Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

In the first application the tenants seek recovery of their security deposit.

In the second application the landlord seeks a monetary award for the cost of a workman/agent, Mr. K.J. who acted as her intermediary, conducted inspections for her and did repair work around the home. She also seeks damages relating to lost work time and for damage and repair work..

The attending tenant Mr. C. concedes the landlord's claim for $50.00 for a damaged carpet and $50.00 for a rusted window.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord is entitled to recover any of the money charged by her workman/agent or for her own work or loss of time?

Background and Evidence

The rental unit is a large house that also contains a suite in the lower level. The tenants' rented the five bedroom house. The landlord occupied the suite.

The house has an attached garage with a door into the home.

The tenancy started April 1, 2015 and ended March 31, 2016. The tenants provided the landlord with a forwarding address in writing prior to March 31.

The monthly rent was $3500.00, due on the first of each month, in advance.

The landlord received and still holds a $1750.00 security deposit.

In June or early July the tenants reported a leaking sink. The landlord attended and repaired the leak. The tenants reported the leak was not fixed and asked the landlord to retain a professional. It appears the tenants reported leaks again at least twice.

During an attendance in July 2015, the landlord inspected the garburator and found a plastic spoon, a plastic bag and a metal spoon in the garburator drain. She warned the tenants that these items should no go through the garburator.

At some point around July 2015, the landlord developed the view that the tenants or at least Mr. C. was intimidating, harassing or hostile. As a result she hired Mr. K.J. to conduct a thorough inspection of the home. On July 22 he went through the home, finding some minor issues, that he brought to the tenants' attention and which, he says, they corrected.

Mr. K.J. in one of his invoices also described his job as "management of harassment towards landlord and intimidation to have items outside of contract agreement."

During his visit on July 22, Mr. K.J. applied a lock to the bi-fold doors to the 50 square foot room housing the gas furnace and gas water heater (the "furnace room").

During his visit Mr. K.J. noted that the en-suite toilet was continuously running. He determined that it was an old toilet and the flapper and seal were not worth replacing. He recommended to the landlord that a new toilet be installed. He shut off the water to the toilet, rendering it unusable. The landlord says the tenants demanded an "emergency repair" of the toilet, namely that it be replaced immediately. She says there was not need to do so because they had a second toilet they could use.

The replacement was, however, installed within a day or two by Mr. K.J. He billed the landlord $672.00 for his work July 21 to July 24.

It would appear from Mr. K.J.'s next invoice, rendered in February 2016, that the landlord retained him again in August 2015. According to the invoice, he was retained to,

> create a response to Tenants [*sic*] registered demand letter for window screens, cat to be on schedule and continued harassment by text. Preparation for meeting to resolve issues and advise tenant again of common area; not allowed to access furnace area.

It appears that the landlord had a cat. The tenant Ms. J. was fearful of cats. The tenants could not open unscreened windows without the landlord's cat getting in. Thus the tenants requested screens and that the cat be on a schedule so they could go outside.

Mr. K.J. attended the rental unit again in January 2016. The landlord had tasked him to set up a meeting with the tenants to resolve issues regarding window screens, the landlord's cat and the use of "common areas." Apparently the tenants wanted access to the furnace room.

Mr. K.J. testifies that the meeting "did not go so well." He returned again on January 22 for an inspection and found nothing wrong.

On February 15 he conducted another inspection for the landlord and again found nothing wrong.

He rendered a bill to the landlord dated February 18 for the August to February work, in the amount of $656.00.

He notes that the tenants kept the rental unit "immaculate" but for the fact that they had many plastic containers stacked in various rooms and the master bedroom was completely full of racks of clothes.

The landlord testifies that she had the furnace room locked up because she was worried the tenants would store things in it, creating a danger.

She also points to a complaint from the tenants that she had been in the garage without permission. Though the tenants were storing various belongings in the garage and the

landlord parked her car on the street, she says she kept her gardening tools and some belongings in the garage and that it was a common area.

She says that on January 4, 2016 the tenants called to say that the gas provider, Fortis, needed access to the furnace room to check something. She is of the view that the tenants had asked for the Fortis representative to attend without letting her know.

As the result of having to go unlock the furnace room, she missed her ride to work that day. Her "invoice" for that attendance indicates she lost three hours of work. She claims two hours compensation at $40.00 per hour.

The tenant Mr. C. testified that the Fortis man came to change a valve. He says the landlord was home and all she needed to do was open the door.

He says the sink was leaking even during the previous tenancy and refers to a text from the landlord stating the same.

