Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with cross applications. The tenant applied for return of double the security deposit and pet deposit and return of a portion of rent paid for the month of September 2010. The landlord applied for compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to made submissions, in writing and orally, and to respond to the submissions of the other party.

I heard that the landlord received the tenant's application and evidence at her place of employment after she returned from out of town. Although the landlord was not served in a manner that complies with section 89 of the Act, I was satisfied the landlord has had an opportunity to review the documents and I deemed her sufficiently served under section 71 of the Act. Accordingly, I proceeded to hear both applications.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit and pet deposit?
2. Is the tenant entitled to return of rent paid after new tenants moved into the rental unit?
3. Is the landlord entitled to compensation for utilities, cable, repairs, missing furniture and the landlord's time to find new tenants and perform other duties?

Background and Evidence

A one year fixed term tenancy commenced July 1, 2010 and the tenant paid a $1,100.00 security deposit and a $1,100.00 pet deposit. The tenant was required to pay rent of $2,200.00 on the 1st day of every month. Condition inspections were performed together; however, no move-in or move-out inspection report was prepared by the landlord. The tenant vacated the rental unit, returned the keys to the rental unit to the landlord, and gave the landlord a forwarding address in writing on September 20, 2010. The tenant did not authorize any deductions from the security deposit or pet deposit. The landlord has not returned any portion of the deposits to the tenant.

I also heard that the landlord re-rented the unit effective September 25, 2010. The parties had agreed that if the tenant vacated early and new tenants moved in during September 2010 the tenant would be refunded a portion of the rent for September 2010.

Tenant's application

In making this application, the tenant is seeking return of double the security deposit and pet deposit in the amount of $4,400.00 and return of rent in the amount of $438.00 representing the rent paid by the tenant for September 25 – 30, 2010.

The landlord explained that she did not file an application or return the security deposit and pet deposit and portion of September's rent of $438.00 as initially agreed upon because the tenant ended the tenancy without sufficient notice, the landlord had cleaning and repairs to make to the property, and the landlord was out of the country from October 8 – November 16, 2010.

Landlord's application

Below I have summarized the amounts claimed by the landlord in the landlord's amended claim and the tenant's response.

Item	Claim	Landlord's reason	Tenant's response
Heating oil	144.14	Tank filled April 12 and supposed to be filled at end of tenancy. Pro-rated the cost of April's fill.	Tenant did not use heating oil during tenancy.
Tenant's request for repairs	764.99	Tenant had requested various repairs and improvements during tenancy which the landlord did in anticipation tenant would be long term tenant.	Upon moving in tenant found certain items not installed (doors, curtain rods) and other items not working properly. Tenant did not agree to pay for these costs.
Hot tub lock	230.04	Lock installed on hot tub for added safety since tenant had children. Both parties agreed this was a good idea but no discussion about who would pay for cost.	Tenancy agreement provides that landlord will maintain hot tub. Tenant did not agree to pay for this cost.
Hot tub chemicals and	99.54	Hot tub had to be drained because tenant or tenant's	Tenant's family did not urinate or defecate in

draining		family defecated or urinated in hot tub. This was misuse which was not the landlord's responsibility under tenancy agreement.	hot tub. Water had to be drained because tenant was not given instructions that sanitizer had to be added after every use.
Hot tub chemicals and draining	180.30	Hot tub had to be drained again after tenancy ended.	Hot tub drained again weeks after new tenants moved in.
New box spring	200.00	Lent tenant 3 year old box spring for his family's use. Tenant took box spring at end of tenancy.	Tenant not aware box spring was only lent to him. Also, at end of tenancy landlord told him to remove all the beds from rental unit.
Carpet cleaning	200.00	Carpets clean at time of move-in but needed cleaning at end of tenancy as tenant had children and pet in unit.	Carpets were not soiled at end of tenancy and some construction was taking place at the rental unit when he moved out.
Satellite	87.70	Landlord supplied satellite for months of July and August in effort to make tenant comfortable in new home.	Tenant did not ask landlord for satellite programming. Tenant did not agree to pay for this cost.
Landlord's lost income	2,800.00	Landlord spent great amount of time finding furniture for tenant, consulting with the tenant, finding replacement tenants and cutting the grass 3 or 4 times.	Tenant was aware of the landlord cutting the grass twice and landlord indicated it was not a big deal at the time.
TOTAL CLAIM	$ 4,797.37		

Analysis

Upon review of all of the evidence before me, I make the following findings with respect to the tenant's application and the landlord's application.

