Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order in the sum of $8,550.00 for damage to the rental unit and damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenants' security deposit.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. The landlord was represented by his agent for much of the tenancy and reference to landlord in this decision includes the landlord and/or his agent.

The landlord submitted a revised Monetary Order worksheet dated April 8, 2018 in the sum of $9,841.60. Although the landlord did not submit/serve an Amendment to increase the claim, the tenant acknowledged that he was prepared to respond to the claims that appear on the April 8, 2018 worksheet. During the hearing, the landlord withdrew one particular item that appears on the April 8, 2018 monetary order worksheet. Accordingly, I permitted the landlord's original claim of $8,550.00 to be amended to $9,700.35 ($9,841.60 less withdrawn claim of $141.25).

The hearing was held over two dates and an Interim Decision was issued following the first hearing date. As seen in the Interim Decision, I authorized and ordered the parties to provide additional evidence during the period of adjournment. At the reconvened hearing, I confirmed that the parties had met their respective obligations to submit/serve their additional documents to each other and the Residential Tenancy Branch as ordered. Accordingly, I have accepted and considered all of the evidence submitted by both parties.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants for damage to the unit and other damages or losses in the amounts claimed, as amended?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The parties executed a tenancy agreement for a fixed term tenancy set to commence on July 1, 2017 and expire on June 30, 2018. The tenants paid a security deposit of $1,000.00 and were required to pay rent of $2,000.00 on the first day of every month. The tenants had paid six months' worth of rent at the start of the tenancy for the months of July 2017 through to December 2017. The tenants vacated the rental unit on or about November 15, 2017.

The rental unit is a 2 bedroom, 2 bathroom ground floor condominium unit in a strata building.

The parties participated in a move-in inspection together and a move-in inspection report was completed.

The parties were in dispute as to whether the landlord and the tenants participated in a move-out inspection together. The landlord issued a notice of entry on November 10, 2017 for an inspection to take place on November 13, 2017; however, the parties were in dispute as to what time the inspection was to take place. The landlord inspected the property on November 13, 2017 although the tenants were not at the property at the time. The parties arranged to meet at the property on November 14, 2017 and on that date both parties were present. The tenants were nearly finished vacating all of their possessions but a dispute arose between the parties concerning responsibility for damage resulting from a water leak in the bathroom. The landlord had presented documents to the tenant to sign to acknowledge responsibility for the water damage, which the tenant refused to sign, resulting in the tenant asking the landlord to leave the rental unit, which he did. Although the tenants were nearly vacated, the landlord issued a *1 Month Notice to End Tenancy for Cause* on November 15, 2017 with a stated effective date of December 31, 2017. The landlord sent a text message to the tenant on November 15, 2017 with a view to setting up another date to do the move-out inspection

but there was no response from the tenant. The tenant stated he did not receive this particular text message. On November 23, 2017 the tenant sent a text message to the landlord to advise the rental unit was empty and the keys were left. On December 3, 2017 the landlord met with repairmen at the rental unit and on December 4, 2017 proceeded to do a move-out inspection without the tenants.

On November 8, 2017 the tenants filed an Application seeking orders for compliance and repairs with respect to repairing the damage that resulted from a water leak in the rental unit (file number referenced on the cover page of this decision) and a hearing was held on January 12, 2018. Although I do not see a request for monetary compensation in the Application filed by the tenants or the submission of an Amendment, for reasons that are unclear to me the Arbitrator dealt with a request by the tenants that they be refunded rent they had pre-paid for Number 2017 and December 2017. The Arbitrator ultimately denied the tenants' request and found insufficient evidence the rental unit was uninhabitable; that the tenants gave notice to end tenancy in November 2017; and, were obligated to pay rent for December 2017. During the hearing before me, the tenant stated that he accepted the decision issued on January 12, 2018.

The landlords filed their Application on December 5, 2017 but it was not scheduled as a cross application with the tenants' Application because the tenants' Application pertain to requests for compliance and repair order whereas the landlord's application was for monetary compensation only. For reasons not clearly explained in the January 12, 2018 decision the Arbitrator proceeded to hear a monetary claim by the tenants but did not order the landlord's monetary claim be joined to the tenants' monetary claim. As a consequence, the parties have provided evidence pertaining to a water leak in the bathroom and ending of the tenancy for both proceedings.

Below, I have summarized the landlord's monetary claims against the tenants and the tenants' responses.

