Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, MNR, MNDC, MNSD, FF
Tenants: MNDC, MNSD, 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 female landlord and an agent for the tenants.

Upon review of the landlord's Application for Dispute Resolution and Monetary Order Worksheet I noted with the landlord that the addition, into the total amount of the claim, of the $400.00 security deposit was made in error. While the landlord originally submitted an Application for $6,607.71, this amount included the addition of the security deposit.

As the security deposit is a deposit held against any liability or debt that the landlords may incur as a result of the tenancy, I find that the amount of a security deposit is not added to the amount of a claim but rather will be applied to the total amount of a successful claim to reduce any amounts owed to the landlords.

As a result, I have amended the landlords' Application for Dispute Resolution to exclude the addition of the security deposit and reduce the total claim from $6,607.71 to $6,207.71. I also note that if the landlords are successful in the whole or in part in their claim the security deposit may be applied to that portion of the claim owed.

In regard to the delay in the writing of this decision I note that Section 77 (1) (d) of the *Act* stipulates that a decision of the director must be given promptly and in any event within 30 days after the proceedings conclude. I also note that Section 77(2) states that

the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1) (d). I apologize for the delay in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for lost revenue; for damage to and cleaning of the rental unit; 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, 45, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to a monetary order for compensation for non-pecuniary damages; for the return of double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 38, 67, and 72 of the *Act.*

Background and Evidence

The landlords submitted into evidence a copy of a tenancy agreement signed by the parties on September 2, 2014 for a fixed term tenancy beginning on September 2, 2014 that later converted to a month to month tenancy for a monthly rent of $800.00 due on the 1st of each month with a security deposit of $400.00 paid.

The parties agree the tenants provided the landlord with an email dated November 1, 2016 with their notice to end the tenancy on November 30, 2016. The landlord seeks compensation for the loss of rent for the month of December 2016 as they submit the Notice does not comply with the requirements set out in the *Act*. The landlord testified that a new tenant moved into the rental unit on December 20, 2016.

The landlord submitted that she had attempted to contact the tenant by text message seeking to set a time to complete the move out inspection but that the tenant's never provided a response. The tenants submitted that they asked the landlord several times when she planned to complete the move out inspection but that the landlord did not reply.

The tenants also submit that the landlord never completed a move in inspection at the start of the tenancy agreement. They also stated that they had never seen a copy of the Condition Inspection Report (for either the move in or move out condition) until the

landlord sent it to them on January 7, 2017. I also note the landlords did not file their Application for Dispute Resolution seeking to retain the security deposit until June 6, 2017. The landlord stated that the tenants did a walk-through of the rental unit with the landlord's agent who gave them the key at the start of the tenancy.

The landlords also seek compensation for the costs to repair damage and clean the rental unit. In support of this claim the landlords have submitted the following evidence:

- A copy of a Condition Inspection Report dated September 1, 2014 completed on the day after the previous tenancy ended to record the condition of the unit at the end of that tenancy and signed only by the female landlord – it is not signed by the previous tenant;
- Several photographs that indicate, in handwriting, that they were taken in 2014;
- Several photographs that the landlord submits shows the damages caused by the tenants during this tenancy;
- A description from the landlord of how she found a tub plug was missing when she was cleaning the rental unit after these tenants moved out of the rental unit; that there was a problem with the toilet and they had it repaired in December 2016; and finally after additional problems with the toilet by the new tenant in April 2017. The landlord provided copies of the receipts for this work and a note from the plumber that indicates that when they broke open the toilet they found a tub plug blocking the drain;
- A copy of a Condition Inspection Report attributed to this tenancy dated September 2, 2014 for the move in inspection date and November 30, 2016 for the move out inspection date. I note that while this Report is signed by the female landlord at the start and end of the tenancy it is not signed by either one of the tenants at either the start or the end of the tenancy; and
- Copies of several invoices for work and supplies required to complete the repairs and cleaning.

The landlord has submitted that the carpet had been installed in 2009 and the rental unit was last painted in 2012.

The landlords seek the following compensation for cleaning and repairs:

Description	Amount
Vanity replacement including installation	$1,177.50
Supplies (cleaning; repairs and painting)	$312.28
Bi-fold door replacement	$314.87
Paint	$367.00
Labour (painting)	$561.20
Fridge and doorknob replacement	$238.35
Garbage removal labour	$200.00
Landfill fees	$68.80
Flooring replacement	$2,067.71
Total	$5,307.71

The tenants submit that they had provided their forwarding address to the landlords by text message on or about December 4, 2016 and that they returned all keys by December 9, 2016. They submit that they heard nothing else from the landlords until January 7, 2017 when they received a package from the landlord that included a copy of the Condition Inspection Report and a demand for payment for cleaning and repairs to the rental unit. The tenants seek return of double the amount of their security deposit as the landlords failed to either return the deposit or file a claim against the deposit.

