Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MND, MNDC, MNSD, FF
Tenants: MNDC, (MNSD), FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by the Act and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenants admitted that they had not served the Landlord with their evidence package and as the Landlord has no ability to respond to it, it is excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for lost rental income?
2. Is the Landlord entitled to compensation for cleaning and repair expenses?
3. Are the Tenants entitled to the return of a security deposit and if so, how much?

Background and Evidence

This fixed term tenancy started on October 1, 2011 and was to expire on September 30, 2012 however it ended on May 31, 2012 when the Tenants moved out. Rent was $1,250.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $1,250.00 at the beginning of the tenancy.

The Landlord claimed that the Tenants gave him verbal notice in mid-May, 2012 that they would be ending the tenancy at the end of May. The Landlord said he started advertising the rental unit in three local, online websites for the same rate of rent but could not find another tenant who would rent the unit until August 2012 and at a lower rate of rent ($1,200.00 per month). Consequently, the Landlord sought a loss of rental income for the month of July as well as for a $50.00 shortfall in the monthly rent to the end of the fixed term.

The Tenants claim they advised the Landlord verbally on May 1, 2012 that they would be moving at the end of the month and he said they "would work around it." The Tenants said they believed the Landlord agreed they could end the tenancy early because he did not say anything about holding them to the balance of their lease. The Tenants said they are responsible for a loss of rental income for June 2012 but should not be responsible for lost rental income after that time because it was the Landlord's choice to reduce the rent. The Tenants also argued that the rent they were paying was too high in any event.

A condition inspection report was completed at the beginning of the tenancy. The Parties participated in a move out inspection on May 31, 2012 however a condition inspection report was not completed by the Landlord's spouse and a copy was not provided to the Tenants until August 8, 2012 when the Landlord served the Tenants with the hearing package.

The Landlord claimed that at the end of the tenancy, he had to make wall repairs and re-paint because the Tenants put holes in the walls to hang shelves and other items. The Landlord said that although the Tenants filled some of the holes, they were not sanded and painted. Consequently, the Landlord said he spent 8 hours repairing the walls and used supplies on hand that he estimated had a value of $50.00. The Tenants argued that the holes in the walls were not "damage" because they used drywall screws to hang the shelves. The Tenants said the Landlord offered to paint the rental unit at the beginning of the tenancy but did not, so they assumed that he would do so at the end of the tenancy instead. The Tenants also claimed that some of the holes were from a previous tenancy. As a result, the Tenants claimed it was the Landlord's responsibility to repaint. The Landlord denied that he offered to paint the rental unit at the beginning of the tenancy and claimed that various rooms had been painted only a year or two prior to the tenancy.

The Landlord also claimed that at the end of the tenancy, the rental unit was not reasonably clean. The Landlord said the walls were dirty, the oven had a white residue, the window and door sills and window panes were dirty, there was broken glass in a crawl space and garbage outside had to be removed. The Tenants claimed that the rental unit was in cleaner condition at the end of the tenancy than it was at the beginning of the tenancy. The Tenants said they had to clean all of the walls at the beginning of the tenancy and may not have removed all of the dirt. The Tenants also said that the oven was self-cleaning so any ash or residue would easily wipe off. The Tenants said they cleaned all of the rental unit and the Landlord's spouse "was fine" with the cleanliness during the move out inspection. The Tenants admitted that they forgot to remove a broken light bulb in the crawl space but argued that the only garbage they left behind was in a garbage can.

The Landlords further claimed that they incurred expenses to repair holes in the yard that were left from the footings of a structure put up and later removed by the Tenants. The Tenants admitted that they erected a structure with the consent of the Landlord but

claim that the yard was already in bad shape at the beginning of the tenancy and that they left no further damage.

