Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction
This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on January 18, 2016 for:

1. A Monetary Order for compensation - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for unpaid rent - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on August 16, 2016 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters
The Landlord states that the usb stick provided by the Tenants does not work and that there are no details of the contents of the device. The Tenant states that the device contains a video of an incident between the Landlord and the upper tenants. The Tenant states that it is relevant evidence in relation to the character of the Landlord. The Landlord states that they have seen this video before and have no objection to it being considered.

Issue(s) to be Decided
Is the Landlord entitled to the monetary amounts claimed?
Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence
The Parties signed a written tenancy agreement. The tenancy started on September 1, 2013 for a fixed term to expire August 31, 2014. At the end of the term the Tenant was required to move out of the unit. Rent of $1,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of $600.00 and a pet deposit of $300.00.

The tenancy agreement provides that the Tenants pay 40% of the utilities, that storage is provided and that there is parking for one motorbike. The Parties mutually conducted a move-in inspection and a condition report was completed. The Tenant never provided the Landlord with their forwarding address.

Landlord Claims

The Landlord states that they discovered the unit abandoned on August 16, 2014. The Landlord states that although they had the Tenant's phone number no attempt was made to offer a move-out inspection. The Landlord did not complete a move-out inspection. The Landlord provided photos of the unit.

The Tenant states that after telling the Landlord that the Tenant would not continue the tenancy after the end of the fixed term the Landlord sent an email to the Tenant informing the Tenant that the Landlord would not enter into a further agreement with the Tenant. The Tenant states that the Landlord immediately advertised the unit with daily showings without informing the Tenant or obtaining the Tenant's consent.

The Landlord states that the Tenant did not clean anything and claims $2,700.00 for the Landlord's labour to clean the 1,280 square foot, 2 bedroom and 1 bathroom unit. The Landlord states that the cleaning took 20 hours including the time to wash the walls twice. The Landlord states that her costs were charged at $25.00 per hour. The Landlord states that in her experience it takes a lot of effort to get rid of smoke smell from the walls. The Landlord states that the unit smelled of marihuana and cigarette smoke. The Landlord states that she never smelled any smoke in the unit during the tenancy but that the Landlord was not familiar with the smell of marihuana. The Landlord states that when the unit was being shown to prospective tenants they found a dirty ashtray and the persons seeing the unit informed the Landlord that they smelled marihuana. The Landlord states that the smell could not have been coming from the upper unit as the tenants were gone and the unit had been cleaned by this time. The Landlord provided photos on a cd.

The Tenant states that they moved out of the unit on August 11, 2014, did not clean the unit or carpet, left the keys inside the unit, did not secure the unit upon their departure and did not inform the Landlord that they were gone. The Tenant states that no smoking was allowed in the unit by the Tenant who is a non-smoker and that her son, the other Tenant, would smoke occasionally outside the unit. The Tenant states that the upper tenants smoked cigarettes and marihuana during their tenancy and that the Tenants had to cover the vents between the units and burn incense to deal with the smell of the smoke. The Tenant argues that the Landlord's costs are excessive and provides estimates of cleaning costs for a regular move-out cleaning.

The Landlord states that the Tenants left the carpet soiled, snagged and stained. The Landlord states that the carpet is 13 years old. The Landlord states that the carpet had to be removed due to the Tenant's failure to leave the carpet reasonably clean and undamaged. The Landlord provided photos of the carpet and claims $3,800.00.

The Landlord states that when removing the carpet in the unit they were subjected to multiple flea bites. The Landlord provides photos and states that the bites lasted for 2-3 weeks and claims $4,990.00 for pain and suffering. The Landlord provided no medical reports. The Tenant states that their pets were treated for fleas and provides a vet report. The Tenant states that there were never any fleas in the unit during the tenancy and that the pets slept with the Tenant and no fleas bit the Tenant.

The Landlord states that because the unit was in such bad shape when they were showing the unit that they had to provide an incentive in order to obtain new tenants for September 1, 2014. The Landlord states that they included the cost of utilities for the next tenancy and as a result lost rental income. The Landlord claims $1,200.00. The Tenant states that the Landlord could not have lost rental income based on anything done by the Tenant as the new tenancy agreement was signed on July 18, 2014 before the tenancy even ended.