Water leak repair -- $2506.38 + $750.00 + $1,200.00

The landlord submitted that the tenant reported a water leak and mould in the main bathroom to the landlord on November 3, 2017. In response, the landlord contacted the strata and an emergency response contractor the strata corporation uses for emergency responses was sent to the rental unit on November 3, 2017. The emergency response company determined the water supply line to the toilet was leaking. The leak was stopped, the baseboard and drywall was removed on the lower section of two of the bathroom walls, anti-mould chemicals were applied, and dehumidifiers were installed for

four days. This work cost the landlord a total of $3,256.38. The landlord explained that the landlord lives in a different province and due to the nature of the problem the landlord hired this company to respond on an emergency basis.

The drywall and baseboards were reinstalled by a different contractor at a cost of $1,200.00.

The landlord also had a new water supply line to the toilet installed out of an abundance of caution although I heard that the water leak was stopped by tightening the water supply line.

The landlord acknowledged that he did not carry any insurance on the rental unit at the time of the incident and thought that he would be covered by the strata corporation's insurance. It turned out not to be the case. The landlord took the position that even if he had insurance he would not have had coverage because insurance policies do not cover seepage or slow leaks. The landlord subsequently acquired insurance for the rental unit and pointed to the policy as evidence there would have been no coverage for seepage or a slow leak.

The landlord seeks to hold the tenants responsible for the emergency response and the repairs on the basis the tenants ought to have been aware of the condition of the property and were negligent in not noticing or reporting the water leak more promptly. The landlord pointed out that the formation of mould indicates that the water was seeping or dripping for quite some time. The landlord submitted that the emergency response company determined the water must have been dripping for at least a week and had the tenants noticed and reported the leak sooner the damage would have been much less. The landlord acknowledged that the leak was very slow.

The tenant denied seeing the water leak before November 3, 2017 or failing to report it in a timely manner. The tenant submitted that he reported the water leak promptly and that he also reported a leak with the dishwasher very promptly in the past. The tenant explained that the main bathroom was used mainly by his children as he and his wife used the ensuite bathroom. On November 3, 2017 the tenant noticed rusty coloured discolouration on the baseboard on the right hand side of the toilet and when he moved the garbage can he noticed the water leak.

The tenant questioned the source of the leak as it appeared to him as though the leak may have been coming from inside the wall and there were pre-existing stains in the bathroom as noted on the move-in inspection report. The tenant also pointed out that

the staining visible on the baseboard was on the right hand side of the toilet but the water supply line is located on the left hand side of the toilet. The tenant submitted photographs in an effort to demonstrate that there was no pooling of water below the water supply line or staining on the wall where the water supply line meets the wall. Also of consideration was that this was a ground floor unit and heavy snow fall may have caused water ingress. The tenant pointed out that he had requested a plumber inspect the property and prepare a report but this was not done.

In response, the landlord pointed out that there are photographs showing the drip coming from the water supply line and that the emergency repair company also documented the source of the water leak.

The tenant was of the position the landlord failed to carry insurance on the property and that there are insurance policies available that would cover these types of losses had the landlord opted for such coverage instead of a basic policy.

Carpet cleaning -- $44.78

The landlord submitted that the carpeting was cleaned at the start of the tenancy although there were three “discreet” stains in the master bedroom carpeting at the start of the tenancy. At the end of the tenancy the master bedroom carpeting was quite soiled, especially between by the ensuite bathroom. The landlord suspected the soiling may have been from walking with wet feet on the carpeting.

The tenant submitted that the tenancy was short in duration and that the landlord had commented on the good condition of the property following his inspection on November 13, 2017.

The landlord responded by acknowledging the text message sent to the tenant but explained it did not reflect a detailed inspection and was sent as a gesture of good will. The landlord pointed to photographs in support of the landlord’s position.

Cleaning -- $90.00

The landlord submitted that three hours of cleaning were required after the tenancy ended. The landlord pointed to a dirty patio area, including barbeque, and stated the cleaner also spent time clearing the carpeting.

The tenant pointed to the text message he received from the landlord's agent where the landlord described the condition of the rental unit as being good on November 13, 2017.

The tenant denied leaving a dirty balcony and claimed he did not use the barbeque.

The landlord acknowledged sending the text message but explained it did not reflect a detailed inspection.

