Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid and/or loss of rent and authorization to retain the security deposit. One landlord appeared at the hearing and confirmed that she was representing both Landlords. One tenant appeared at the hearing and confirmed that he was representing all co-tenants.

Preliminary and Procedural Matters

The tenants had also applied for a Monetary Order against the landlords for compensation for a storage facility and return of the security deposit and that file was before me; however, the Notice of Hearing indicated the tenants' application was set to be heard on January 27, 2016. Interestingly, the Branch records reflected that the two applications had been crossed and were set to be heard on August 30, 2016. The tenant stated that he understood that the files may be joined. Both parties were in agreement that the same facts would have to be heard and decided upon consented to joining the two applications together and heard on this date. Accordingly, I ordered the application be joined and both applications were heard by me on this date. Having heard and decided the tenant's application on this date, the hearing set for January 27, 2016 is cancelled.

The tenants indicated they were seeking a Monetary Order in the amount of $900.00 on the application for Dispute Resolution but completed a Monetary Order document indicating they were seeking $900.00 for return of the security deposit plus $493.03 as compensation for a storage facility. The landlord confirmed that she understood the tenants were seeking the sum of $1,393.03 and I amended the tenants' application accordingly.

With consent of both parties, the tenants' names were amended on the landlord's application to reflect the correct spelling.

I noted that the landlords had named and served two co-tenants with the landlord's hearing package by registered mail; whereas, the tenants identified four co-tenants on their application. Should the landlords succeed in their claims, any Monetary Order issued in favour of the landlords shall name only the two tenants served with the landlords' application.

Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitled to recover unpaid and/or loss of rent from the tenants for the month of January 2016?
2. Have the tenants established an entitlement to recover the cost of a storage locker rented in January 2016 from the landlords?
3. Disposition of the security deposit.

Background and Evidence

The parties provided consistent testimony that the tenants viewed the property on November 28 or 29, 2015 and paid a $900.00 security deposit to the landlord on November 30, 2015 or December 1, 2015 for a tenancy set to commence January 1, 2016 for the monthly rent of $1,800.00.

On December 29 or 30th, 2015 the tenants brought some of their personal possessions to the property with the intention of storing them until the tenancy started. The landlord submitted that the tenant's possessions were put in the basement; whereas, the tenant stated that the possessions were left in the yard and someone else put them in the basement.

On December 31, 2015 the parties met at the residential property. The landlord expected that the parties would sign the written tenancy agreement and complete the move-in inspection but the tenants informed the landlord that they decided not to rent or move into the rental unit. The tenancy agreement was not signed and the tenants requested return of the security deposit.

The landlord submitted that an advertisement to re-rent the unit was placed on December 31, 2015 and the unit was rented to replacement tenants on February 1, 2016. The landlords seek to recover the unpaid and/or loss of rent in the amount of $1,800.00 for the month of January 2016 plus a late fee of $25.00. The tenants were not agreeable to paying rent for January 2016 as the tenants were of the position the rental unit was not suitable for occupation.

The tenants proceeded to store their possession in a storage locker for a minimum period of one month even though the tenants found alternative accommodation on January 15, 2016. The tenants seek recovery of the cos of storage in the amount of $493.03, plus return of the security deposit.

The tenant sent the landlord a forwarding address by way of a letter dated January 8, 2016. The tenant also sent a text message to the landlord regarding the forwarding address on January 15, 2016. The landlords filed their application on January 20, 2016.

The reasons the tenants did not take possession of the rental unit was the primary crux of this dispute. According to the landlord the tenants informed her that they were not moving in because the unit did not suit their needs. According to the tenant the tenants had heard from the outgoing tenant that the unit had mould that the landlords would not rectify. The landlord acknowledged that the tenants asked about mould to which she responded there was no issue with mould. The landlord claims that the outgoing tenant was angry with the landlords after she was evicted for cause and was making untrue statements. The tenant claimed that the outgoing tenant showed him a receipt for mould treatment. The landlord countered by stating that the tenants that took possession on February 1, 2016 are still occupying the rental unit and have not raised issues with respect to the mould or otherwise.

The tenants also included photographs they took in the basement of the rental unit. Included are photographs of the utility room and a dark stained caulking can be seen at the intersection of the wall and floor; a dirty ledge in the basement; and a light fixture no attached to the ceiling in the basement.

The landlord stated that the landlords had been focused on painting and cleaning the upper main level of the rental unit and the tenant took pictures on December 29 or 30, 2015 before the landlords had finished cleaning and painting the rental unit. Further, the photographs are of the utility room which houses the furnace, hot water tank and utility sink.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

During the hearing the tenant pointed out that the parties did not sign a written tenancy agreement and did not move in to the rental unit. However, it is not necessary for a written contract to be signed and a tenant to take possession in order to find a tenant liable to fulfill the terms of tenancy agreed upon. I make this finding considering sections 1, 16 and 20 of the Act which I have described below.

