Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, FF

Introduction

In the first application the tenants seek recovery of a $400.00 security deposit and the return of $300.00 paid pursuant to an alleged wrongful rent increase.

In the second application the landlord seeks damages for cleaning and waste removal from the premises after the tenants vacated.

All three 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 imposed an unlawful rent increase? Did the tenants leave the premises reasonably clean and waste and garbage free when they left? If not, then what damages did the landlord reasonably suffer as a consequence?

Background and Evidence

The rental unit is a one bedroom log cabin located on the landlord's semi-rural acreage. The landlord lives in a house on the same land.

The tenancy started in March 2015 on a month to month basis at a rent of $800.00. The tenants paid and the landlord still holds a $400.00 security deposit.

The rent included utilities like heat and water.

There is no written tenancy agreement. The landlord did not conduct a move-in inspection nor prepare a report of the condition of the premises at the start of the tenancy. Neither did he do so at the end of the tenancy.

According to the tenants they paid the March rent but moved out about March 10.

The landlord says they did not pay the March rent and moved out at the end of February.

The tenants permitted Mr. C.F.'s father to reside at the premises. Mr. C.F. claims it was only for ten days a month. The landlord says the man was living there full time.

In or about December 2015 the landlord contacted the tenants about the third person, the father, living there and insisted the tenants pay an additional $100.00 per month because of it. The tenants paid the increased rent for the months of January and February. They say they paid it for March too, but the landlord disputes that.

The tenants brought their application on April 13, 2016. The landlord made his application on August 3.

The landlord testifies that he hired a cleaner to conduct a rather intense cleaning of the premises, including dusting of the entire interior, cleaning and oiling of all the log walls, vacuuming and shampooing of carpets because the house was "a mess." The fridge and stove required cleaning as did the bathroom. He says the cabin smelled of marijuana and had to be aired out for three days. He helped with the cleaning.

The landlord testifies that he made two runs to the local dump to dispose of the waste and items left by the tenants. He says they left a snowboard slide they had constructed and that he had to create an access to it through the snow and take it apart before disposing of it.

The tenant Ms. P. says she left the cabin clean and in "beautiful shape." She says the tenants did not use drugs; at least inside the cabin. She complains about a perpetual mouse problem and a lack of heat and water, though I note that the tenant's claim does not include a request for compensation for those problems.

She says that the side shed was full of tools “and stuff” when they arrived and so she shouldn’t have to pay for disposal of those items.

The tenant Mr. F. says the landlord agreed with the idea of his dad staying there for awhile. He says that the materials for the snowboard slide all came from the landlord’s property and so the tenants shouldn’t have to pay for their removal.

In response the landlord says his items in the side shed were not taken away; they don’t form part of the claim.

He disputes that the snowboard slide was construct with his material and describes three sheets of particle board the tenants brought and used in its construction. He says the lumber they used was brought onto the property by them from their workplace at a mill.

He says the Mr. C.F.’s father is an electrical contractor in the area and so was there daily.

He says he’s checked his receipt records and the last receipt he issued to the tenants was for February rent.

He admits he received the tenants’ application in mid-April but says it came by regular mail, not by registered mail as the tenants allege. He says he did not make his own application right away because he was unaware that he needed to do so.

Analysis

The Rent Increase

The landlord has put himself at a distinct disadvantage by not complying with the mandatory provisions imposed on him by the *Residential Tenancy Act* (the “*Act*”).

Section 13 of the *Act* requires that a landlord prepare every tenancy agreement in writing. If a landlord wishes to restrict the number of occupants in a rental unit, it is normally and best accomplished in the written agreement. Otherwise the landlord is left to argue based on a verbal agreement and s. 6 of the *Act* renders invalid any term if “the term is not expressed in a manner that clearly communicates the rights and obligations under it.” Frankly, an alleged verbal term in a tenancy agreement that is disputed has little chance of being found to be enforceable.

I find that the tenants were not restricted in the number of occupants in the rental unit but for the overriding requirement that the number of occupants not be unreasonable.

Having regard to the description of the premises, I agree with the landlord that a third occupant was simply not reasonably contemplated at the start of the tenancy and that three was more that the parties would have expected.

Considering that the utilities were included in rent and that a third person living in the rental unit would be an increased drain on those utilities, it would not be unreasonable for the landlord to negotiate with his tenants on that subject.

I'm satisfied that is what occurred here. However, the landlord has not followed the law and the rent increase is not enforceable. Had the landlord prepared a written tenancy agreement providing for additional charges for additional occupants, as is contemplated by s. 13(2)(f)(iv) of the *Act* then the tenants could have not complained; it would not be a "rent increase" and not subject to the statutory provisions relating to rent increases. Had he simply had the tenants agree to the increase in writing, the tenants could not now object.