The tenants acknowledged that they had not completed the cleaning of the rental unit on November 30, 2016 because while they were working on it at 5:00 a.m. the property manager told them to stop working until 8:00 a.m. as there had been noise complaints. The tenants acknowledge that by 4:00 p.m. they were still not done and they had left some items behind and some garbage.

However, they submit that there was a “small amount of stuff in the kitchen; a dresser without its drawers and some garbage that I couldn’t get to the landfill before it closed. There was a steel lockbox in the bedroom, and some other possessions left behind. The tenants submit the photographs taken by the landlord were taken before the tenants had moved out all of their belongings.

The tenants submitted that on December 2, 2016 the male landlord left a voice message for the female tenant, which she retrieved at work. The tenants provided a recording of the voice message. The male landlord made a number of statements including:

- The condition of the rental unit “will be causing a big issue for you”;
- That the landlords intend to “aggressively chase you down and ahh get retribution”;

- “We’ve got our two sons in [community], we’ve got friends there, we will pursue you”;
- That they have 25 years’ experience managing rental properties and they will take the tenants to Small Claim Court.

The tenants submit that at the time of this voice message the female tenant was pregnant and that she had a panic attack at work after the call. They also submit that for some time afterwards she would jump at the sound of their door bell and suffered from ongoing stress. The tenants submit their child was born earlier than expected at Children’s Hospital.

The tenants confirmed they did not report the voice message to police. They also submitted a “transcript” from several text messages between the tenants and both landlords including a response to the male tenant’s text on December 4, 2016 providing their forwarding address and several messages on December 9, 2016 regarding the return of an access fob. There was no mention of the voice message in any of this communication.

The female landlord acknowledged in the hearing that the message was inappropriate.

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.

Section 45(1) of the *Act* states a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) states if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after

the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. Section 45(4) stipulates a notice to end a tenancy given under this section must comply with section 52.

At the time the tenants provided their Notice to End the tenancy I find the tenancy was a periodic (month to month) tenancy. As such, I find the tenants were required to give notice to the landlords of their intention to end the tenancy in accordance with either Section 45(1) or 45(3). As there is no evidence before me that the landlord had breached a material term of the tenancy at the time the tenants gave their Notice, I find the Notice must therefore comply with Section 45(1).

As rent, according to the tenancy agreement, was due on the 1st of each month I find that in order for a Notice to End Tenancy provided by the tenants to be effective on November 30, 2016 the latest the notice, in writing, must have been received by the landlord was October 31, 2016 to be compliant with Section 45(1).

As the written notice was provided to the landlords was given to them on November 1, 2016 I find the earliest the tenancy could have ended would have been December 31, 2016. As such, I find the tenants are responsible for the payment of rent for the month of December 2016, subject to the landlords' obligations to mitigate their losses.

As the landlords have testified that the unit was re-rented by December 20, 2016 with a new tenant moving in that date. As a result, I find the landlords are entitled to the amount of rent for this tenancy for the period of December 1, 2016 to December 19, 2016 or $490.39 based on a per diem rate of $25.81.

Section 23(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(3) requires that the landlord must offer the tenant at least 2 opportunities for the inspection.

Section 23 goes on to say the landlord must complete a condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

The landlord must make the inspection and complete and sign the report without the tenant if the landlord has complied with subsection (3), and the tenant does not participate on either occasion.

Section 17 of the Residential Tenancy Regulation stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at a time offered the tenant may propose an alternative time to the landlord, who must consider this time prior to purposing a second opportunity, different from the first opportunity, to the tenant by providing the tenant with a notice in the approved form.

Section 18 of the Residential Tenancy Regulation requires the landlord must give the tenant a copy of the signed Condition Inspection Report of an inspection made under Section 23 of the *Act*, promptly and in any event within 7 days after the condition inspection is completed.

Section 24 of the *Act* stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with section 23 (3) and the tenant has not participated on either occasion.

This section goes on to say that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with Section 23 (3); having complied with Section 23 (3), does not participate on either occasion, or does not complete the Condition Inspection Report and give the tenant a copy of it in accordance with the regulations.

Section 35(1) of the *Act* requires the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Section 35(2) states the landlord must offer the tenant at least 2 opportunities for the inspection.

Section 35 goes on to say the landlord must complete a Condition Inspection Report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

The landlord may make the inspection and complete and sign the report without the tenant if the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit.

Section 36(1) of the *Act* states the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord complied with section 35 (2), and the tenant has not participated on either occasion.

Section 36(2) also states that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with Section 35 (2), having complied with Section 35 (2), does not participate on either occasion, or having made an inspection with the tenant, does not complete the Condition Inspection Report and give the tenant a copy of it in accordance with the regulations.