The Landlord claims $90.80 for unpaid utilities. No invoices or bills were provided from any of the utility companies. There is no dispute that the upper tenants were directly billed from the utility companies during the tenancy and that the Tenant paid the upper tenants for their share of usage. The Tenant submits that this occurred due to concerns that the Landlord was not providing bills with her claims for the utility costs at the beginning of the tenancy. The Landlord states that the utilities were placed in the Landlord's name after the upper tenants moved out.

The Landlord states that the Tenants left garbage in the yard, including tires, and that a handyman was hired to remove and dispose of the garbage. The Landlord claims $100.00. The Tenant denies leaving any garbage or tires at the unit and states that the tires that the Landlord claims to have been removed are still present. The Tenant denies that the tires belonged to the Tenants and states that the photo of the tires provided as evidence by the Tenant were taken on August 12, 2016. The Landlord states that the tires appeared to have a 16" rim and agrees that the Tenants' cars have different sized rims.

The Landlord states that maybe emotions contributed to the amounts being claimed by the Landlord but that she was on her own in dealing with the tenancy while taking care of two small children. The Landlord states that she had to figure thins our on her own and expects that not all the claims will be successful.

Tenant Claims

The Tenant states that the Landlord constantly harassed the Tenant, primarily in July 2014 while the Landlord was working on the upper unit by telling the Tenant what she could or could not do. The Tenant states that during the tenancy there were at a minimum 12 confrontations by the Landlord with the majority occurring in July 2014.

The Tenant states that every time she went outside the Landlord would confront the Tenant with accusations. The Tenant states that the Landlord would speak to the Tenant in a loud, contemptuous tone of voice, would be rude and would put down the Tenant or her animals. The

Tenant states that the Landlord was difficult and demanding. The Tenant states that the Landlord lies and is inconsiderate, contemptuous and unreasonable.

The Tenant states that the Landlord told the Tenant she could not park her motor bike in the carport and threatened to remove the bike with a bailiff even though the tenancy agreement provides for the bike parking. The Tenant states that the Landlord once told the Tenant that she could not use water to wash her bike outside. The Tenant states that the Landlord once drenched the Tenant's cat with water while hosing the deck down at the same time that the cat was tied to the deck. The Tenant states that the Landlord told the Tenant that the cat was not seen but then started to harass the Tenant about where the Tenants were storing their articles outside. The Tenant states that the Landlord was making loud noise and playing loud music during their work on the upper unit. The Tenant points to the Landlord's behavior during the Landlord's dispute with the upper tenants as evidence of the Landlord's character.

The Tenant states that her mental state was greatly disturbed by the behavior of the Landlord. The Tenant states that the intrusions were so constant that the Tenant avoided being home whenever the Landlord was there. The Tenant states that she mostly only slept at the unit during July 2014.

The Tenant states that the Landlord sent an email to apology for her behavior on July 7, 2014. The Tenant states that when the Tenant objected to the daily showing of the unit to prospective tenants, the Landlord did not reduce the number of showing and would only inform the Tenant by email of the times. The Tenant states that sometimes she would not get to the emails until the day of the showing or later. The Tenant states that the Landlord would just show up so the Tenants just allowed the showings.

The Tenant claims $3,900.00 for harassment and $8,000.00 for loss of quiet enjoyment.

The Landlord denies being loud and states the Tenant never complained about any noise. The Landlord states that other than once asking for rent in July there were no interactions at all between the Landlord and the Tenant. The Landlord states that their complaints about the Tenant's storage were put in writing and that the Landlord only once complained to the Tenant in person. The Landlord states that the incident with the cat was a misunderstanding. The Tenant confirms that any notices from the Landlord during this month were sent by email.

The Landlord states that they only attending the unit for showings twice and that these were booked with the Tenant's notice, that the work on the upper unit only occurred between 9 and 5 and that they do not recall seeing the Tenant on twelve occasions. The Landlord states that the amounts being claimed by the Tenant are excessive and taken together total more than the rent paid over the term of the tenancy. The Landlord states that the tenancy was stressful for them as well and acknowledged that mistakes were made.

