Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to an application by the tenant for a monetary order as compensation for emergency repairs / compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Three previous hearings have been scheduled in the dispute(s) between these parties. The first hearing was scheduled on March 11, 2015 in response to applications by both parties. Both parties appeared at the hearing and by way of Interim Decision dated March 13, 2015, the hearing was adjourned.

The second hearing was scheduled on April 30, 2015. While the landlord appeared, the tenant did not, and by way of Second Interim Decision dated May 01, 2015 the hearing was again adjourned.

The third hearing was scheduled on June 23, 2015. While the tenant appeared, the landlord did not. By way of Decision dated June 23, 2015, the landlord's application was dismissed, and the tenant's application was dismissed with leave to reapply. Subsequently, the tenant filed a new application for dispute resolution on July 27, 2015 which led to the scheduling of this present hearing.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute was located in the basement portion of a house, and the upstairs portion of the house was divided into housekeeping units rented to others. It is understood that an advertisement was posted by, or on behalf of the landlord, pursuant to which the unit was available for rent on an "as is" basis. While

there is no signed, written tenancy agreement before me in evidence, the agreement to rent was reached between the tenant and "CR," the landlord's agent, and was effective from on or about December 03, 2013.

Rent was $450.00 per month, however, in exchange for cleanup, garbage removal and unspecified repairs, rent was reduced by $250.00 to $200.00 per month for the first 3 months of tenancy which were December 2013, and January & February 2014. Thereafter, rent was reduced by $100.00 to $350.00 for the 3 months of tenancy from March, and through April to the end of May 2014. After these 6 months of reduced rent the monthly rent returned to $450.00. A security deposit of $250.00 was collected near the start of tenancy. There is no move-in condition inspection report in evidence.

In his written submission the tenant describes himself as "an experienced builder." He also claims that he "soon learned that the scope of repairs was much greater than I expected." He further claims that costs he incurred for the various work undertaken far exceeded the amount of rent reduction provided over 6 months; he suggests that a "discount in rent only partially paid for initial removal of trash." It is understood that the cleanup, garbage removal and repairs were completed by July 2014, and the tenant claims he "understood that [he] would be fully reimbursed for remaining extensive work through several years of rent at a reduced level and proceeded on that basis."

The tenant vacated the unit on February 28, 2015, and claims this was in response to a 2 month notice to end tenancy for landlord's use of property. The tenant claims that this unexpected notice led to his filing of an application for dispute resolution, as his expectation of realizing the full costs of labour and materials for cleanup, rubbish removal and repairs by renting the unit on a more long term basis, was precluded from being realized. While there is a copy of a "proof of service" concerning a 2 month notice to end tenancy, there is no copy of a 2 month notice as such before me in evidence. The landlord disputes that such a notice was ever issued to the tenant. There is no move-out condition inspection report in evidence.

Pursuant to the Second Interim Decision dated May 01, 2015, the tenant was ordered to provide the landlord with his forwarding address "within three days [of] receipt of the Second Interim Decision." In the Second Interim Decision the Arbitrator also noted:

> If the Tenant has already provided its forwarding address to the Landlord, the Tenant must provide supporting proof of this provision in advance of the reconvened hearing.

During the hearing the parties resolved the aspect of the dispute surrounding return of the security deposit. Specifically, the tenant confirmed that he does not seek the double

return of his security deposit, only the amount of the original security deposit, and the landlord agreed that he would repay this amount. It was confirmed that the tenant's forwarding address is provided in his current application for dispute resolution which was filed on July 27, 2015, a copy of which the landlord has in his possession.

Analysis

Based on the documentary evidence and testimony of the parties, the various aspects of the dispute and my related findings are set out below.

$250.00: *return of security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

As set out above, the tenant confirmed during the hearing that he seeks repayment of his security deposit in the amount of his original deposit which is $250.00, and not double that amount. Further, during the hearing the landlord agreed to make this repayment. In the result, I find that the tenant has established entitlement to the amount claimed.

$450.00: *compensation pursuant to section 51 of the Act*

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**. Related to section 49, section 51 of the Act addresses **Tenant's compensation: section 49 notice**, and provides in part:

> 51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In the absence of a copy of the 2 month notice at issue, or conclusive evidence that such a notice was ever issued and served on the tenant, this aspect of the application must be dismissed.

$13,269.84: *cost of labour and materials arising from cleanup, rubbish removal and repairs (some alleged to be "emergency" repairs)*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Further, section 33 of the Act addresses **Emergency repairs**, and provides in part:

> 33(3) A tenant may have emergency repairs made only when all of the following conditions are met:
>
> (a) emergency repairs are needed;

While it is understood that a rent reduction was provided for a 6 month period in exchange for cleanup, rubbish removal and certain repairs, there is no documentary evidence of a formal agreement between the parties concerning reimbursement for the related cost of labour and materials. Neither is there documentary evidence of any agreement related to specific repairs that might be undertaken beyond the general cleanup and rubbish removal.

Further, there is no authoritative third party documentary evidence before me in support of the tenant's claim that the condition of the unit failed to comply with the "health, safety and housing standards required by law," or that any of the repairs undertaken could be considered "emergency" repairs. Neither is there documentary evidence of the comparative results of move-in and move-out condition inspection reports before me.

Additionally, the landlord disputes that the tenant had authority to undertake work to the extent that he did, and he submitted into evidence a notice from the local government authority dated June 15, 2015, in which he is instructed, in part, to "obtain the required Building and Trades Permits to remove all interior alterations carried out without permit

or approval." In the result, I find that the tenant has failed to meet the burden of proving entitlement to the costs claimed, and this aspect of the application must be dismissed.

$100.00: *filing fee*

As the tenant has achieved limited success with his application, I find that he has established entitlement to recovery of the filing fee in the limited amount of **$50.00**.

Total entitlement: $300.00 ($250.00 + $50.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **$300.00**, which reflects repayment of the security deposit and recovery of ½ the filing fee. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

All other aspects of the tenant's application are hereby dismissed.

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 20, 2016

Residential Tenancy Branch