Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MND, MNDC, MNSD, FF
Tenant: MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid utilities, for compensation for a loss of rental income and for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant 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.

Issue(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
3. Is the Landlord entitled to compensation for cleaning and repair expenses?
4. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This month-to-month tenancy started on March 1, 2012 and ended on May 31, 2012 when the Tenant moved out. Rent was $700.00 per month payable in advance on the 1st day of each month which included the exclusive use of one of three bedrooms in the rental property and the shared use of common areas with two other tenants.

The Landlord said the Tenant gave her "30 days notice" via e-mail on May 1, 2012 that she would be vacating on June 1, 2012, however she did not receive it for 3 or 4 days. The Landlord said she did not believe the Tenant's notice was proper because it was not delivered to her in writing, was not signed and was not given in the required amount of time. The Landlord said she responded to the Tenant on May 5, 2012 and advised her of these things. The Landlord also claimed that although she asked the Tenant on a number of occasions what her intentions were, the Tenant did not respond to her. The Landlord said she advertised the rental unit in an online website on May 4th or 5th, 2012

and found a new tenant for June 14, 2012. Consequently, the Landlord sought lost rental income for 13 days of June.

The Tenant said that the tenancy agreement contains a term (clause 2b) which requires the Tenant to provide the Landlord with "30 days notice in writing" but she argued that the form of writing is not specified. The Tenant argued that she believed e-mail was an acceptable form of "writing" because another term of the tenancy agreement (clause 29) required the Landlord to provide the Tenant with "24 hours written notice of entry" and that all notices of entry and other correspondence given by the Landlord during the tenancy was given by e-mail.

The Landlord said a condition inspection report was not completed with the Tenant at the beginning or at the end of the tenancy. The Landlord claimed that the entire rental property was professionally cleaned in January and February 2012 and the Tenant's room was clean and freshly painted at the beginning of the tenancy. The Landlord claimed that at the end of the tenancy, there were dark marks on two walls where a black comforter and futon had rubbed against them. The Landlord sought $250.00 for cleaning and vacuuming the Tenant's room and for cleaning the common areas in the rental property at the end of the tenancy. The Landlord said that although all three tenants were responsible for cleaning the common areas, she believes that the Tenant did not do her share during the tenancy based on what she was told by her daughter who was one of the other tenants.

The Tenant denied that there were any marks on the walls at the end of the tenancy and that she owned a black comforter. The Tenant said she washed the walls of her room and swept the floors and cleaned the bathroom and kitchen at the end of the tenancy. The Tenant also claimed that she cleaned the common areas during the tenancy and argued that it was the Landlord's daughter who did not do her share of the cleaning during the tenancy.

The Landlord also sought to recover from the Tenant expenses for dishwashing soap and toilet paper. The Landlord said she supplied these items at the beginning of the tenancy and the tenants were required to replace them during the tenancy. The Landlord claimed that the other tenants replaced these supplies from time to time but that the Tenant did not. The Tenant claimed that she did buy toilet paper and cleaning supplies during the tenancy and argued that the Landlord was not entitled to make a claim for cleaning supplies and toiletries in any event because that was a matter between herself and her roommates.

The Landlord also sought to recover on behalf of her daughter, compensation for a damaged cutting board and lost employment income from waiting for a plumber. The Landlord said the Tenant was responsible for damaging a toilet handle and her daughter had to wait at the rental property for a plumber to arrive. The Landlord also claimed that at the beginning of the tenancy, the Tenant asked for a lock to be put on her bedroom door and verbally agreed to reimburse the Landlord for it but did not do so.

The Tenant denied that she agreed to reimburse the Landlord for this expense and argued that the Landlord never asked her to pay for it during the tenancy.

The Landlord further claimed that the Tenant made long distance calls and had an outstanding balance of $2.65 at the end of the tenancy (which the Tenant did not dispute). The Parties agree that the Tenant gave the Landlord her forwarding address in writing by regular mail on May 25, 2012, that the security deposit has not been returned to the Tenant and that the Tenant did not give the Landlord written authorization to keep it.

