Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, RR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit in partial satisfaction of the claim. The hearing was originally scheduled to be held on January 26, 2012 at which time all parties were in attendance. On that date, the landlord requested and was granted an adjournment. February 22, 2012 was set as a new date for the hearing. On February 2, the tenants filed a cross-application requesting a monetary order and a rent reduction. Both claims were heard on February 22 when once again, all parties were in attendance.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on September 1, 2010 and ended on or about June 10, 2011 when the tenants vacated the rental unit. Rent was set at $1,290.00 per month and the tenancy proceeded on a month-to-month basis. The tenants paid a $645.00 security deposit.

I address the claims of the parties and my findings around each claim as follows:

1. **Landlord's claim: Unpaid rent for June 2011.** The landlord seeks to recover $1,290.00 in unpaid rent for June 2011. The parties agreed that after having requested and been denied the opportunity to end their tenancy on June 15, on or about May 27, 2012 the tenants gave the landlord notice to end their tenancy on June 30. The parties further agreed that the tenants stopped payment on their rent cheque for the month of June. The tenants argued that they were desperate to escape the tenancy because the landlord had deprived them of quiet enjoyment and they needed the money to secure alternate accommodations. Section 26(1) of the

Act requires tenants to pay rent when it is due under the tenancy agreement regardless of whether the landlord has complied with her obligations under the Act. I find that the landlord is entitled to recover $1,290.00 in unpaid rent for the month of June and I award her that sum.

2. **Landlord's claim: Carpet cleaning and repair.** The landlord seeks to recover $369.00 as the cost of cleaning stains from the carpet in the rental unit. The parties agreed that the tenants had the carpet professionally cleaned at the end of the tenancy. The tenants testified that there was a single stain, approximately 2 square inches, which could not be removed. The landlord claimed that there were several stains on the carpet which a second cleaning was able to remove. The landlord provided the invoice from the party who performed the second cleaning which stated that there were "red stains and urine dog stains" as well as a note in which that technician wrote that "most of the stains are reduced so they're not so bad".

   Usually in these circumstances, I would refer to other corroborating evidence such as photographs or the condition inspection report. However, the landlord provided no photographs and the parties did not complete a condition inspection report at the end of the tenancy. The landlord had the obligation to schedule a time and date to perform a condition inspection at the end of the tenancy and generate a report and, if the tenants failed to agree on a time, the landlord was obligated under the *Residential Tenancy Regulation* to issue a "Notice of Final Opportunity to Schedule a Condition Inspection". The landlord had ample opportunity to schedule this inspection before the tenants vacated the unit, but chose not to issue that notice and I find that the landlord is at fault for not scheduling that inspection. In the absence of photographs or the report which could have corroborated the landlord's claim, I find insufficient evidence to show that the stains alleged by the landlord were as severe as she claimed or that they went beyond what may be characterized as reasonable wear and tear. Although the tenants acknowledged that there was one small red stain, the landlord testified that the carpet was over 10 years old and I find that it had outlived its useful life and that any diminution in value was so minimal that it is not compensable. For these reasons I dismiss this claim.

3. **Landlord's claim: Lock replacement.** The landlord seeks to recover $162.31 as the cost of replacing the locks at the end of the tenancy. The parties agreed that the tenants returned all of the keys issued by leaving them inside the rental unit. The landlord claimed that the unit was left unlocked and that anyone could have entered and made copies of the keys and because of this concern, she felt that she needed to replace the locks. I find it unlikely that a thief would enter the unit on two occasions, once to take the keys and a second time to return them after having

made copies. However, even if this unlikely event had occurred, the landlord would have been obligated to change the locks at the outset of the next tenancy at the new tenant's request in any event, so for these reasons I find that the landlord is not entitled to recover this cost and I dismiss this claim.

