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 tenants for recovery of their security deposit and further monetary compensation.

The hearing first convened on September 12, 2011. On that date, both tenants and one landlord, RF, attended the teleconference hearing. At that time, the tenants had failed to serve all of their evidence on both landlords. I adjourned the hearing to allow the tenants more time to serve all of their evidence on both landlords.

The hearing reconvened on October 12, 2011, with tenants and both landlords in attendance. The landlord stated that he had not received the tenants' evidence until October 5, 2011, less than 5 full business days before the hearing, and he would have submitted evidence in response if he had received the tenants' evidence in a timely manner. The tenants stated that they intentionally did not serve the landlord with their evidence until close to the hearing date because they did not want to disclose to the landlord the names of their witnesses.

The Rules of Procedure require that applicants file and serve copies of all available evidence at the same time they make their application for dispute resolution, and that they serve all evidence at least five business days before the date of the hearing. All evidence that a party intends to rely on in the hearing must be provided to the other party in a timely fashion so that the other party may have time to consider the evidence against them and provide their evidence in response, and so that the hearing may be conducted in accordance with the principles of administrative fairness.

In this case, the hearing was adjourned to allow the tenants to properly serve the landlords with their evidence, as they had failed to do so before the commencement of the first scheduled hearing date. The tenants chose to withhold their evidence until just prior to the hearing, and the landlord was not afforded an opportunity to submit evidence in response. I found that it would be unduly prejudicial to the landlord to admit the tenants' evidence in this case, and I did not admit or consider the tenants'

documentary and photographic evidence. I allowed the tenants to give oral testimony, and the landlord provided testimony in response.

I have reviewed all of the testimonial evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to double recovery of their security deposit?
Are the tenants entitled to other monetary compensation as claimed?

Background and Evidence

The tenancy began on February 15, 2009. At the outset of the tenancy, the tenants paid the landlord a security deposit of $200. The tenancy ended in May 2011. The tenants gave the landlord their written forwarding address and requested return of their security deposit on May 11, 2011. The landlord did not return the security deposit or make an application to keep the security deposit.

The tenants' testimony regarding their application was as follows.

During the tenancy, the tenants noticed mould on the basement laundry room wall. The tenants told the landlord about the mould, but the landlord did not do anything about it. The tenants then found mould in their bedroom closet. The mould damaged pillows, bedding, a pair of shoes and some clothing, all of which had to be thrown out. The tenants told the landlord about the damage, but the landlord refused to compensate the tenants for their lost items or take steps to address the mould problem.

The rental unit had an old deck that was breaking apart. In the spring of 2011 the landlord and the tenants discussed the deck, and the landlord said he planned to remove and replace the entire deck. They also discussed removing some trees and growing new grass in the back yard. The landlord encouraged the tenants to do the yard work. The tenants removed trees and stumps as well as rotted wood ties, and planted new grass.

On March 19, 2011 the landlord gave the tenants a two month notice to end tenancy for landlord's use. The effective date on the notice was May 15, 2011. The tenants believed that they had no choice but to move out by that date. The tenants began moving out on April 30, 2011.

On May 9, 2011 the tenant went to retrieve some of their belongings from the garage, and moved some boards that the landlord had placed on top of one of the tenants' shelves. Later that day the landlord called the tenant and yelled and swore at him for moving the boards.

The next day, the landlord left several text and voice mail messages on the male tenant's cell phone, using vulgar, offensive and threatening language. In the hearing, the tenant read some of the landlord's messages. The landlord also called the female tenant and was so rude to her that he had her in tears. The landlord dumped garbage in the yard of the tenants' new residence, put all of the tenants' remaining possessions out on the street in front of the rental unit and changed the locks on the rental unit. Some of the tenants' possessions, specifically eight bags of masonry and a saw, were missing.

The tenants have claimed double recovery of their security deposit; $185 for items that were lost to mould; $200 for yard work; $140 for the masonry bags; $150 for the saw; and $1200 for "punitive and personal damages," for the landlord's offensive and inappropriate behaviour at the end of the tenancy.

The landlord's response to the tenants' claim was as follows.

The landlord never heard anything from the tenants about mould. The tenant did yard work on his own initiative, and there was no agreement that the landlord would pay the tenant for his work. The landlord acknowledged that he was a bit upset at the tenants, and he was sarcastic. The landlord also acknowledged that he dumped some of the tenants' items at their new address, and he did put their other possessions out on the street.

Analysis

Upon consideration of the evidence, I find as follows.

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, I find that the tenancy ended on May 10, 2011, the date that the landlord changed the locks. The tenants provided their forwarding address in writing on May 11, 2011. The landlord has failed to repay the security deposit or make an application for

dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenants have established a claim for double the security deposit, in the amount of $400.

The tenants did not provide sufficient evidence to establish that they notified the landlord of the mould problem. A landlord has a responsibility to maintain the rental unit in a state of repair that complies with health, safety and housing standards; however, a landlord cannot address a problem that has not been brought to their attention. In this case, I do not find that the landlord is responsible for the cost of the tenants' possessions they state were damaged by mould. I therefore dismiss this portion of the tenants' application.

The tenants did not have an agreement with the landlord to do yard work in exchange for payment, or otherwise. Even if the landlord and tenant had such an agreement, it would most likely be a form of employment contract, and I do not have authority under the *Residential Tenancy Act* to enforce such an agreement. I therefore dismiss this portion of the tenants' application.

The landlord violated the Act when he removed the tenants' belongings from the rental unit and changed the locks before the tenancy had ended. When a landlord lawfully removes a tenant's belongings they must make an inventory list and securely store those items. The landlord did not deal with the tenants' belongings in a responsible manner, and the tenants cannot be expected to prove that the items the landlord put out on the street were not missing. I therefore accept the tenants' evidence on this point, and grant the tenants the amounts claimed of $140 for the missing masonry bags and $150 for the saw.

I accept the tenants' evidence regarding the landlord's inappropriate behavior toward the tenants on May 9 and 10, 2011. The Act does not provide me the authority to grant punitive damages. However, I find that as the landlord ended the tenancy on May 10, 2011, the tenants are entitled to an abatement of rent for May 10 to 15, 2011, in the amount of $232.26.

As their application was largely successful, the tenants are also entitled to recover the $50 filing fee for the cost of their application.

Conclusion

I grant the tenant an order under section 67 for the balance due of $972.26. This order may be filed in the Small Claims Court and 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: October 26, 2011.

Residential Tenancy Branch