Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

In the first application the tenants seek to recover an overpayment of rent claiming the landlord imposed an unlawful rent increase. During the hearing it was apparent that $175.00 of "utility deposit" money was also claimed.

In the second application the landlord seeks compensation for cleaning and repairs, the tenants' share of outstanding utilities and recover of $1000.00 in liquidated damages.

The listed 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 there has been an overpayment of rent or that there exists outstanding deposit money? Does it show that the tenants owe utility money, liquidated damages or that they failed to leave the rental unit reasonably clean and free of damage but for reasonable wear and tear as required by the *Residential Tenancy Act* (the "*Act*")?

Background and Evidence

The rental unit is a four bedroom portion of a house owned by the landlord.

The tenancy commenced pursuant to a written tenancy agreement dated February 13, 2016 between the landlord and Mr. S.B. and Ms. B.B. for a “one year fixed term” commencing February 15, 2016 and ending April 30, 2017. The agreement provided that the tenants must vacate the rental unit at the end of the term unless another tenancy agreement was entered into.

The rent under the first agreement was $1850.00 per month. The tenants paid a security deposit of $925.00 and a “utility deposit” of $175.00.

On April 1, 2017 a second tenancy agreement was entered into in identical form to the first for a “one year fixed term” commencing May 1, 2017 and ending April 30, 2018. Again, the tenants were required to vacate the rental unit at the end of the term. The new rent was $2400.00. The security deposit was $1200.00 with a handwritten note indicating that $275.00 was payable. This would have been the top up from the $975.00 being held by the landlord under the first agreement. The area of the agreement demarcated for a “utilities deposit” was left blank.

The tenants to this second tenancy agreement were shown to be Mr. S.B., Ms. B.B and Ms. M.B., however Ms. B.B. did not sign the agreement.

The tenancy seems to have been a problem free one. In early 2018 however, the tenants purported to give notice to end the tenancy at the end of March 2018, one full month before the fixed term had expired.

A move out inspection was conducted on or about March 29, 2018 with Ms. C.B. and a woman named M on behalf of the landlord. There is conflicting evidence about what the inspection report reported however, it is most likely that the report prepared after the inspection and photographed by Ms. C.B. when she signed it is the true report prepared between the parties together after the inspection. Another report, submitted by the landlord, shows additions to that photographed report, mainly cleaning issues, that I am satisfied were added after Ms. C.B. signed and without her knowledge or consent.

The report indicates that the only significant item was a small dent in a wall. No photo of the damage was presented. No allocation for repair of the dent was noted by the parties. Ms. C.B. indicates her handyman painted over it and that it was prior damage.

Ms. M., the person who conducted the inspection for the landlord, did not testify or provide any statement. It appears that Ms. C.B. recorded her conversation with Ms. M. during the inspection. She provided that recording for this hearing however I give it little if any weight; the written report is the determinative document in my view.

Analysis

The tenants argue that the tenancy agreements are ambiguous as they both refer to a "one year fixed term" but were actually for longer periods. I do not accept this argument. The agreements set fixed dates for the start and end of each tenancy and are therefore clear and unambiguous.

The tenants argue that the agreements "obfuscate" by hiding their terms in some way. I do not agree. The wording in the agreements may not be "plain language" drafting but the intent of each paragraph is discernable without difficulty.

The tenants argue that all clauses other than the standard terms of a tenancy agreement set by the *Act* must be contained outside the standard terms or in an addendum. No authority was offered for this proposition and I know of no basis for it.

The tenants argued that the size of the type used in the agreements was too small and therefore the agreements are of not effect. It was suggested that the type size is 8 or 9 when it should be 12. No authority was offered to support this proposition. As it happens, the Residential Tenancy Regulation, s. 12 set the type size for tenancy agreements at no less that 8 point type. This argument fails.

Rent Increase

It is the tenants' position that the landlord imposed a rent increase from $1850.00 to $2400.00 and that it was unlawful. The landlord says the tenants, after considering his

increasing expenses for the home, proposed the amount of the increase and agreed to it..

In my view there has been no “rent increase” that would be restricted by the *Act* or regulations. The term of the initial tenancy ended April 30, 2017 and the tenants were required to move out unless a new agreement was made. The parties made a new agreement for a second tenancy at a different, higher rent. It was a mutual agreement. The landlord did not impose a rent increase during a particular tenancy.

The tenants’ claim to recovery the amount of rent paid over and above the rent rate of their first tenancy is dismissed.

Cleaning (including garbage removal) and Repair

I find that the true inspection report; the one photographed by the tenant Ms. C.B. discloses only minor damage. The landlord has not demonstrated that a small dent in a wall is damage in excess of reasonable wear and tear and has not justified a claim to be compensated for repair.