4. **Landlord's claim: Couch removal.** The landlord seeks to recover the cost of removing a couch which the tenants had left outside at the end of the tenancy. The couch was removed on June 15 at a cost of $33.60. The tenants testified that on or about June 8, they had made arrangements for a local organization to pick up the couch and that had the landlord waited, the couch would have been removed at no cost. The couch was removed by the landlord almost a full week after the date the tenants claim to have asked the local organization to remove it and I find it more likely than not that by that late date the organization had either overlooked the couch or viewed the couch and determined that it did not meet their criteria for a donation. I find that the landlord is entitled to recover the cost of removing the couch and I award her $33.60.

5. **Landlord's claim: Wall repair and painting.** The landlord seeks to recover $104.30 as the cost of supplies and $50.00 as the cost of labour to repair and repaint the walls in the rental unit. The landlord claimed that the walls were damaged and required repair. The tenants denied that they had damaged the walls and claimed that there was some minor damage at the beginning of the tenancy. The landlord bears the burden of proving her claim on the balance of probabilities and in the absence of corroborating evidence such as a move-out condition inspection report or photographs, I am unable to determine whether there was any damage or whether that damage was beyond reasonable wear and tear. I find that the landlord has not met her burden and I dismiss the claim.

6. **Landlord's claim: Cleaning.** The landlord seeks to recover $115.00 as the cost of cleaning the unit at the end of the tenancy. She claimed that the oven had not been cleaned at all and that other cleaning was required, including cleaning cupboards in which items and crumbs had been left behind. She further testified that the tenants had left items and garbage behind. The tenants acknowledged that they did not clean the oven, claiming that they were unsure of how to operate the self-cleaning function and the landlord had refused their request for help. The tenants claimed that the rest of the unit had been cleaned and that items left behind in a cupboard were items which were there at the beginning of the tenancy. They claimed that the garbage left behind had been left in the outside garbage and recycling area. The landlord provided photographs of the oven, one cupboard in which there were some items left, garbage bags and boxes, a soiled ashtray and a small plastic container.

The landlord testified that the self-cleaning function of the oven was easy to operate and simply required the flip of a switch, but stated that the oven racks and drawer should have been cleaned. It is clear that the oven was left unclean. Since the cleaning required just the flip of a switch, I find that no compensation is required for that part of the cleaning. I find that an additional hour of cleaning was required to clean the oven racks and drawer, remove the ashtray and plastic container and ensure the garbage was collected. The landlord provided no evidence to corroborate her claim that other areas of the unit required cleaning. I award the landlord $15.00 for cleaning.

7. **Landlord's claim: Drawer repair.** The landlord seeks to recover $46.19 as the cost of materials and $100.00 as the cost of labour to repair drawers in the rental unit. The landlord testified that she found that the drawers had been removed and were non-functional. The tenants claimed that the drawers had not functioned from the outset of the tenancy and stated that they had simply removed the drawers and not used them. The daughter of one of the tenants, who claimed to be a "professional floors and doors salesperson", provided a written statement in which she stated that the drawers were of inferior construction and design, warped and could not support even a light weight. The tenants acknowledged that they did not report the problem to the landlord and stated that they did not do so because of her poor attitude toward repairs. When tenants encounter a difficulty in the rental unit, they have an obligation to report this to the landlord. When this report is not made and there is no indication of malfunction on the move-in condition inspection report, it leads me to believe that the problem did not pre-date the tenancy. I find it more likely than not that had the tenants encountered a problem at the beginning of the tenancy, they would have informed the landlord as their relationship had not yet deteriorated at that point. I do not accept the tenant's daughter as a professional qualified to comment on the construction or design of the drawers. I find that the landlord has proven this claim on the balance of probabilities and I award her $146.19.

8. **Landlord's claim: Advertising.** The landlord seeks to recover costs associated with advertising the rental unit at the end of the tenancy. This tenancy was not set for a fixed term, but was a month-to-month tenancy under which the tenants were free to end the tenancy with one month's notice. As the tenants provided adequate notice and did not breach the Act or the tenancy agreement by ending the tenancy, there is no basis on which I can award the landlord the cost of advertising and I find that the claim must fail. The claim is therefore dismissed.