Loss of rent -- $6,000.00

The landlord seeks to recover from the tenants three months of rent for the months of January 2018 through to March 2018. The landlord stated that after the tenancy ended the landlord decided not to re-rent the unit. Rather, the unit was repaired and the landlord listed the unit for sale at the end of December 2017 or early January 2018. The landlord transferred title to the property to the new owner at the end of March 2018. The landlord seeks to hold the tenants responsible to compensate him for loss of rent because the tenants breached their fixed term tenancy agreement. The landlord also stated that the landlord would have been agreeable to ending the tenancy early had the tenants agreed to pay for a month for the landlord to find replacement tenants but the tenants were not agreeable and the dispute dragged on. As a result, the landlord was turned off of renting and decided to sell the unit.

The tenant was not agreeable to compensating the landlord for loss of rent. The tenant was of the position he notified the landlord in late October 2017 of his need to end the tenancy so as to return to his country for medical treatments and the parties had an agreement to end the tenancy early in November 2017. Also, that the landlord decided to list the property for sale instead of re-renting it, which the landlord has the right to do but the tenants are not liable to pay for that decision.

The landlord responded by stating there were discussions between the parties in an attempt to reach a mutual agreement to end the tenancy but that an agreement was not reached. The tenant was of the position that their agreement is reflected in the documents submitted to me as evidence.

Unpaid utilities (electricity) -- $24.61 + $84.58

The landlord seeks to recover electricity from the tenants for the period of December 21, 2017 through to March 30, 2018 while the unit was vacant and listed sale. The landlord

argued that had the tenants not ended their fixed term tenancy early the landlord would not have incurred any electricity costs for the unit.

The tenant stated that they paid for all the electricity consumed during their tenancy and that they are not liable to pay for the electricity after the tenancy ended. The tenant was of the view the bills were high, suggesting someone may have been inhabiting the unit.

The landlord confirmed that no other person occupied the rental unit after the tenancy ended. Rather, electricity was used to power appliances, during showings of the unit, and while repairs were underway. The landlord pointed out that the claim includes a reconnection fee because the service had been disconnected after the tenancy ended and to be reconnected.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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.

As the applicant in this case, the landlord has the burden of proof. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Water leak repair

Upon review of the documents issued by the emergency response company that attended the property on November 3, 2017 in response to a complaint of a water leak

and based on their report I accept that the source of the water leak was a slow leak from the toilet supply line.

The landlord was of the position the tenants should be held responsible to pay for the emergency response and repair of damage the water leak caused because the tenants were negligent in noticing the water leak or reporting it in a timely manner. The tenant submitted that the leak was reported as soon as it was noticed.

When I look at the photographs and the emergency response company report, it appears that the first obvious sign of a repair issue was the discoloured baseboard on the right hand side of the toilet. The discolouration is very evident and I accept this is what caught the tenant's attention. Also, the emergency repair company provided a detailed document that outlines their observations and actions and it would appear their first steps included removal of this particular baseboard.

In the tenants' photographs, the water supply line and a garbage can are visible on the left hand side of the toilet. As such, I accept that the water supply line may have been slowly dripping for some time and not noticed by the tenants. Also of consideration is that in the tenant's message to the landlord, where he reports the leak, the tenant was of the belief there was a leak behind the wall. While that assumption appears to be inaccurate in hindsight, it serves to demonstrate the tenants did not observe pooling of water or active dripping of the water supply line. Nor, did I read in the emergency repair company report that there was pooling of water that was obvious when the emergency response company responded. Finally, the tenants had reported a water leak around the dishwasher earlier in the tenancy which points to the tenants acting with due care.

While I appreciate the extensive damage that water may cause, especially where water has seeped or slowly leaked for quite some time, there was no suggestion that the tenants caused the water supply line to start leaking. As such, in order for the landlord to succeed in recovering the emergency response and repair costs from the tenants the landlord must prove the landlord's losses were the result of negligence on part of the tenants. To demonstrate negligence on part of the tenants the landlord must be able to show that the tenants knew, or ought to have known, of the water leak and failed to report it in a timely manner. I find the evidence presented to me is not sufficient for me to conclude the tenants knew or ought to have known of the water leak for an unreasonable amount of time before it was reported. Therefore, I dismiss the landlord's request to recover the emergency response and repair costs from the tenants.

Carpet cleaning

Section 37 of the Act provides that a tenant is required to leave a rental unit "reasonably clean" and undamaged at the end of the tenancy. Section 37 also provides that reasonable wear and tear is not considered damage.