He acknowledges that perhaps his nephew had made a mistake and put improper items in the garburator. He says that it worked fine after the landlord cleaned it out on July 9.

Analysis

From the evidence adduced at this hearing I am left with the impression that the parties were under differing opinions about what was being rented and that uncertainty was a central cause of the friction between them.

Needless to say, a tenancy grants to a tenant the right to exclusive possession of the rental unit, subject only to the landlord's limited right of entry on notice.

The rental unit is normally taken to be the living area and contiguous rooms. A landlord who does not intend to let out any particular room that is contiguous usually makes it clear in the tenancy agreement or by having that room locked or otherwise closed off from the area being rented.

In this case the tenants' four bedroom main area in the upper portion of the home was directly connected by stairs to an internal, ground floor landing. There was a door at the top of the stairs but it did not have a lock. From the landing the tenants could enter the furnace room or go into the attached double garage.

There was also a door on the landing giving entry to the landlord's suite, however, that door was locked by a deadbolt apparatus and only the landlord had the key.

Given that layout, it would not be unreasonable for a tenant to assume that the occupant of the suite, whether she is the owner of the property or not, would stay behind the locked door.

It is clear the tenants were entitled to use the garage to some degree. They store things there and likely could have parked cars there. The landlord parked on the street. She did not reserve to herself any parking space in the double garage.

As part of the tenancy agreement, the tenants were responsible for having the gas bill in their name. They were the clients of Fortis, the gas provider.

In my view, a tenant renting premises with this layout on these terms could fairly assume that the furnace room and garage were part of the premises being rented.

Equally fairly, the landlord, the owner of the home; her home, could not be faulted for considering those areas to be common areas over which she retained some control.

In so far as the bills from Mr. K.J. are concerned, those parts of the bills relating to repairs are for repairs that appear to have been the normal responsibility of the landlord. If a repair, like the toilet replacement, was done expeditiously at the request of the tenants, then that is a request the landlord acceded to at the time. She cannot now come back and try to charge the tenants money for it.

In regard to the services provided by Mr. K.J. as a mediator or advisor, having regard to what has been said about the vagueness of the description of what was being rented, it was not unfair or improper of the tenants to raise these issues and demand the landlord respect their right to exclusive possession over the furnace room or even the garage.

It was not part of the tenancy that the tenants share a cat with the landlord. It was not unfair for the tenants, finding themselves to be living with the landlord's cat, to demand some protection like window screens or some accommodation from the landlord about when the cat would be at large.

In result, I can find no just ground for the tenants to have to pay for the mediation services or advice that the landlord paid Mr. K.J. for.

In regard to Mr. K.J.'s inspection services I find that for the same reasons, the tenants cannot be made to pay for them. A landlord is free to conduct timely inspections of a rental unit. Indeed landlords are well advised to do so. A landlord cannot charge for conducting an inspection. It is part of the business of being a landlord.

I find no convincing evidence that the tenants were somehow threating the landlord so as to justify her in having an agent conduct inspections for her. From the limited messaging referred to by the parties during this hearing, I am left with the impression of tenants merely demanding what they considered to be entitled to. Frankly, in the circumstances of this case those demands were not unreasonable.

In regard to the delay caused by the attendance of the Fortis person, the evidence does not satisfactorily indicate whether he was there at his own instigation or whether he was summoned by the tenants.

In any event, the landlord did not explain why she could not simply have ignored him and gone to work or just unlock the bi-fold door to the furnace room. Those would appear to have been her obvious choices. I must dismiss this item of the landlord's claim.

I find that the tenants or someone permitted on the property misused the garburator by placing plastic and metal objects in it. The landlord had to repair it. Her charge of $75.00 is fair.

At the hearing the parties also argued about the landlord's mail arriving in the tenants' mailbox. That issue is not relevant to the claims set out in the application.

The landlord indicated during her evidence that she repaired things that did not require repair. It is not clear what she meant but I would state that if she chose to repair something then that is a decision she made at the time and she cannot, much later, seek compensation for it.

Conclusion

The landlord will have to pay Mr. K.J.'s invoices on her own. I dismiss her claim for recovery of any amount from either invoice. I dismiss her claim for loss of work.

I grant the landlord a monetary award of $50.00 for the office carpet and $50.00 for the damaged window blind.

I award the landlord $75.00 for repairing the garburator.

As each side has had some success, I offset their filing fees against each other.

The landlord is entitled to a total award of $175.00. I authorize her to deduct that amount from the $1750.00 security deposit she holds. The tenants will have a monetary order against the landlord for the remainder of $1575.00.

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: August 26, 2016

Residential Tenancy Branch