Section 1 of the Act defines a tenancy agreement to include tenancy agreements entered into in writing, orally, or by way of implied or express agreement. Section 16 of the Act provides that "the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit." Section 20(c) of the Act provides that a landlord cannot require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

In this case, the tenants had viewed the property, were informed that the rent for the unit was $1,800.00 per month starting January 1, 2016, and paid a security deposit of $900.00 on November 30, 2015 or December 1, 2015. In paying the security deposit and the landlord's acceptance of the deposit I find that signified a meeting of the minds on November 30, 2015 or December 1, 2015 that the tenants agreed to rent the unit and the landlord agreed to rent the unit to the tenants effective January 1, 2016 in exchange for monthly rent of $1,800.00. Accordingly, as of November 30, 2015 or December 1, 2015 I find the parties became obligated and bound to fulfill that agreement.

Having found the parties became bound to fulfill their tenancy agreement, I find the tenants were obligated to pay rent, as required under section 26 of the Act, until such time the tenancy ended in a manner that complies with the Act.

Section 26 of the Act provides that a tenant is required to pay rent when due in accordance with the tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has the legal right to withhold rent. The Act provides very limited and specific circumstances as to when a tenant may legally withhold rent, such as: overpayment of a security or pet damage deposit, overpaid rent, incurring costs for an emergency repair, or having the authorization of an Arbitrator. I was not presented evidence to suggest one of these circumstances existed.

As for ending the tenancy, where parties have a month-to-month tenancy agreement, a tenant is required to give at least one full month of written notice. Where parties have a fixed term tenancy agreement the tenant is not permitted to end the tenancy before the expiry date unless done so in a manner that complies with section 45(3) of the Act, or with the authorization or order of an Arbitrator.

Section 45(3) of the Act permits a tenant in a fixed term tenancy to end the tenancy early if the landlord has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable amount of time after written notice to do so.

The tenants in this case did not give the landlord any written notice to end the tenancy or of a breach. Nor, did the tenants have the authorization of an Arbitrator to end the tenancy. Accordingly, I find the tenants did not end the tenancy in a manner that complies with the Act, whether the tenancy was a month to month or a fixed term.

I proceed to give consideration to whether the tenants established a basis for repudiating the tenancy agreement due to the condition of the rental unit. Under section 32 of the Act, a landlord is required to provide a rental unit that meets health and safety and building laws, and is suitable for occupation having regard for the age, character and location of the rental unit. The tenant submitted that the rental unit was not suitable for occupation and the majority of the tenant's submissions focused on the presence of mould in the rental unit. I see dark discolouration on caulking on the floor of utility room in the photographs provided by the tenant. I accept that the utility room, which includes a utility sink, is likely prone to moisture and the discolouration may be mould. However, I am uncertain as to whether that discolouration was present when the tenancy was set to commence on January 1, 2016 as the tenants took the pictures in late December 2015. Nevertheless, even if mould were present it appears to be limited to a small area

of a room that has a utilitarian purpose and the remedy would appear to be rather basic, such as wiping the area with a mould killing solution or removing the caulking and reapplying new caulking. The tenant submitted that the outgoing tenant showed him a receipt for mould treatment; however, I find that submission is not sufficient. It is important to consider that mould may be the result of actions of the occupant who may not provide adequate heat or ventilation to the unit, or indicative of a failure in the building. I was not provided enough information to demonstrate the previous tenant had a mould problem due to a problem with the building. The landlord had also denied that there was an issue with mould in the building and that the subsequent tenants have not had an issue with mould. All things considered, I find the tenants did not satisfy me that the condition of the rental unit was such that it was not suitable for occupation and that repudiation of the tenancy agreement was the warranted in the circumstances.

Given the tenants' very last minute notice of their intention to repudiate the agreement, which I have found to be without sufficient merit, and their lack of proper notice to end tenancy, I find the tenants violated the Act and that violation resulted in losses by the landlords. I find the landlords' efforts to re-rent and secure replacement tenants for February 1, 2016 to be reasonable. Accordingly, I grant the landlords' request to recover unpaid and/or loss of rent for the month of January 2016 and I dismiss the tenants' request to recover storage costs from the landlords.

The landlords are further awarded recovery of the $100.00 filing fee paid for their application.

I make no award to the landlords for a late fee as section 7 of the Residential Tenancy Regulations provide that in order to charge a late fee the tenancy agreement must contain such a term. The landlords did not have a written tenancy agreement to show the parties agreed to a late fee clause and I did not hear that such an agreement was reached orally on November 30 or December 1, 2015.

The landlords are authorized to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlords.

In keeping with the above findings and awards, the landlords are provided a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Unpaid and/or loss of rent for January 2016	$1,800.00
Filing fee	100.00
Less: security deposit	(900.00)
Monetary Order	$1,000.00

Conclusion

The landlords are authorized to retain the tenants' security deposit and have been provided a Monetary Order for the balance of $1,000.00 to serve and enforce upon the tenants.

The tenants' application has been dismissed in its entirety.

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 28, 2016

Residential Tenancy Branch