Tenant's application

Section 38 of the Act provides for the return of security deposits and pet deposits. Section 38(1) requires a landlord to either return the deposits to the tenant or make an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit and pet deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

I find that the tenancy ended on September 20, 2010 when the tenant vacated the rental unit and the tenant provided his forwarding address to the landlord in writing on September 20, 2010. Accordingly, the landlord had 15 days from September 20, 2010 to return the deposits to the tenant or file an Application for Dispute Resolution in order to avoid doubling of the deposits. Since the landlord did not comply with the requirements of section 38(1) the landlord must now pay the tenant double the deposits pursuant to section 38(6) of the Act. The tenant is awarded double of the deposits which amounts to $4,400.00 [($1,100.00 security deposit + $1,100.00 pet deposit) x 2].

Upon hearing from the parties and upon review of the email communication presented to me, I am satisfied the tenant gave up possession of the rental unit earlier than September 30, 2010 in order to accommodate incoming tenants with the understanding the tenant would be refunded $438.00 of the rent that was paid for September 2010. I uphold that agreement between the parties and award the tenant $438.00.

The tenant has been successful in his application and is entitled to a total of $4,838.00 from the landlord.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, the landlord 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.

Water

Water is a cost to be paid by the tenant under the tenancy agreement. The tenant agreed with the cost claimed by the landlord and the landlord is awarded $90.66.

Heating Oil

Heat is a cost to be paid by the tenant under the tenancy agreement. Heat is provided by an oil furnace. The tenant denied using any heat during his tenancy since he resided in the rental unit during the summer months. I find the landlord's expense to fill the tank in April 2010 did not satisfy me that the tenant used any heating oil during the tenancy. Therefore, I dismiss this portion of the landlord's claim.

Repairs and improvements

It is undisputed that the landlord made certain repairs and improvements during the tenancy. The issue is whether the repairs were made as a result of a violation of the Act, regulations or tenancy agreement by the tenant. I do not find the tenant damaged the rental unit or that there was an agreement between the parties for the tenant to pay for certain improvements. Therefore, the landlord's claim for recovery of these costs from the tenant fails to meet the criteria for monetary compensation.

Hot tub costs

The tenancy agreement provides that "hot tub and maintenance" is included in rent. The addendum to the tenancy agreement provides: "The landlord will be responsible for hot tub maintenance within reason. Not included will be costs of repair or maintenance due to misuse of hot tub and/or cover."

I heard that a hot tub company was maintaining the hot tub every couple of weeks at the landlord's expense. The tenant was of the belief he did not have to maintain the hot tub and was unaware of the need to add chemicals to the hot tub more frequently than those added by the hot tub company.

Under the Act, the landlord has the burden to create the tenancy agreement and ensure terms are expressed in a manner that clearly communicates the rights and obligations under it.

Given the wording of the addendum I find, in the absence of evidence that the landlord did give the tenant specific instructions to add chemicals after each use, that the tenant had a reasonable expectation that the landlord was responsible for ensuring sufficient chemicals were added to the hot tub. Therefore, I do not find the tenant responsible for the draining and re-filling of the hot tub that took place during the tenancy.

I do not hold the tenant responsible for the draining and re-filling that took place weeks after the tenancy ended. I find the landlord cannot establish that this was necessary due to misuse by the tenant.

Finally, I do not find the installation of the hot tub cover lock was a result of misuse by the tenant. Nor do I find evidence that the lock was installed with the understanding the tenant would pay for this cost.

In light of the above, all of the hot tub costs claimed by the landlord are dismissed.

