Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of double her security deposit. Both parties participated in the conference call hearing.

The tenant had submitted as evidence a flash drive on which she had video evidence of the landlords and a third party in the rental unit as well as a recording of a conversation between her and one of the landlords. The parties agreed what the videos depicted. The Residential Tenancy Branch has policy prohibiting me from viewing the contents of flash drives. As the content of the video evidence was not in dispute, I accepted that the video depicted what was described and found that it was unnecessary to view the video evidence as the tenant was in no way prejudiced.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in May 2010 at which time a $550.00 security deposit was paid and that it ended on October 1, 2010. The parties further agreed that on October 15, the landlords returned $500.00 of the security deposit by issuing a cheque which the tenant had not cashed as of the date of the hearing. The landlords had indicated that they withheld $50.00 for 2 late rental payments during the tenancy.

The tenant seeks to recover double the amount of the security deposit, $1,100.00 in compensation for repairs which were not completed during the tenancy, $1,100.00 in compensation for loss of quiet enjoyment, $234.00 which is half the cost of moving from the rental unit and the $50.00 filing fee paid to bring her application.

The tenant alleged that there were numerous repairs which were not completed as promised. She claimed that at the time she entered into the tenancy agreement, the landlords promised to perform a number of repairs, including cleaning the unit which had not been cleaned by the previous tenant, removing the previous tenant's belongings, painting, replacing the toilet seat and a missing drain plug, repairing light fixtures and repairing the refrigerator. The tenant testified that at the time she moved in, the only action which had been taken by the landlords was to remove a couch left by the previous tenant. The tenant provided a letter authored by a friend who had witnessed her interaction with the landlords at the time she viewed the apartment. The friend stated that the tenant and landlords "discussed the condition of the rental unit as it needed some repairs such as a new toilet seat, light fixtures, shelf and drawer in the fridge, etc. The landlords assured [the tenant] it would all be taken care of. They also discussed having the couch and possessions of the last tenant removed."

The tenant testified that after the tenancy began, other issues came to light which she brought to the attention of the landlords, including a silverfish infestation, a lack of a fan and electrical outlet in the bathroom and a non-functional thermostat.

The tenant testified that these issues were not addressed in a timely manner or in some cases, not at all. At some time early in the tenancy, the landlords replaced the toilet seat and provided a plug for the bathtub drain. The tenant went away for a brief holiday in July and August and left a list of repairs taped to her door, which included a request for an electrical outlet and fan in the bathroom, light bulbs for the living room, a light fixture for the bedroom and an exterminator to address the silverfish problem. The tenant gave the landlord a letter on or about August 31, 2010 in which she outlined her complaints. In that letter, the tenant acknowledged that light fixtures were repaired.

The tenant further alleged that after she had planted a garden, the landlords advised that they would have to dig up the garden area in order to work on plumbing and suggested she move her plants before the following day. The tenant stated that she had spent approximately $100.00 for plants and had to donate them to friends to avoid their destruction.

The landlords testified that they were unaware of a silverfish problem until they received the tenant's letter in August and argued that they had performed most of the requested repairs, including replacing the toilet seat, providing light bulbs and providing a fully functional refrigerator. They stated that the lights were operational in the unit throughout the tenancy but that one room did not have light bulbs and the other room was missing a cover for the light fixture.

The tenant testified that the landlords had repeatedly breached the Residential Tenancy Act during the tenancy by not producing a written condition inspection report at the beginning or end of the tenancy, by not giving her a copy of the tenancy agreement, by coercing the tenant to sign a mutual agreement to end tenancy, by allowing an unauthorized person into the unit to assist in cleaning, by performing cleaning in the unit without the tenant's permission and by illegally accessing the unit on occasion. The tenant stated that on several occasions a door to the common area was left unlocked by the landlords or their guests. She alleged that the landlords had imposed upon her times for their entry and had entered without her prior consent and that on one occasion, they had brought a third party to the unit and although they had given her notice that they would be showing the unit to prospective tenants, they spent time cleaning the unit, particularly evidence of the silverfish infestation. The tenant argued that she had not agreed to permit a third party into her home or for the landlords to do any cleaning. The tenant further alleged that the landlords had spoken to her disrespectfully, and on one occasions had called her a derogatory name and that as a result of renovations to the garage, her access to the garbage cans was blocked for a period of time.