Section 18 of the Residential Tenancy Regulation requires the landlord must give the tenant a copy of the signed Condition Inspection Report of an inspection made under Section 35 of the *Act*, promptly and in any event within 15 days after the later of the date the condition inspection is completed, and the date the landlord receives the tenant's forwarding address in writing.

From the submissions of both parties, I find that the landlords have failed to comply with Sections 23 and 35. Specifically, I am not satisfied that a condition inspection was conducted at the start of the tenancy; the Condition Inspection Report was not signed by the tenants; and it was not provided to the tenants within 7 days of the date it was completed. In addition, I find the landlords did not offer 2 opportunities with the final opportunity in writing to complete the move out inspection.

As a result, pursuant to Sections 24 and 36 I find the landlords have extinguished their right to claim against the deposit for damage to the rental unit. However, I note that as the landlords have also made a claim for lost revenue (not damage to the rental unit) Sections 24 and 36 have no impact on this particular claim.

Condition Inspection Reports are a significant form of evidence in regard to claims for damage to and cleaning of a rental unit. In order to be successful in such a claim a landlord must provide sufficient evidence to establish that the damage or need for cleaning has resulted by the actions or neglect of the tenants during the tenancy.

In the case before me, I note that none of the Condition Inspection Reports submitted, including the one from the previous tenant, are signed by anyone other than the female landlord. As such, I find that they are only a record of what the landlord considered the condition of the unit at any given point. I find that neither the previous tenant nor these

tenants were ever given an opportunity to confirm the condition. As a result, I find that the Report completed at the end of the previous tenancy and the one completed at the start of this tenancy do not provide a reliable record of the condition of the rental unit at the start or end of the tenancy.

While the landlord has submitted a significant number of photographs I note that there are only a couple that have a date stamp produced from the camera itself. I also note that the two that have date stamps indicate they were taken on November 1, 2016 and a number of other photographs have the bottom right corner of the picture cut out.

As a result, I find there is no way to confirm the photographs either from what the landlord attributes to 2014 or the end of the tenancy in 2016 to be taken at those times. I am not satisfied that these photographs provide any relevant evidence that can confirm the condition of the rental unit any of the material times.

As a result, in regard to the landlord's claims for compensation for repairs to damage in the rental unit I find generally the landlords have failed to provide sufficient evidence to establish the need for any of the work claimed. More specifically, I find there is insufficient reliable evidence to show that the carpet; bi-fold doors; toilet replacement; tub stopper were lost or damaged sufficiently more than normal wear and tear during this tenancy.

In regard to cleaning, I accept that the tenants acknowledge they had not completed all necessary cleaning and as a result the landlord was required to clean and remove items from the property. Despite the tenants' assertions that some of the items were personal property; not garbage; and the landlord did not handle them in accordance with the requirements set forth in the Residential Tenancy Regulation, I note the tenants have not put forward a claim for the return of any personal property or compensation for any items that are not recoverable.

As such, I find the landlord is justified in claiming for cleaning and for costs incurred in removing items to the landfill. As the landlord's claim does not clearly distinguish which labour was related to cleaning I will grant the landlord a nominal amount for cleaning of $100.00 plus the labour for removal of items to the landfill as claim in the amount of $200.00 plus the landfill charges of $68.80.

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.

I am satisfied by the tenants' undisputed submissions that they had provided the landlord with their forwarding address on December 4, 2016 and as a result, the landlords were required to either return the deposit or file an Application for Dispute Resolution seeking to claim against the deposit no later than December 19, 2016.

As the landlords submitted their Application for Dispute Resolution on June 6, 2017, I find the landlords have failed to comply with Section 38(1) and the tenants are entitled to double the amount of the deposit pursuant to Section 38(6). I find the tenants are entitled to $800.00.

In regard to the tenants' claim for non-pecuniary damages for the male landlord's voice message, I find that despite the inappropriateness of the message, there is insufficient evidence to establish any entitlement to compensation. While the submissions from the tenants indicate the female tenant was significantly impacted by the threats in the voice message, I find these assertions are inconsistent with not reporting such a threat to police.

Further, I note that in the text message correspondence on dates after the voice message was left it was the female tenant who was in contact with the male landlord. If she was so disturbed by the incident I would expect that either the male tenant or their agent would have contacted the landlord or that the female tenant would have contacted the female landlord instead of the male landlord.

Therefore, I dismiss this portion of the tenants claim.

As both parties have been partially successful in their claims I would normally award each of them $50.00 of their respective filing fees. However, as these awards would simply cancel each other out, I dismiss each parties claim to recover the filing fees.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **$859.19** comprised of $490.39 lost revenue and $368.80 cleaning and garbage removal.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of $800.00 comprised of double the amount of the security deposit.

I order the landlords' award be set off against the tenants' award. I grant a monetary order in the amount of **$59.19** to the landlords. This order must be served on the each of the tenants. If the tenants fail to comply with this order the landlords 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: August 31, 2017

Residential Tenancy Branch