Box spring

The parties provided opposing testimony as to whether the box spring was lent to the tenant for use during the tenancy or given to the tenant. I note that in the tenant's evidence is an email from the landlord to the tenant including the phrase "I have lent you furniture and ran around getting furniture for you." I find this evidence indicates that the tenant knew or ought to have known certain furniture was lent and not given to the tenant. Then the landlord writes on September 9, 2010 "I will expect the house be emptied of all the furniture you collected…" and "I will advertise the furniture I left for your starting next week." The tenant claims that at the end of the tenancy the landlord told the tenant to take all of the beds away.

I find upon consideration of the evidence before me I am uncertain as to what the agreement was with respect to the box spring. Accordingly, as outlined in the criteria set out earlier, the landlord must show that the tenant violated a term of the tenancy agreement, the Act or the regulations in order to establish an entitlement to compensation. I do not find the tenancy agreement reflects the inclusion of furniture. I do not find the tenancy agreement was amended to include furniture. Therefore, I do not find the tenant breached the tenancy agreement, Act or regulations with respect to the box spring and this portion of the landlord's claim is dismissed.

Carpet cleaning

Residential Tenancy Policy Guideline 1 provides that tenants are not generally held responsible for cleaning carpet where the tenancy was less than one year in duration. Exceptions to this guideline exist including situations where the tenant has smoked or had a pet in the unit. In this case the tenant had a pet in the unit and I find the tenant responsible for cleaning the carpets at the end of the tenancy. I find the $200.00 the landlord claimed to have paid in cash to be reasonable and I award the landlord this amount.

Satellite programming

The tenancy agreement provides that programming is not included in rent. The landlord provided programming in July and August 2010 and this was not at the request of the tenant. Although a nice gesture, I do not find the landlord's decision to provide satellite programming to constitute a violation of the Act, regulation or tenancy agreement by the tenant. Therefore, the landlord is not entitled to recover this cost from the tenant and this portion of the landlord's claim is dismissed.

Landlord's loss of income

The landlord has claimed for time spent cutting the grass and doing yard work. The addendum to the tenancy agreement provides "It is the renter's responsibility to cut the grass in the yard. If they are unable to, they will let the landlord know and allow the landlord to cut it." The term is not expressed in a manner that conveys to the tenant that if the landlord has to cut the grass the tenant will compensate the landlord for this. Rather, the term indicates the tenant's responsibility is to let the landlord know that the grass needs to be cut and to let the landlord do it. Since the landlord has the onus to ensure the terms of a tenancy agreement convey the obligations under it I find the tenant cannot be held responsible for compensating the landlord for grass cutting when the tenancy agreement does not clearly communicate that.

The landlord has claimed for time spent sourcing and picking up furniture for the tenant's use. As stated previously, I do not find the tenancy agreement provided for a furnished unit. I accept that the landlord made this generous effort for the tenant's benefit but that it was done voluntarily by the landlord. However, I do not find the tenant agreed to compensate the landlord for this effort or a breach of the tenancy agreement by the tenant.

The landlord has claimed for time spent advertising and showing the rental unit to prospective tenants. This effort was made because the tenant had given notice of his intent to end the tenancy early. However, section 7 of the Act requires that the landlord make every reasonable effort to minimize losses which would entail advertising and showing a unit to prospective tenants. In other words, the landlord's efforts were an ordinary cost of doing business as a landlord. In the absence of a clause in the tenancy agreement that provides for a specific amount of liquidated damages to be paid by the tenant if the tenant were to terminate the tenancy early, I do not find the landlord entitled to recover time spent finding new tenants.

The landlord has claimed for time spent consulting with the tenants; however, I do not find this time connected to any violation of the Act, regulations or tenancy agreement by the tenant.

In light of the above findings, I dismiss this portion of the landlord's claim.

The landlord has established an entitlement to recover the water bill and carpet cleaning from the tenant in the amount of $290.66. I offset this amount against the amount awarded to the tenant.

Monetary Order

The tenant is provided a Monetary Order in the net amount of $4,547.34 [$4,838.00 – 290.66] to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) as necessary.

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant has been provided a Monetary Order in the net amount of $4,547.34 to serve 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: March 04, 2011.

Residential Tenancy Branch