Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNSD, MNDC, FF
Tenant: MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord; a witness for the landlord; and one of the tenants.

At the outset of the hearing I clarified with the tenants that despite the fact that there were 6 people living in the rental unit and that they had listed all 6 names on their Application for Dispute Resolution as tenants the tenancy agreement itself only lists 4 names as parties to the agreement. As a result, I amend the tenants' Application to exclude the two names not included in the tenancy agreement.

The landlord submitted that he served only one hearing package to the tenants at the address of one of the tenant's parents. The tenant at the hearing stated that all tenants were aware of the claim and he was representing everyone's interests.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; lost revenue; cleaning and junk removal; utilities; property management fees for finding new tenants; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

The issues to be decided are whether the tenants are entitled to a monetary order 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 *Act.*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on April 6, 2015 for a 1 year fixed term tenancy beginning on September 1, 2015 for a monthly rent of $3,000.00 due on the 1st of each month with a security deposit of $1,500.00 paid.

The tenancy agreement includes a clause that states: "Tenant shall also pay utility/hydro fee on the first day of the month if they received Landlord's utility/hydro fee notice." A separate clause states: "Utility fees (hydro and water bills). Tenant is responsible for paying the utility fees including hydro and water."

The tenants submit that a move in condition inspection was not completed. There is no submission from either party that a Condition Inspection Report was provided to the tenants after the start of the tenancy.

The landlord issued a 1 Month Notice to End Tenancy for Cause on November 30, 2015 with an effective vacancy date of December 31, 2015 citing the tenants had allowed an unreasonable number of occupants in the unit and the rental unit must be vacated to comply with a government order.

The parties agreed the tenants moved out of the rental unit on or before December 21, 2016. The tenant submitted that they provided the landlord with their forwarding address before they vacated the rental unit. The landlord could not remember when he received the tenants' forwarding address.

The landlord's written submission states that "We told them only 4 people will rent and sign the lease". The landlord submitted that a local bylaw enforcement officer visited the rental unit and found 6 people living in the rental unit contrary to local bylaws and ordered that at least 2 people move. He states that he wrote to the tenants telling them at least two occupants had to move out.

The tenants submitted several emails between themselves and the landlord beginning with one dated April 3, 2015 where they stated clearly that they intended to have 6 people living in the 6 bedroom rental unit. In other emails the landlord is advising the tenants to hide two of the beds from two of the rooms for when the bylaw enforcement officer returns and if asked to tell the officer that only 4 people live in the property.

The landlord seeks $597.00 for unpaid utilities including $317.00 for hydro for the period of December 2015 and $280.00 for water for the period of October to December 2015. The tenants agree they owe the landlord $471.57 for both utilities.

The landlord submitted that the tenants failed to clean the house, the appliances, the floor, a cabinet; left behind furniture and garbage; and damaged a light; floor; and door handles. The landlord has not submitted into evidence any documentation as to the condition of the rental unit, either at the start or end of the tenancy, or evidence of costs incurred as a result of the condition of the unit. The landlord seeks $200.00 for

cleaning; junk, furniture removal, and fixing damage. The tenants submitted they are willing to compensate the landlord $100.00 for cleaning and damage.

The landlord also seeks compensation in the amount of $200.00 as "property management fee/transportation cost" for looking for a new tenant. The landlord has provided no evidence that he has incurred such costs.

The landlord seeks lost revenue for the month of January 2016 in the amount of $1,600.00. In his written submission the landlord wrote: "We have done all we can to look for new tenant since early December, 2015, showing the house at least 20 times to be rent. But it is hard to find tenant in winter, we only get $1400 as rent for January 2016." [reproduced as written]. The landlord clarified in the hearing that only a portion of the unit was rented out and it still has not been rented to the full capacity.

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.

While I accept that the tenancy agreement signed by the parties stipulates that only the 4 signatories to the tenancy agreement were allowed in the tenancy I find that the landlord knew or should have known that the tenants intended to have 6 people living in the rental unit.

I make this finding in part because of the initial email sent to the landlord by the tenants when they were looking for a rental unit. In that email they clearly state that there are 6 people looking for a rental property. I also note the email refers the advertisement of the rental unit to be for a 6 bedroom house.