Should a landlord seek to bring the rental unit to a level of cleanliness that is greater than "reasonably clean" that cost is born by the landlord. With a view to determining "reasonably clean", Residential Tenancy Policy Guideline 1: *Landlord & Tenant – Responsibilities for Residential Premises* provides that tenants will generally be held responsible for shampooing or steam cleaning carpeting if their tenancy exceeded one year or the tenant had uncaged pets.

In this case, the parties were in dispute as to whether the tenants left the carpeting in need of cleaning. The tenants had possession of the unit for less than five months and there was no suggestion the tenants had pets. Accordingly, in order for the landlord to succeed in holding the tenants responsible to pay for carpet cleaning, I must be satisfied that the tenants left the carpets soiled or stained or damaged beyond reasonable wear and tear.

The landlord provided a copy of a receipt to show that a carpet cleaning machine was rented on December 5, 2017. The landlords provided photographs of the carpeting that they described as being "damaged" carpeting in the master bedroom. I do not see damage in the photographs. I see signs of a high traffic area and perhaps some light stains. There were some stains noted on the move-in inspection report; however, no photographs of the carpeting at the start of the tenancy. Based on this evidence, I find I am unsatisfied the tenants left the carpets soiled or stained.

Cleaning

The receipt or invoice from the cleaning person merely indicates three hours of cleaning. There is no description as to what she did during those three hours. The landlord stated that the three hours included carpet cleaning; however, I also note that the cleaning invoice is dated January 11, 2018 which is several weeks after the tenants vacated, after repairs were made to the unit and after the carpet cleaner was rented. As such, I do not rely upon this invoice as evidence that three hours of cleaning were required due to the tenants' failure to leave the unit reasonably clean.

When I look at the photographs taken by the landlord, I see that the patio area required cleaning, including the remnants of a decomposed pumpkin, and I award the landlord compensation of $30.00 for this.

Loss of Rent

The tenants were in a fixed term tenancy that was set to expire June 30, 2018. The tenancy ended early, in November 2017 when the tenants vacated the rental and gave up possession of the unit. Where a tenant breaches a fixed term tenancy, the tenant may be held liable to pay rent for the remained of the fixed term, provided the landlord takes all reasonable steps to minimize losses.

The parties were in dispute as to whether there was an agreement reached to end the tenancy in November 2017; however, I find it unnecessary to make such a determination.

As mentioned above, a landlord seeking to recover loss of rent from a tenant, as with any other monetary claim, must demonstrate that all reasonable efforts were made to minimize or mitigate losses. On November 14, 2017 the landlord observed the tenants had nearly vacated the rental unit and the landlord was notified on November 23, 2017 that the tenants gave up possession of the unit. The landlord decided not to make any efforts to re-rent the unit or rent it while it was listed for sale. That was the landlord's decision to make; however, the landlord cannot hold the tenants responsible to pay for the landlord's decision to leave the unit untenanted or vacant while it was listed for sale. Therefore, I dismiss this claim due to failure to mitigate losses.

Unpaid utilities (electricity)

For the reasons provided above under loss of rent, I find the landlord cannot expect the tenants to pay for utilities during the period of time the landlord decided to leave the rental unit vacant while listing the property for sale. Had the landlord re-rented the unit the landlord would have avoided paying utility costs. Also, the reconnection fee could have been avoided had the landlord transferred the electricity account into his name in a timely manner after the tenants gave up possession of the unit. Therefore, I dismiss the landlord's claim to recover utility costs from the tenants from the period of December 31, 2017 though to March 30, 2018.

Security Deposit, filing fee and Monetary Order

The landlord had very limited success in this application and I make no award for recovery of the filing fee.

The landlord is authorized to deduct $30.00 from the tenants' security deposit for cleaning and I order the landlord to return the balance of tenants' security deposit in the amount of $970.00 to the tenants' without delay.

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off*, I provide the tenants with a Monetary Order in the amount of $970.00 to serve and enforce upon the landlord if necessary.

Conclusion

The landlord is awarded $30.00 for cleaning and the balance of the landlord's claim against the tenants is dismissed without leave.

The landlord is authorized to deduct $30.00 from the tenants' security deposit and is ordered to return the balance of the security deposit in the amount of $970.00 to the tenants without delay. The tenants are provided a Monetary Order in the amount of $970.00 to serve and enforce upon the landlord.

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 27, 2018

Residential Tenancy Branch