The landlords stated that they had given the tenant a copy of the tenancy agreement and denied having coerced her to sign a mutual agreement to end tenancy. They acknowledged that they brought a third party with them to show the unit as it was their practice to ensure that they were not alone in the unit with prospective tenants but had a third party who could assist in ensuring that prospective tenants were carefully observed at all times while in the unit. The landlords stated that they cleaned up the unit because it was not in suitable condition to show. They further testified that they had removed the tenants' garbage from where she had placed it beside the garbage bins.

The tenant claimed that the landlords should be responsible for half of her moving expenses because they had forced her to sign a mutual agreement to end the tenancy. The tenant stated that she had a meeting with the landlords and their business partner on or about September 1 and that at that meeting, the landlords refused to perform any more repairs, which left the tenant no choice but to agree to vacate the rental unit.

The landlords testified that at the September 1 meeting, they asked the tenant if she wanted to break the lease and she agreed to do so at that time.

Analysis

Section 38(1) of the Act provides that landlords must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. In this case, the landlords returned

$500.00 of the deposit within 14 days of the end of the tenancy. The only amount which remained outstanding was the $50.00 to which they felt they were entitled for late payment fees. The Act requires landlords to obtain the written agreement of tenants in order to retain any part of the security deposit. I find that the landlords wrongfully withheld $50.00 of the deposit and I find that pursuant to section 38(6), the tenant is entitled to recover double that part of the deposit which was wrongfully withheld. I award the tenant $100.00. The parties appeared to agree that as of the date of the hearing, the tenant had not cashed the landlords' cheque for $500.00. As it is unclear whether the cheque is still negotiable, I find it appropriate to include the amount of the cheque as part of the award and I award the tenant $500.00. If the tenant is able to negotiate that cheque, it will serve to reduce the total amount of the award.

Addressing the question of whether the tenant is entitled to compensation for the diminished value of the tenancy as a result of repairs not having been completed, the tenant has the burden of proving that repairs were required, that the landlords were obligated to perform those repairs, that the landlords failed to comply with that obligation and that the tenant suffered a diminished value of her tenancy as a result of that failure. I find that the landlords had no obligation to install a fan or electrical outlet in the bathroom. When the tenant agreed to rent the unit there was not a fan or outlet and there is no indication that the absence of those features prevented her from using the bathroom for its intended purpose.

The tenant provided no details as to how she addressed the lack of cleanliness in the unit at the time she moved in. Apparently she packed and removed the remaining belongings of the previous tenant and I assume she cleaned the rental unit. I find it more likely than not that she had to do some cleaning and dispose of items and I find that she is entitled to some compensation for that labour. As I have no evidence as to how much time was spent performing those tasks, I find that an award of $30.00 which represents 2 hours of labour at a rate of $15.00 per hour will adequately compensate the tenant.

The landlords claimed that the lights in the unit were fully operational but acknowledged that one light was missing a cover and the other was missing bulbs. The landlords replaced the burned out bulbs and the light cover during the tenant's summer holiday. I find that the tenant has provided insufficient evidence to prove that she was deprived of light in those rooms until the landlords made those repairs. The tenant had an obligation to act reasonably to minimize her losses and if the bulbs were burned out at the start of the tenancy, she should have replaced the bulbs and asked the landlords for reimbursement rather than living in the dark for 3 months. I find that the tenant has failed to prove entitlement to compensation for a lack of light.

The landlords did not dispute having received the tenant's list of required repairs taped to her door when she left for holidays in July. I find that they received notice of the silverfish problem at that time and I find that they did not address the issue within a reasonable period of time. I accept that there was a problem with silverfish, that the landlords were aware of it and had an obligation to act and I find that the landlords should have acted more quickly to address this issue and I award the tenant $100.00 for the diminished value of her tenancy as a result of that infestation.

