported by any evidence.

Further, the Act does not permit a landlord to charge a tenant a “penalty” for breaking a fixed term tenancy agreement. Parties may agree to liquidated damages in the tenancy agreement; which the parties did not do in this case; however, liquidated damages clauses are not enforceable if the amount is seen as a penalty.

In light of the above, I find the landlords have not established an entitlement to compensation of \$1,000.00 from the tenant for breaking the fixed term tenancy.

In summary, I have denied all of the landlords’ claims against the tenant. Accordingly, the landlords’ application is dismissed in its entirety.

Conclusion

The landlords’ claims against the tenant are dismissed in their entirety.

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: January 05, 2016

Residential Tenancy Branch