The Parties agree that during the move out inspection on May 31, 2012, the Tenants gave the Landlord's spouse their respective forwarding addresses in writing. On or about June 20, 2012, the Landlord sent each of the Tenants a cheque in the amount of $525.00 with a handwritten note stating that $200.00 had been deducted for wall repairs. The Parties agree that the Tenants did not give their written authorization for the Landlord to keep any of the security deposit and it has not been returned to the Tenants.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that the Landlord accepted the Tenant's verbal notice that they gave on or about May 1, 2012. Although the Landlord claimed this notice was given in mid-May, this contradicts the written submissions on his application which states "*attached are detailed listings from Castanet – the original ad was placed May 6 and approved May 7, then refreshed on May 15.*" However, I find that there is insufficient evidence that the Landlord agreed that the Tenants could end the fixed term tenancy early without being responsible for rent to the end of the term. Although the Landlord initially returned all but $200.00 of the Tenants' security deposit and pet damage deposit, I find that this did not constitute a waiver of the Landlord's right to later make a claim for lost rental income. The Tenants also conceded at the hearing that they believed they were responsible for June rent and accordingly I find that the Landlord is entitled to recover a loss of rental income for June 2012 in the amount of **$1,250.00**.

I also find that the Landlord is entitled to recover lost rental income of $50.00 per month for the following 3 months of July, August and September 2012. Although the Tenants argued that this was the Landlord's choice and not theirs, I find on a balance of probabilities that it was necessary in order to mitigate further losses of rental income. Consequently, I also award the Landlord **$150.00** for this part of his claim.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days, respectively). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental property during the tenancy or if she

has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. Given that the Landlord did not provide a copy of the move out condition inspection report for the Tenants to complete, I give it no weight (unless portions of it are admitted by the Tenants). The Landlord provided no other documentary evidence of the state of repair or cleanliness of the rental unit in support of his claim.

The Tenants admitted that they put screw holes in a wall to support shelves. RTB Policy Guideline #1 says at p. 4 that "*the tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screw or tape have been used and left wall damage*." The Tenants also admitted that they filled some smaller nail holes but did not sand and paint over them because they believed the Landlord would do so at the end of the tenancy. I find that the screw holes in the walls is not reasonable wear and tear and that the Tenants were responsible for returning that wall to its original condition which meant sanding and painting the wall. However, in the absence of any corroborating evidence from the Landlord regarding the extent or nature of the other nail holes made and filled by the Tenants, I find that there is insufficient evidence to conclude that they constituted "damage" as defined by the Act. Consequently, I award the Landlord **$50.00** for wall repairs and painting including supplies.

The Landlord also argued that the rental unit was not reasonably clean at the end of the tenancy. With the exception of a broken light bulb in a crawl space, the Tenants disputed this part of the Landlord's claim and argued that it was left in better condition that they received it. Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord (who bears the onus of proof) to resolve the contradiction, I find that there is insufficient evidence to support the Landlord's claim for cleaning expenses and it is dismissed without leave to reapply.

The Landlord also sought to recover expenses for repairing an area of the back yard where he claimed holes were left from the removal of footings where the Tenants had erected a structure. The Landlord provided a repair estimate of $220.00. However, the Tenants denied that there were damages and the Landlord provided no evidence of the alleged damaged area. In the absence of any corroborating evidence (such as photographs, for example), I find that there is insufficient evidence to conclude that the back yard was damage by an act or neglect or the Tenants and accordingly, this part of the Landlord's claim is dismissed without leave to reapply. Consequently, I find that the Landlord is entitled to a total monetary award of $1,475.00.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does

not do either one of these things and does not have the Tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the tenancy ended on May 31, 2012 and that the Landlord's agent received the Tenants' forwarding address in writing on the same day. Consequently, the Landlord had until June 15, 2012 at the latest to return all of the Tenants' security deposit or to file an application for dispute resolution to make a claim against it. I find that the Landlord returned $1,050.00 of the $1,250.00 security deposit to the Tenants on June 20, 2012 and did not have their written authorization to keep the balance of $200.00. I also find that the Landlord did not file an application for dispute resolution to make a claim against the deposit until August 2, 2012 (outside of the 15 day time limit required under s. 38(1) of the Act). As a result, I find that pursuant to s. 38(6) of the Act, the Tenants are entitled to recover the following amount from the Landlord:

Double security deposit:	$2,500.00
Less Payment made:	($1,050.00)
Balance Owing:	$1,450.00

As any order I would make for recovery of the Parties' respective filing fees would be offsetting, I make no award of them and that part of both Parties' applications is dismissed without leave to reapply. I order pursuant to s. 38(4) and s. 72(2) of the Act that the Parties' respective monetary awards be offset with the result that no amount is owing to the other.

Conclusion

The Landlord's application is granted in part. The Tenants' application is granted. 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: September 06, 2012.

Residential Tenancy Branch