In addition, I find the later emails from the landlords to the tenants to refrain from using the second kitchen because it is "not legal technically" when the bylaw enforcement officer attends the property and to tell the officer that only 4 people live there, support the finding that the landlord was aware of 6 occupants in the rental unit.

As such, I find the landlord knowingly accepted a tenancy for more occupants than local bylaws allowed and that when they were caught and forced to end the tenancy by local bylaw enforcement the fault rested with the landlord.

In addition, the landlord has provided no evidence of any steps that were taken to attempt to re-rent the unit or the costs involved in "property management fees" or that

they entered into a new tenancy at a reduced rental amount for the month of January 2016.

As a result, I find the landlord has failed to establish the tenants should be responsible for property management fees or lost revenue for the month of January 2016. I dismiss this portion of the landlords claim.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy 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.

In the absence of any evidence from the landlord that any cleaning, junk and furniture removal, or repairs were required I would normally dismiss this portion of the landlord's claim as well. However, in the case before me the tenants agree to compensate the landlord $100.00. As such, I will grant the landlord $100.00.

Section 6(3) of the *Act* stipulates that a term in a tenancy agreement is not enforceable if the term is inconsistent with the Act or regulations; the term is unconscionable; or the term is not expressed in a manner that clearly communicates the rights and obligations under it. Section 3 of the Residential Tenancy Regulation states that a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

In regard to the landlord's claim for hydro and utilities I find that the terms in the tenancy agreement are vague and unclear. For example, one term states that the tenants only have to pay the hydro and water utility after the landlord provides them a bill – if the tenants were never provided a bill then they would not have to pay the bill. As another example, the clause on utilities specifies only water and hydro yet the landlord is claiming for sewer, garbage and recycling.

As a result, I would normally find that the term was not enforceable and would dismiss the portion of the landlord's claim for utilities. However, the tenants have again agreed that they owe the landlord $471.57 for utilities. As such, I will grant the landlord $471.57.

Section 44(1) of the *Act* states a tenancy ends if the tenant vacates or abandons the rental unit. Despite the effective date of the Notice to End Tenancy identified as December 31, 2016 I find the tenancy ended when the tenants vacated the property by December 21, 2016 in accordance with Section 44(1).

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day. The landlord must offer the tenant at least

2 opportunities with the second offered time being offered in writing and in the approved form.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Pursuant to Section 18 of the Residential Tenancy Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

Section 24 of the *Act* states that the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with the requirement to offer the tenant 2 opportunities to attend the inspection; if the landlord has provided 2 opportunities the landlord does not participate in the inspection; or complete the condition inspection report and give the tenant a copy as required under the Regulation.

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.

In the case before me, I find the landlord has failed to complete a move in condition inspection and a Condition Inspection Report as required under Section 23 of the *Act*. As a result and pursuant to Section 24, I find the landlord has extinguished their right to claim against the security deposit.

Section 38(4)(a) of the *Act* states a landlord may retain an amount from a security deposit or a pet damage deposit if the tenant, at the end of the tenancy, agrees in writing the landlord may retain that amount to pay a liability or obligation of the tenant. Section 38(5) states that the landlord's right to retain an amount under Section 38(4)(a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against the security deposit has been extinguished under Section 24(2).

As I have found the landlord extinguished their right to claim against the deposit, I find the landlord could not retain any amount from the deposit by agreement with the tenants was also extinguished.

In addition, I note that the landlord cannot recall how or when they received the forwarding address of the tenants. As such, I must rely on the tenant's submission that they provided it to the landlord prior to the end of the tenancy on December 21, 2015.

Based on all of the above, I find the tenancy ended and the landlord had received the tenants' forwarding address on or before December 21, 2015. As such, I find the landlord should have returned the deposit to the tenants no later than January 5, 2016 or file their Application to claim against the deposit.

As the landlord did not file their Application until January 15, 2016, I find the landlord has failed to comply with the requirements of Section 38(1) and the tenants are entitled to double the amount of the deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$621.57** comprised of $100.00 cleaning; $471.57 utilities owed; and $50.00 of the $100.00 fee paid by the landlord for this application as they were only partially successful.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **$3,100.00** comprised of $3,000.00 double the deposit and the $100.00 fee paid by the tenants for this application.

I grant a monetary order to the tenants in the amount of **$2,478.43**. This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 08, 2016

Residential Tenancy Branch