The Tenant states that at move-in they unloaded their belongings into the car port and left them there while they returned the rental truck. The Tenant states that upon return they discovered that a tree had been cut down with branches and blocks of the tree blocking the sidewalk to the back entrance. The Tenant states that the other side had to be used to get to the back entrance but that this side of the hose was only ground with no concrete. The Tenant states that as a result she had to hire a person to carry her belongings into the unit. The Tenant claims $300.00 for this cost.

The Landlord states that they did not know that the arborist would start cutting the tree on the Tenant's move-in day and that as soon as they discovered this they cleared the other side of the house for the Tenant to bring her belongings through. The Landlord states that the Tenant's submissions indicate that her truck and movers were cancelled for the move so the Tenant had to incur that cost regardless of the tree blocking the one entrance to the back. The Landlord states that the side used by the Tenant was no more difficult to maneuver than the side with the tree down.

The Tenant states that the tenancy agreement provides storage and at the time of signing of the tenancy agreement the Landlord told them that storage would be available in the back shed. The Tenant states that the Landlord then denied them use of the shed so they had to store their belongings under the deck and on the side of the house. The Tenant states that as a result some of her belongings were damaged. The Tenant claims a reduction in the value paid for the unit in the amount of $150.00 per month. The Landlord states that the size of the shed was not suitable for the Tenant's belongings as the shed was only 5ft x 5ft. The Landlord states that when the unit was shown and the lease was negotiated the Tenants were told that the shed was only for the Landlord's use and that the storage referred to in the tenancy agreement was in relation to the inside storage area and the furnace room. The Landlord states that the Tenant was informed of this storage and that no outside storage was provided. The Landlord states that the move-in report specifically notes the under stairs storage.

The Tenant states that from July 19 to 24, 2014 there was no hot water as the gas utility had been disconnected. The Tenant states that the Landlord was not informed however the Landlord's handyman was informed on the first day. The Tenant claims $39.80 for each of the six days. The Landlord states that they were informed on July 19, 2014 that the upper tenants had discontinued the utilities and that gas was placed in the Landlord's name the same day. The Landlord states that the gas was connected by the gas company as soon as possible.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, 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. Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results.

The Landlords were fully aware that the Tenant would be moving out of the unit on or before the end of the fixed term, refused to enter into another term, showed the unit to prospective tenants, entered into a tenancy agreement with new tenants by July 18, 2015 and had the Tenant's phone contact information. Based on this evidence I do not consider that the Tenant failed to give notice to end the tenancy or to have to have abandoned the premises. I do find that the Tenant left the unit without returning the keys as required by the Act and leaving the unit unsecured however the Landlord has not claimed any damages that occurred as a result of the unit being unsecured with the keys inside.

I found the Tenant's evidence in relation to the state of the unit at move-out to be straightforward and truthful. I also accept the Tenant's persuasive evidence that smoking was not allowed in the unit. That it itself however does not establish that the son did not at least on occasion smoke something in the unit . Given the undisputed evidence that the upper tenants smoked in the unit however it is very conceivable that the covering of the vents and incense was due to the smoke coming down. I do not find the ashtray to be of much help in the circumstances. As there is nothing to support the discoloration of the walls due to smoke damage, I find that the Landlord has not substantiated on a balance of probabilities that the walls were damaged by smoke to the extent claimed or that the Tenants were the sole cause of the smell of smoke in the lower unit. As there is no invoice detailing the hours spent by the Landlord on any of the cleaning tasks, including wall washing, and considering that the overall amount is excessive in comparison to the Tenant's credible evidence of usual move-out clearing costs, but given that the Tenants clearly breached the Act by not leaving the unit clean, I find that the Landlord is only entitled to reasonable compensation of **$300.00** for the costs to clean the unit.

Policy Guideline #40 indicates that the useful life of a carpet is 10 years. Given the photos of the carpet, considering that the carpets were marked as damaged at move-in and given the age of the carpet I find that there was no longer any useful life left to the carpet and therefore no value was lost due to any action or inaction of the Tenant. I dismiss the claims for the carpets.