There is no evidence to show that the issue of the broken thermostat was brought to the landlords' attention prior to the letter dated August 31and I find that this was the date on which the landlords were first given notice of that issue. The tenant was not specific as to whether the temperature was unbearable during the month of September and in the absence of that evidence, I find that the tenant has not proven an entitlement to compensation.

The tenant provided no proof of the value of the plants that were lost when the landlords dug up the garden area and I find that the quantum of that loss has not been proven.

Turning to the question of loss of quiet enjoyment, I accept that there were aspects in which neither of the parties fully complied with their obligations under the Residential Tenancy Act. The landlords were obligated to complete condition inspection reports which they failed to do and the tenant paid rent late in contravention of a specific term of the tenancy agreement as well as demanding that the landlords not enter the rental unit unless she had approved of a time for them to enter. The Act does not provide a monetary penalty for parties who fail to comply with the Act. The tenant must prove that her quiet enjoyment was unreasonably disturbed by the actions of the landlords. I am unable to find that the disruption of which she complains was unreasonable. Specifically, the lack of a condition inspection report does not seem to have in any way inconvenienced the tenant.

Although the tenant claimed she was not given a copy of the tenancy agreement, there is no evidence that she requested it from the landlords which I find unusual as she did not hesitate to put other requests in writing. She claimed that she was forced to sign the agreement to end tenancy because the landlords failed to perform repairs, but among the repairs she had requested was a request that they install a bathroom fan and outlet which they were not obligated to do. She had the option of applying for dispute resolution to request an order that the landlords perform repairs, but she chose instead to end the tenancy. I am unable to find that she was forced to make this choice; rather, she chose not to pursue other remedies which were available to her.

With respect to access, there is nothing in the Act preventing landlords from bringing third parties into a rental unit without the tenant's permission. The landlord had a reasonable explanation for the third party's presence and there is no indication that there was an actual rather than merely a perceived impact on the tenant. As for the landlord and the other parties cleaning in the rental unit, it appears that the cleaning was superficial and I find that it was reasonable. Again, the tenant has proven no actual impact on her quiet enjoyment.

The tenant did not have the right to demand that the landlords obtain her agreement to a time of entry. The landlords' attempt to find mutually agreeable times for entry was courteous but was not an obligation. Upon having served proper notice, it was open to the landlords to unilaterally impose a time for entry.

I find that the fact that common areas were left unlocked on occasion caused the tenant no inconvenience.

The reduced access to garbage cans does not appear to have inconvenienced the tenant as the landlord's evidence showed that she was still able to dispose of her garbage.

As for the tenant's argument that the landlords spoke to her rudely and unprofessionally, while this may not have been appropriate behavior in the context of a professional relationship, I am unable to find that this behavior, particularly as it was not extreme, should attract compensation.

On the whole, I find that the tenant has failed to prove that she suffered a loss of reasonable privacy or was unreasonably disturbed and accordingly I dismiss her claim for compensation in that regard.

I find that the tenant was not forced to sign the mutual agreement to end tenancy and therefore the landlords cannot be liable for any of her moving costs. The claim for half her moving costs is dismissed.

As the tenant has been substantially unsuccessful in her application, I find that the parties should divide the cost of the filing fee and I award the tenant $25.00.

Conclusion

In summary, the tenant has been successful in the following claims:

Security deposit	$500.00
Double unreturned portion of deposit	$100.00
Labour for cleaning at outset of tenancy	$ 30.00
Silverfish infestation	$100.00
Filing fee	$ 25.00
Total:	**$755.00**

I grant the tenant a monetary order for $755.00. Again, if the tenant is able to negotiate the landlords' $500.00 cheque of October 15, 2010, this will serve to reduce the amount payable to $255.00.

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 29, 2011

Residential Tenancy Branch