Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNSD, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and the tenant.

The tenant had submitted a letter dated October 15, 2012 that included a request to amend her Application seeking compensation in the amount of $325.00 to $600.00 that included doubling of the pet damage deposit to $250.00 and $300.00 for not being able to use the washing machine and the $50 filing fee.

The landlord confirmed that he had received the tenant's letter and appeared to be prepared to discuss the matter I amended the tenant's Application to include the additional compensation.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for all or part of the pet damage deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

In the alternative it must decided if the tenant is entitled to a monetary order for all or part of the pet damage deposit; for compensation for damage or loss; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The parties agree the tenancy began on January 14, 2012 as a month to month tenancy for a monthly rent of $650.00 due on the 1st of each month with a security deposit of $325.00 and a pet damage deposit of $125.00 paid. The pet damage deposit was in recognition that the tenant had two ferrets and two cats.

The tenancy ended when the tenant vacated the rental unit on or before July 14, 2012. The landlord testified they had the tenants forward address by the end of the tenancy.

Both parties provided extensive testimony regarding the tenant's notice to end tenancy. The landlord submitted that the tenant did not provide her notice in writing until July 14, 2012 and the tenant testified that she had had discussions and provided text messages to the landlord in June and an email on July 2, 2012 advising of her intent to end the tenancy.

The landlord testified that they had arranged to have a new tenant move in to the rental unit on July 16, 2012 for a monthly rent of $400.00 but that after the tenant had vacated the rental unit the urine smell from the pets was substantial and they called their new tenant to tell him he could not move in until they took care of the smell. The landlord submits the new tenant moved into the unit on July 27, 2012 and he started paying rent on August 1, 2012.

The tenant testified that the landlords did not complete a move in or move out Condition Inspection Report and that when she did the walk through with the landlord there was no indication that there was any smell problem.

The tenant has provided a written statement from a witness who attended the move out inspection and he indicates the landlord had assessed the condition to be sound both in cleanliness and structural integrity and that everything was good to go. The witness did not attend the hearing.

The tenant also testified that the landlord or their previous tenant may have caused the smell because the landlord had pets. The tenant stated she could not recall if there was a pet urine smell at the start of the tenancy. The landlord testified his previous tenant was his mother who did not have a pet and that his pets did not go into the rental unit.

The landlord testified the litter boxes for the ferrets were place in the corners of the room during the tenancy and during the walk through she identified to the tenant and her witness that there was a smell problem but the tenant did not comment or make response during the walk through. The tenant did not dispute these statements from the landlord despite being offered to respond to the landlord's testimony.

In relation to the washing machine, the tenant submits that she was unable to use the washing machine from June 18, 2012 until the tenancy ended on July 14, 2012. The tenant seeks $300.00 as compensation for this for the added costs of laundry; for transportation to the laundromat; and the stress of the situation. The tenant provided no receipts for transportation or evidence to confirm that she had any laundry services outside of the rental unit for which she incurred any costs.

The landlord testified that washing machine had broken down and they had ordered parts and were waiting for the arrival and installation of the parts. He also testified there

was a laundromat across the street from the rental unit and therefore there was no need for transportation.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the pet damage deposit or file an Application for Dispute Resolution to claim against the pet damage deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the pet damage deposit.

As the tenancy ended on July 14, 2012 and the landlord confirmed that they had the tenant's forwarding address by this date I find the landlord had until July 28, 2012 to either return the pet damage deposit in full or file an Application for Dispute Resolution seeking to claim against the deposit.

As the landlord's Application for Dispute Resolution is dated October 9, 2012, I find the landlord failed to meet their obligations under Section 38(1) and the tenant is entitled to double the amount of the deposit in accordance with Section 38(6).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 27 of the *Act* states a landlord must not terminate a service or facility if it is essential to the tenant's use of the rental unit or its provision is a material term of the tenancy agreement. The section goes on to state that a landlord may terminate or restrict a service or facility other than one noted above if the landlord gives the tenant 30 day's notice and reduces the rent by an amount equivalent to the reduction in value of the tenancy agreement.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

However, in the case before me, I find the washing machine had broken down and that the landlord had taken reasonable steps to repair the machine fulfilling their obligations under Section 32 and the landlord was not intending to terminate or restrict the service.

Therefore I find the tenant has failed to establish the landlord has violated the *Act*, regulation or tenancy agreement. Further, the tenant has provided no evidence to substantiate that she has suffered a loss or the value of that loss. I dismiss this portion of the tenant's Application for Dispute Resolution.

While both parties presented considerable testimony regarding the tenant's notice to end tenancy, I find that despite the tenant's failure to provide sufficient notice to end the tenancy as required by the *Act* this issue is not relevant to the landlord's claim before me today.

However, the landlord seeks to retain the pet damage deposit because they suffered a loss by not being able to start a new rental with a new tenant because of damage caused by the tenant's pets.

I also note that although the landlord failed to obtain $200.00 in rent from the new tenant when they would not let him move in until they took care of the smell, the landlord only claims the value of the pet damage deposit of $125.00.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

While I accept the tenant's position that the landlord has not provided condition inspection reports for the condition of the rental unit at the start or end of the tenancy, I note that those requirements deal solely with requirements for the return of deposits and do not prevent the landlord from using other methods to prove their claim.

In the case before me, as the tenant, herself, cannot recall if there was an odor problem in the rental unit and based on the landlord's testimony I accept that there were no pet odor problems at the start of the tenancy.

Further, the landlord submits that she identified the problem with the tenant during the walk through at the end of the tenancy but the tenant did not respond to this testimony, as such I must assume that the tenant did not disagree and the landlord did discuss it with her.

While the tenant has submitted a written statement from her witness the witness did not participate in the hearing to provide verbal testimony or an opportunity to provide additional clarification on whether the landlord raised the issue of the smell in the rental unit at the end of the tenancy.

For these reasons and based on the balance of probabilities I find that after a 6 month tenancy with 2 cats and 2 ferrets it is likely there would have been a pet urine odor problem and as such, I find the tenant failed to meet her obligations under Section 37 to leave the rental unit reasonably clean and undamaged.

As a result of this and based on the landlord's testimony I find the landlord has suffered a loss of rent that should have been paid by the new tenant as he was unable to move into the rental unit on the start date of that tenancy (July 16, 2012). I find the landlord is entitled to compensation in the amount equivalent to the pet damage deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$125.00** comprised of $250.00 double the pet damage deposit less $125.00 compensation to the landlord for lost rent.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were largely successful in their claim I dismiss both Applications to recover the filing fees.

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 23, 2012.

Residential Tenancy Branch