Although I accept the Tenant's evidence that their pets were treated for fleas during the tenancy it is undisputed that the Tenant did not clean the carpet before leaving. Given the photos of the bites I accept that the Landlord was bitten by fleas that remained in the carpet after the pets' departure and that this was caused by the Tenant's failure to clean the carpet. Although I accept that the bites were from fleas, given that the Landlord did not seek any medical treatment, I cannot find that the Landlord sustained an injury as great claimed. As result I find that the Landlord has not substantiated its claim for $4,990.00 and I dismiss it.

As the tenancy was not over before the Landlord signed the next tenancy agreement, I find that the Landlord has not shown that the reduction in rent was caused by any breach of the Act by the Tenants and I dismiss the claim for lost rental income.

Given the lack of utility bills I dismiss the Landlord claim for utility costs.

Given the lack of a move-out condition report or invoice from the handyman, considering the Tenant's plausible evidence that no garbage was left, and the evidence that the tires were not the size used for the Tenants' cars, I find that the Landlord has provided insufficient evidence to substantiate on a balance of probabilities that the Tenant left the garbage or that the Landlord incurred a cost for its removal. I dismiss the claim for the removal of garbage.

Section 39 of the Act provides that despite any other provision of the Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both. Based on the undisputed evidence that the Tenants never provided their forwarding address to the Landlords I find that the Landlords are entitled to keep the combined security and per deposit plus zero interest of **$900.00**.

I accept the undisputed evidence that the Tenants' original movers cancelled and find that the Tenant likely required the mover's help regardless of the move into the unit from either side of the building. As there was no evidence on the difference in time for unloading between the sides I find that the Tenant has not substantiated that the Landlord did anything to cause the cost or an increased cost for moving. I dismiss the claim for $300.00.

Based on the undisputed evidence that the Tenant was without hot water for 5 days and considering that the Landlord did not have the gas started any sooner that 4 days after finding out, I find that the Landlord acted slowly and negligently in providing the Tenant with hot water. I find that the Tenant is entitled to compensation however the amount claimed is excessive in relation to the rent paid. I find therefore that the Tenant is only entitled to a nominal amount of **$100.00** for this loss.

Although the Landlord denies that the Tenant were told they could have use of the shed when they signed the tenancy agreement, given the lack of specifics on the tenancy agreement I find it more likely that the Landlord said nothing about the use of the outside shed and the Tenant's assumed they had use of the outside shed. As the Landlord holds the pen in writing the tenancy agreement I find in favour of the Tenants and accept that the Tenant's agreed to the rental amount that would include use of the outdoor shed. However since there is no evidence of any loss of valuables from being placed outside and as the Tenants did not provide any evidence of costs associated with storing belongings elsewhere I find that the Tenants have only substantiated a loss of convenience during the tenancy. For this and considering the length of the tenancy I find that the Tenant is entitled to a nominal sum of **$200.00**.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act. Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

There is no evidence that the Landlord ever entered the unit without the knowledge and permission of the Tenant and I therefore do not consider evidence of showing the unit to be a disturbance. Considering the evidence of the dispute between the upper tenants, the Landlord's admission of being under pressure and the Tenant's persuasive evidence I accept that the Landlord's behavior was difficult and that the Landlord acted in a condescending, rude, and demanding manner toward the Tenant. However I do not consider this disrespectful behavior alone to be evidence of unreasonable disturbance and any adverse effect on the Tenant's mental state is not supported by any psychological or medical report. Given the Tenant's evidence that she was mostly gone during the day throughout July 2014 I find the Tenant's description of the interaction times as "constant" to be exaggerated. I therefore accept the Landlord's more credible evidence of very limited interaction, and find that the Tenant has not, on a balance of probabilities, established that the Landlord engaged in a course of behavior to harass the Tenant or breached the Tenant's right to quiet enjoyment. I therefore dismiss the claims for breach of quiet enjoyment and harassment.

As the application of both Parties had merit I decline to award the respective filing fees.

As the Landlord already has the combined pet and security deposit of $900.00 I deduct the Tenant's entitlement of $300.00 from the Landlord's remaining entitlement of $300.00 leaving a zero balance owed to either Party.

Conclusion

I order that the Landlord retain the security and pet deposit plus zero interest of $900.00.

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: September 09, 2016

Residential Tenancy Branch