Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's legal counsel and both tenants.

Legal counsel testified he served the tenants and the Residential Tenancy Branch with additional evidence on January 20, 2016, the day before the hearing. Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

As the landlord had failed to serve this additional evidence in accordance with Rule 3.1 I have not considered it in this decision.

Residential Tenancy Branch Rule of Procedure 3.10 stipulates that digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

The Rule goes on to say that when submitted, digital evidence must be provided to the other party and the Residential Tenancy Branch and accompanied by a printed description, including:

- A table of contents
- Identification of photographs, such as a logical number system
- A statement for each digital file describing its contents
- A time code for the key point in each audio or video recording, and
- A statement as to the significance of each digital file.

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible. If a party is unable to access the digital evidence, the Arbitrator may determine that the digital evidence will not be considered.

Regardless of how the evidence is accessed during the hearing the party must submit a memory stick compact disk or DVD for the permanent files.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible so that the party submitting and serving digital evidence can meet the services requirements of Rules 3.14 and 3.15 or as ordered by an Arbitrator.

I note also that the tenants referred to video evidence they had submitted. However, the video evidence was in the form of a webpage address. The tenant noted that the webpage address no longer contained the evidence. I have not considered this evidence as it was not available to the parties during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on September 21, 2014 for a 1 year and 15 day fixed term tenancy beginning on October 15, 2014 for the monthly rent of $3,850.00 due on the 1st of each month with a security deposit of $1,925.00 and a pet damage deposit of $1,925.00 paid. The parties agree the tenants vacated the rental unit on or before June 30, 2015.

The tenants submit that from the time they felt misled by the landlord in representing the property prior to the start of the tenancy. They state the landlords informed them that they had intended to move back into the house at some point and so the tenants thought the property would have been adequately maintained.

They state that after they moved in they were informed by a developer that the landlords intended to tear down the property and build new. The tenants submit that once they moved into the property they noticed a number of deficiencies that they reported to the landlord.

The tenants submit that they began to notice structural and rot and mold issues. The tenants acknowledge that the landlord did have someone start repairs but they were not qualified to the make the necessary repairs and they were unprofessional when in the rental unit.

The tenants submitted that after putting up with the problems with the house, including some flooding and many and ongoing repairs they determined the house was not safe for them to live in anymore and on May 14, 2015 they provided the landlord with a letter stating that they were moving out of the rental unit by June 30, 2015.

The letter went on to identify 7 specific issues:

- The landlord's hiring of an unlicensed, unqualified labourer to complete work without permits;

- Arguing and yelling with the labourer;
- Having contractors borrow tools from the tenants;
- Multiple visits and unsuccessful attempts to complete repairs, leaving things unfinished and in a hazardous state;
- Not providing 24 hours' notice to attend the property or for scheduling contractors;
- General leaking and moisture issue that "will inevitably lead to mold if not already existing as evidence by the rotten collapsing wall in the front bedroom";
- Leaving work unfinished until they had to complain again to the landlord to have it completed.

The letter requested also that the landlord agree to not pursue any losses for rent in the event the landlord was not able to re-rent the unit right away and a reduction of rent for the month of June 2015.

The parties agree the tenants did not pay any rent for the month of June 2015. The landlord seeks June rent as well as $1,411.67 for lost revenue from July 1, 2015 to July 11, 2015 the period for which the unit remained unrented and stop payment charges of $7.00.

The landlord's legal counsel testified that the new tenants entered into an agreement for rent in the amount of $3,980.00 per month and as such the landlord received $2,568.00 for July from the new tenants.

The landlord seeks compensation for an outstanding water bill in the amount of $411.60. The tenants did not dispute this part of the landlord's claim.

The seeks additional compensation for replanting outdoor plants ($338.30); sink and shower repairs ($78.75); fridge repairs ($271.68); laundry repairs ($99.00); painting ($787.50); cleaning paid to the new tenant ($200.00); replacement of 8 kitchen doors ($698.88); and carpet cleaning ($99.00).

The landlord did not submit a Condition Inspection Report or any other evidence that recorded the condition of the rental unit at the start of or the end of the tenancy. The landlord did submit some quotes; estimates; and advertisements of potential costs for **some** of the work the landlord submitted was required.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept by the tenants' agreement that they owe the landlord $411.60 for utilities.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As the landlord has provided no evidence at all recording the condition of the rental unit at either the start or the end of the tenancy, I find the landlord has failed to establish that the tenants caused any damage to the rental unit or that they failed to clean the rental unit as is required under Section 37.

I therefore dismiss the portion of the landlord's claim in the amount of $2,573.11 for general and carpet cleaning and for repairs to damage to the rental unit.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

Residential Tenancy Policy Guideline 8 requires that for a party to end the tenancy for a breach of a material term the party alleging the breach must inform the party in writing:

- That there is a problem;
- That they believe the problem is a breach of a material term of the tenancy agreement:
- That the problem must be fixed by a deadline included in the letter, and that the deadline is reasonable; and
- That if the problem is not fixed by the deadline, the party will end the tenancy.

Upon review of the tenants' letter dated May 14, 2015, I find that while the letter identified a number of problems the tenants had with the way the landlord was handling their complaints and the condition of the rental unit it did not identify that the tenants thought it was a breach of a material term; provide the landlord with a deadline to make it right; or that if he did not make the rectify that breach they would vacate. The Notice simply stated they were ending the tenancy.

As a result, I find the tenants have failed to end the tenancy in accordance with Section 45(2) or Section 45(3) and the landlord is entitled to compensation for all rents owed to the end of the fixed term of the tenancy subject only to the landlord's obligation to mitigate.

As such, I find the landlord is entitled to rent for the month of June 2015 plus stopped payment fee; and for the lost revenue for the period of July 1, 2015 to July 11, 2015. As the landlord

received $2,568.00 from the new tenants and the rent according to these tenants' tenancy agreement was $3,850.00 I find the amount owed to the landlord is $1,282.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$5,600.60** comprised of $3,850.00 rent owed; $7.00 bank fees; $1,282.00 lost revenue; $411.60 utilities and $50.00 of the $100.00 fee paid by the landlord for this application as they were only partially successful.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of $3,850.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$1,750.60**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 25, 2016

Residential Tenancy Branch