9. **Tenants' claim: Double security deposit.** The tenants seek an order for the return of double their security deposit. Under section 38 of the Act, the landlord's obligation to deal with the security deposit is not triggered until she receives the tenants' forwarding address in writing. The tenants argued that the landlord had their telephone numbers, email addresses and work addresses and claimed that she could have contacted them through any of those means. I find that this does not meet their obligation to provide their forwarding address in writing. Under section 38(1), the tenant's right to recover double the security deposit does not arise unless the landlord has failed to make an application to retain the security deposit within 15 days of having received their forwarding address in writing. The tenants acknowledged that they did not provide their forwarding address in writing until after the landlord had made a claim against the deposit. I find that the entitlement to the return of double the deposit was therefore not triggered and I dismiss the claim.

   I note that it is clear on the evidence that the landlord has extinguished her claim against the security deposit by failing to schedule a condition inspection report as explained above. However, the Act does not prevent the landlord from making a claim for damages and section 72(2)(b) of the Act permits me to deduct the security deposit from any award made to the landlord. The net result of the interaction of these sections is that the security deposit may be applied to any monetary award made to the landlord, which is what I will do in the interest of expediency.

10. **Tenants' claim: Legal fees and missed work.** The tenants seek to recover the cost of retaining counsel to respond to the landlord's claim as well as lost wages for the time spent participating in the hearing over 2 days. Under the Act, the only litigation related expense I am empowered to award is the cost of the filing fee and accordingly I dismiss this claim.

11. **Tenants' claim: Loss of quiet enjoyment.** The tenants seek compensation for loss of quiet enjoyment suffered throughout the tenancy. They claim that the rental unit was shown to prospective purchasers numerous times throughout the tenancy and that the landlord and her realtor often did not provide them with proper written notice. The tenants provided a string of emails in which they repeatedly complained that the landlord was depriving them of quiet enjoyment and requesting that she comply with her obligations under the Act. The landlord testified that she found it frustrating that when she or her realtor knocked on the door, the tenants often didn't answer because they did not want "same day showings." The male tenant testified that because his workday started in the early hours of the morning, sometimes as early as 3:00 a.m., he had to be in bed early and although he repeatedly explained

to the realtor that evening showings were disruptive, she persisted in scheduling appointments for the evenings.

The tenants testified that the landlord would turn music on extremely loudly in the middle of the night if she was awakened by the tenants walking overhead. The landlord did not deny turning her music up loudly but complained that the male tenant was disruptive and wore shoes which sounded heavily over her head. She questioned why he would use the room at night. The male tenant testified that he often had to get up and get dressed in the room directly above where the landlord slept and that he did so in order to avoid waking the female tenant. The tenant denied wearing shoes in the house.

While the tenants may have been aware at the outset of the tenancy that the rental unit was for sale and that showings would be required, they were still entitled to quiet enjoyment of the unit. I accept that the landlord needed to show the unit, but because she chose to enter into a tenancy, she was obligated to ensure that her tenants were not unreasonably disturbed. I find that the landlord showed the unit excessively throughout the tenancy, that she did not provide proper written notice and that she ignored the tenants' repeated attempts to arrange a reasonable number of showings at times which would least disturb them. I further find that the landlord turned up her music to an unreasonable level specifically to disturb and aggravate the tenants. I find that the tenants suffered a loss of quiet enjoyment at times throughout the tenancy. I find that an award of $645.00, which is one half of one month's rent, will adequately compensate them and I award them that sum.

12. **Filing fees.** Both parties seek to recover the filing fees paid to bring their applications. As both parties have enjoyed some success, I find it appropriate that each bear the cost of their own filing fees.

Conclusion

The landlord has been awarded $1,484.79 which represents $1,290.00 in unpaid rent, $33.60 for the couch removal, $15.00 for cleaning and $146.19 for the drawer repair. The tenants have been awarded $645.00 for loss of quiet enjoyment. Setting off these claims as against each other leaves a balance of $839.79 payable by the tenants to the landlord. I order the landlord to retain the $645.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of $194.79. This order may be filed in the Small Claims Division of the Provincial 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: February 24, 2012

Residential Tenancy Branch