The landlord did not do any of these things. As a result, his charge of an additional $100.00 per month rent cannot be maintained and the tenants are entitled to recover the overpayments.

The landlord admits to two months of overpayments: January and February 2016. The onus is on the tenants to prove payment of any more than these two months. They have not satisfied that onus by proving payment of March rent.

I therefore allow the tenants the amount of $200.00 for overpayment of rent under the landlord's unenforceable rent increase.

This decision is not meant to restrict or prohibit the landlord from a claim against the tenants for the increased cost of utilities incurred by the third occupant. He is free to bring that claim.

The Landlord's Cleaning Claim

Again, the landlord has put himself in a difficult position by not following the law. The *Act*, ss. 23 and 35 require that at the start and at the end of a tenancy the landlord conduct an inspection with the tenants to review the condition of the premises and that

on each occasion the landlord prepare a report of that condition. Rules are set out for notifying the tenants of the inspections and for circumstances where the tenants fail to attend for the inspections. The landlord has done neither inspection nor has he prepared any report.

I appreciate that the landlord is an older gentleman living in a rural area and may not be in the habit of spending time reading up on the law. Nevertheless, whether he is renting out a cabin in the country or the apartments in a 200 unit apartment block, the law applies.

The lack of inspection puts a tenant at a distinct disadvantage when a landlord later complains about the state of the premises. If the parties get together for an inspection they are able to acquire and keep evidence about any disputed item. Nowadays a simple digital photograph is easy to create, showing the condition of the premises. Similarly, a party can obtain the assistance of a witness or a professional to confirm or assess the need for cleaning or repair.

Tenants, such as the two involved in this dispute, who have not taken part in any inspection and who are charged with cleaning or repair of a rental unit after they have vacated, have lost the opportunity to collect and preserve that evidence.

Given the disagreement about the state of cleanliness and given the landlord's failure to corroborate any of his allegations either with a condition inspection report, photographs or otherwise, I find that the landlord has not shown on a balance of probabilities that the tenants failed in their statutory obligation to leave the premises reasonably clean and undamaged but for reasonable wear and tear.

I dismiss these items of the landlord's claim.

The Landlord's Disposal Claim

The landlord testifies that the tenants left a large amount of garbage outside the house and in an adjacent shed as well as the snowboard slide.

The tenants say that much in the shed were there already and that the materials for the slide came from the property and so needn't have been removed.

Given the fact that the tenants constructed what is not disputed to have been a snowboard slide of considerable size; including three sheets of particle board, and that they made no apparent effort to remove it or deconstruct it, I find that the they were not

generally disposed to clean up the yard. As well, there is no dispute that the landlord hauled tow ¾ ton truck loads of debris to the dump. I consider it unlikely that he would have gone to that effort had the tenants left the premises as they had found it. I accept the landlord's evidence about they state of the yard over the evidence of the tenants.

I accept the landlord's claimed thirteen hours of work on the outside of the house and consider his rate of $20.00 per hour to be reasonable. I award him $260.00 for general yard cleanup. I accept his evidence that the nearest dump that would take the debris was 25 km away. I consider it unlikely he would have chosen the dump site the tenants allege was only 6.2 km away, had he had the choice. $0.55 per kilometer for travel is a reasonable rate. I award the landlord $55.00 for two round trips. I award him $20.00 for dump fees for a total of $335.00.

The Tenants' Deposit

The tenants are, of course, entitled to be credited for the deposit money the landlord holds.

There is a question of whether they are entitled to a doubling of the deposit pursuant to s. 38 of the *Act*.

Section 38 provides that once a tenancy has ended and once the landlord receives the tenant's forwarding address in writing, then the landlord has a fifteen day window in which he must either repay the deposit money or make an application to keep it. If he fails to comply, the tenants are entitled to a doubling of the deposit money.

It is clear in this case that the tenancy ended in early March. Equally clear, the landlord received the tenants' application for dispute resolution, containing their forwarding address, in mid April. He did not comply with s. 38, waiting three and one half months to finally make his application against the deposit.

On the face of it the tenants are entitled to a doubling of the deposit money. However they did not request a doubling in their application. In such circumstances Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" provides that an arbitrator is to award the double even though not requested in an application unless it is specifically declined by the tenants at the hearing.

That question was put to the tenants at this hearing and they requested the doubling.

It follows that the tenants are entitled to return of their $400.00 security deposit, doubled to $800.00.

Conclusion

The tenants are entitled to recover $200.00 for rent overpayment, $800.00 for the doubled security deposit, plus recovery of the $100.00 filing fee: a total of $1100.00.

The landlord is entitled to an award of $335.00 for yard cleanup plus recovery of the $100.00 filing fee.

The tenants will have a monetary order against the landlord for the difference of $665.00.

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 01, 2016

Residential Tenancy Branch