Analysis

Section 45 of the Act sets out the requirements with which a tenant must comply to end the tenancy. However, parties may also agree to another arrangement in their tenancy agreement provided that it is not less than (or more stringent than) the right or entitlement to what the Tenant would be entitled under the Act. In this case, clause 2(b) of the Parties' tenancy agreement states that the Tenant must provide "30 days notice in writing" whereas the Act which requires one clear month's notice that must be given prior to the date rent is due (eg. the last day of the month). Consequently, I find that the Tenant's notice given on May 1, 2012 was given in sufficient time to end the tenancy effective May 31, 2012.

I also find that the Landlord established a practice of corresponding with and giving 24 hour "written" notices of entry to the Tenant by e-mail and therefore I find that the Landlord cannot now argue claim that her notices satisfied the requirement of writing but that the Tenant's did not. However both clause 3(b) of the tenancy agreement and s. 52 of the Act require that the Tenant's notice to end the tenancy must be signed and dated. While the Tenant's notice is dated, I find that it is not signed and it is not an effective notice for that reason. Consequently, I find that the Tenant is responsible for any lost rental income incurred by the Landlord.

The Tenant argued that the Landlord tried to re-rent the rental unit at a higher rate of rent (ie. $750.00 per month), however the Landlord claimed that this advertisement was posted online for one day only and then she changed her advertisement to $700.00 per month. I find on a balance of probabilities that the Landlord took reasonable steps to re-rent the rental unit and accordingly, I award her a loss of rental income of $303.33 for the period, June 1 – 13, 2012.

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). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit 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.

The Landlord did not complete a condition inspection report or provide any other documentary evidence of the condition of the rental unit at the end of the tenancy. The Landlord claimed that she incurred expenses of $250.00 to clean the Tenant's room and some common areas after the tenancy ended because the Tenant failed to do so at that time as well as during the tenancy (based on what her daughter told her). The Tenant claimed that she cleaned her room and common areas during the tenancy and at the end of the tenancy. I find that the Landlord's evidence of what her daughter told her verbally is hearsay evidence and I give it little weight because her daughter could not be questioned to test the reliability of the information. Given the contradictory evidence of the Parties on this issue and in the absence of any *reliable* corroborating evidence to resolve the contradiction, I find that there is insufficient evidence to support this part of the Landlord's claim and it is dismissed without leave to reapply.

For similar reasons, I find that there is insufficient evidence to conclude that the Tenant agreed to reimburse the Landlord for the cost of putting a lock on her bedroom door. The Landlord relied on an e-mail from her daughter as proof of such an agreement, however, as stated above, e-mail evidence in the absence of the deponent is hearsay and unreliable. Consequently, this part of the Landlord's claim is also dismissed without leave to reapply.

I find that there is no basis under the Act or tenancy agreement upon which the Landlord can recover expenses on behalf of her daughter who was another tenant of the rental property and therefore her claims to recover compensation for a cutting board and lost employment income are dismissed without leave to reapply. Furthermore, while the Landlord claimed that she asserting a claim to recover the cost of cleaning supplies paid by her, a Statement of Account dated July 20, 2012 and delivered to the Tenant shows that instead that this part of her claim was advanced by the Landlord on behalf of the other tenants. Consequently, the Landlord's claim for cleaning and toiletry supplies is also dismissed without leave to reapply. As the Tenant did not dispute the Landlord's claim for unpaid telephone charges, I award her the amount of $2.65.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. 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 then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the tenancy ended on May 31, 2012 and that the Tenant mailed her forwarding address to the Landlord on May 25, 2012. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later.

Consequently, the Landlord had until June 15, 2012 at the latest to either return the Tenant's security deposit or to file an application for dispute resolution to make a claim against the security deposit.

I find that the Landlord did not return the Tenant's security deposit of $350.00 and did not have the Tenant's written authorization to keep it. Although the Landlord filed an application for dispute resolution on August 8, 2012 to make a claim against the security deposit, I find that it was not filed within 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 Landlord must return double the amount of the security deposit or $700.00.

As an award of the Parties' respective claims for the $50.00 filing fee would be offsetting, I dismiss that part of each of their applications without leave to reapply. I Order pursuant to s. 62(3) and s. 72(2) of the Act that the Parties' respective monetary awards be offset ($700.00 - $305.98) with the result that the Tenant will receive a Monetary Order for the balance owing of $394.02.

Conclusion

A Monetary Order in the amount of $394.02 has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 10, 2012.

Residential Tenancy Branch