The matter of carpet cleaning and drape cleaning were proper items for the condition report as well. They are items that the parties would normally have dealt with in the report had any cleaning or repair been required. Their omission from the report is not fatal to a landlord’s claim for compensation, however a landlord wishing to pursue a claim for clearing or repair of items that should have been but were not dealt with in a condition report, must offer an explanation why they were not dealt with (for example: they were not readily observable) and must show the extent of the damage or cleaning required so that any actual expense for the cleaning or repair can be fairly attributable.

The landlord has not done so here. I dismiss the landlord’s claim for cleaning and repair.

Utilities

Under the tenancy agreement the tenants were responsible for 60% of utilities. The landlord has presented Hydro bills for use during this tenancy totalling $546.26 as the

tenants' share and for local government utility costs totalling $647.98 as the tenants' share.

There was little dispute but that these bills were owing by the tenants and no objective proof that the tenants paid any portion of them Indeed, Ms. C.B. during her cross examination indirectly confirmed that they were outstanding after the tenants' vacated. I award the landlord $1194.24 under this item.

Liquidated Damages

The tenancy agreement contains a "liquidated damages clause:

Liquidated damages: If the Tenant ends the fixed term tenancy before the end of the Term as set out above, the Landlord may, at the Landlord's option, treat this Tenancy Agreement as being at an end. In such an event, the sum of $1000.00 will be paid by the Tenant to the Landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the Rental Unit. The Landlord and Tenant acknowledge and agree that the payment of liquidated damages will not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damage to the Rental Unit or Residential Property and damages as a result of lost rental income due to the Tenant's breach of any term of this Tenancy Agreement.

The tenants argue that the clause imposes a penalty and that the landlord ended up renting the premises at a higher rent that he was receiving under this tenancy.

The landlord states that his "administration costs" were his time and expense to advertise for new tenants and to conduct showings.

I find that this clause is reasonably clear and that it would be readily apparent that if the tenants chose to break the tenancy agreement by leaving before the expiry of the fixed term they would be exposed to a claim for liquidated damages. The amount of $1000.00 is not such an extraordinarily large amount as to warrant a finding that it is a penalty (and therefore not enforceable).

The landlord is entitled to recover $1000.00 as liquidated damages as per the tenancy agreement. He is not entitled to receive compensation for advertising expenses he has claimed. They are subsumed in the liquidated damages clause.

The "Utility Deposit"

The *Residential Tenancy Act* does not contemplate a specific monetary deposit to be held as security for a tenant's payment of utilities. Such a payment would fall under the definition of "security deposit," being "money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property." I find that the utility deposit was a security deposit and subject to the same rules as security deposits.

The tenancy under which the deposit was paid, the first tenancy, ended April 30, 2017. Section 38 of the *Residential Tenancy Act,* requires that once a tenancy has ended and the tenant has provided a forwarding address in writing, a landlord must either repay the deposit money or make an application to keep it within fifteen days, and if the landlord fails to do so he must account to the tenant for double the amount of the deposit.

Here, the tenancy had ended and the landlord had the tenants' forwarding address in writing; the address of the premises as given in the second tenancy agreement. The landlord failed to repay or claim against the utility deposit and so must account to the tenants for double: $350.00.

Conclusion

The tenants' claim as contained in the written application, is dismissed.

The landlord claim for cleaning and repair costs is dismissed. He is entitled to recover $1000.00 as liquidated damages and $1194.24 for utility costs. As he has been largely successful I award the landlord recovery of the $100.00 filing fee.

I authorize the landlord to retain the $925.00 security deposit carried over from the first tenancy agreement. I find it most likely that the tenants topped up the deposit money to $1200.00. Ms. C.B. testified she did and the landlord could not remember. I authorize

the landlord to retain this topped up deposit money of $275.00 and to retain the $350.00 of doubled “utilities deposit” money, all in reduction of the amount awarded.

The landlord will have a monetary order against the tenants for the remainder of $744.24. The “tenants” are the parties who signed the second tenancy agreement as tenants, namely: Mr. S.B. and Ms. M.B.

Last, Mr. J.C., the tenants’ advocate requested that his view be noted that he did not get an opportunity to cross examine the landlord regarding the landlord’s claim. As stated at hearing it was my view, the landlord’s view and in accord with my notes that he had. My notes indicate that on September 18, 2018 the landlord commenced his testimony in support of his claim, that testimony continued on September 27 and at about 2:00 o’clock p.m. Mr. J.C. commenced his cross examination of the landlord, which lasted until about 3:30 or 4:00 p.m., but for a short break.

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: March 19, 2019

Residential Tenancy Branch