Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

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

The hearing was conducted via teleconference and was attended by one of the tenants and the landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for the return of rent; for overfilling the heating oil tank; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on August 26, 2009 for a 1 year fixed term tenancy beginning on September 1, 2009 that converted to a month to month tenancy on September 1, 2010. The agreement stipulates that rent was $1,600.00 due on the 1st of each month with a security deposit of $800.00 paid.

The tenancy agreement included an addendum with 6 additional terms. Term 2 states "The fuel tank has been filled with 798 litres of fuel oil at the start of the tenancy. The Tenants are responsible for leaving 798 litres of fuel in the tank at the end of the tenancy.

The tenants submit that on September 17, 2015 the oil tank was filled. While the tenants did submit a copy of the invoice from their fuel supplier it is was too faint to read. The tenant read into the hearing that they had paid for 374.3 litres of oil for a total cost of $436.09 including all taxes and included a handwritten notation stating "Tank filled".

The tenants submitted into evidence several emails exchanged between the tenants and the landlord on the issue of the oil. In a response from the landlord dated November 3, 2015 the landlord made the following explanation:

> "Before you moved in I filled the tank to 798 litres. What I believed was full as the driver filling tank only has a whistle to go by and once he does not hear that whistle he stops and thinks the tank is full. I dipped it and it read ¾ tank. Now maybe something is wrong with my whistle but that is all the driver has to go by and says it is full.

> You filled the tank of 376 litres and the whistle stops and the driver says it is full. I dipped it and Columbia fuels says there is 775 litres in tank. ¾ full. Even the gauge says it is ¾ full. My 798 and your 775 says you are short 23 litres but close enough, I am not going to argue about 23 litres in your favour."

The tenancy ended after the tenants provided the landlord with a letter dated September 23, 2015 stating that they intend to end the tenancy on October 31, 2015 but that they would be moving out of the rental unit on October 10, 2015 and included their forwarding address.

The tenants submit that they did receive their security deposit from the landlords by e-transfer but not until October 29, 2015 or 19 days after they had moved out of the rental unit. The tenants seek double the amount of the security deposit for the landlords failing to return the deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

The tenants also seek return of 2 weeks' rent in the amount of $722.54 because they returned the keys to the landlord on October 10, 2015 and the landlord took the time between that date and the end of October to prepare the rental unit so they could rent it to new tenants effective November 1, 2015.

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.

In regard to the tenants' claim for a reimbursement for over filling the oil tank, I accept that Term 2 of the tenancy agreement addendum does require the tenants to leave the oil tank with at least 798 litres of oil at the end of the tenancy. I note the addendum is silent on what might happen if the tenants leave more than the required amount.

I accept that the parties dispute how much oil was in the tank at the end of the tenancy. That is to say the landlords are satisfied that the tenant had substantially met her obligation to leave 798 litres at the end of the tenancy and the tenants assert that they left a full tank or 1000 litres.

However, as the tenancy agreement is silent on what would happen should the tenants leave the tank with more oil than the required amount I find the amount left in the tank is not relevant to the outcome of this claim.

Rather, I find the tenants were aware of their obligation to leave the tank with 798 litres and according to the testimony they ordered a "tank fill" from the supplier. As such, I find the tenants chose to fill the tank to what they believed was 1,000 litres. As a result, I find the tenants have failed to establish the landlords have violated the *Act*, regulation, or tenancy agreement. As such, I find the landlords have no obligation under the agreement to compensate the tenants for any additional amount they may have left in the tank.

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
    i. Section 45 (tenant's notice);
    ii. Section 46 (landlord's notice: non-payment of rent);
    iii. Section 47 (landlord's notice: cause);
    iv. Section 48 (landlord's notice: end of employment);
    v. Section 49 (landlord's notice: landlord's use of property);
    vi. Section 49.1 (landlord's notice: tenant ceases to qualify;
    vii. Section 50 (tenant may end tenancy early);
b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
c) The landlord and tenant agree in writing to end the tenancy;
d) The tenant vacates or abandons the rental unit;
e) The tenancy agreement is frustrated; or
f) The director orders the tenancy is ended.

Section 45(1) stipulates that a tenant may end a month to month 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 and is the day before the day in the month that rent is payable under the tenancy agreement.

While Section 44(1)(d) does indicate that a tenancy ends when a tenant vacates or abandons the rental unit, I find that once a tenant provides a landlord with their own notice to end the tenancy under Section 45, the earliest the tenancy can end is on the effective date of such a notice. In the case before me, I find that the earliest this tenancy could have ended was October 31, 2015.

I find that if a tenant chooses to move out of the rental unit prior to the earliest possible effective date of their notice under Section 45 it is their own choice to do so, but the obligations of both parties, in relation to the tenancy, do not end before the effective date of that notice.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the above, I find the landlords had received the tenants' forwarding address prior to the end of the tenancy and that the tenancy ended on October 31, 2015. As per the tenants' testimony I find the landlords returned the tenants' security deposit on October 29, 2015. As such, I find the landlords have complied with their obligations under Section 38(1) of the *Act* and are not obligated to pay the tenants double the amount of the deposit pursuant to Section 38(6).

Regardless of the tenants' obligations until the effective end date of their tenancy, I find that once the tenants returned the keys to the landlords on October 10, 2015 the landlords were not required to wait until October 31, 2015 to complete any work to prepare the unit for the next tenants.

In fact, even if the tenants had not returned the keys to the landlords, the landlords could have completed any work that they wanted in preparation for their new tenants during the month of October, 2015. The only difference would have been that they would have had to have provided notice to the tenants of their planned entries to complete the work.

In addition, even if I were to find that the landlords had violated the *Act* regulation or tenancy agreement in this regard, I find the tenants have not suffered any loss as a result and therefore would not be entitled to any compensation for this part of their claim.

Conclusion

For the reasons noted above, I dismiss the tenants' Application for Dispute Resolution in its entirety without leave to reapply.

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: June 24, 2016

Residential Tenancy Branch