Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC FF

Introduction

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for compensation for damage or loss under the Residential Tenancy Act, (the Act).

The landlord and one of the two co-tenants attended the hearing and each gave testimony in turn.

Preliminary Issue

Although the landlord had named two different co-tenants in the application, only one was served by registered mail sent to the forwarding address provided to the landlord by the attending co-tenant.

For this reason I find that the landlord can only proceed against the tenant who was properly served with the Notice of Hearing documents and the matter cannot proceed against the co-tenant who was not served.

Issue(s) to be Decided for the Landlord's Application

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages or loss?

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The landlord testified that a one-year fixed term tenancy began on April 1, 2012 with rent of $1,400.00. A security deposit of $700.00 was paid.

The landlord testified that, after moving in, the tenant had complained about the smell of cat urine in the unit and arrangements were made with the tenant to replace the contaminated carpet as of May 10, 2012.

The landlord testified that on April 26, 2012, before the carpets could be replaced, the tenant suddenly gave notice to terminate the tenancy and moved out on April 30, 2012. The landlord testified that the tenant provided a forwarding address and the tenant's $700.00 security deposit was returned to the tenant in full.

The landlord testified that, after the tenant had left, the carpets were removed and replaced on May 10, 2012, as planned. However, it was discovered that the heating ductwork also had to be replaced as the contractors discovered that the ductwork was a source of the cat urine odour, in addition to the contaminated carpeting.

The landlord testified that, because the tenant gave short notice, they were not able to find a replacement renter and the unit was vacant for the month of May 2012 and part of June 2012. The landlord was seeking $1,400.00 for the loss of revenue for the month of May 2012 and $700.00 for half a month loss of rent for June 2012.

The landlord testified that, during the tenancy, the tenant had changed the locks and the landlord and the landlord repaid the tenant for this. The landlord is claiming $134.00 for the locks.

The landlord testified that they also had to do some minor cleaning before the replacement renters could take possession in June 2012. The landlord is claiming $50.00 in cleaning costs and submitted a receipt for the cleaning dated June 13, 2012.

The tenant testified that he and his girlfriend signed the fixed term tenancy in good faith with every expectation that they would enjoy the home. The tenant testified that, shortly after moving in they found that the premises were intermittently invaded by an extremely strong odour of cat urine, particularly when the heat was turned on. The tenant testified that, although the landlord promised to come and replace the carpet on May 10, 2012, the tenant's partner left shortly after moving in, stating that she and the children could no longer tolerate the stench and unhealthy living conditions. The tenant testified that he then had no choice but to terminate the tenancy on short notice because the unit was unfit for habitation and his partner had permanently vacated.

With respect to the cleaning costs, the tenant testified that the unit was left in a reasonably clean condition. The tenant pointed out that the landlord's final clean-up apparently occurred after their renovation work was finished a month and a half after he had moved out.

Analysis

In regard to an applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the

other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

I find that section 32 of the Act imposes responsibilities on 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, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

Although I find clear that the tenant did violate the contract by terminating the tenancy prematurely, I accept the tenant's position that his violation of the agreement was based on the initial violation perpetrated by the landlord in failing to provide the residential property in a state of decoration and repair that complied with health, safety and housing standards.

I find that the landlord did immediately make a commitment to address the problem. However, there is a valid question of whether or not the tenant was required under the Act to remain in the unit long enough to afford the landlord a reasonable opportunity to rectify the deficiency in the condition of the rental unit.

In this regard, I find that, even if the tenant was able withstand the adverse conditions by physically remaining in the unit until the landlord had removed the carpet on May 10, 2012, the urine contamination problem would have still remained because additional disruptive renovation work needed to be done by the landlord with respect to the duct

work. I find that the tenancy would likely have been adversely impacted by the replacement of duct work even after the carpets were changed. I find that, on a balance of probabilities, the tenant may well have been entitled to a rent abatement for the first and possibly the second month of habitation if he had chosen to make an issue of the devalued tenancy through dispute resolution.

In any case, I find that the vacancy of the unit during May and June 2012, was likely caused in part by the existing odour and the remedial work that was under way in the unit which had to be completed prior to any new tenants moving in.

For the reasons above, I find that the landlord's claim for loss of revenue has failed element 2 or the test for damages and must be dismissed.

With respect to the claim for the cost of changing the locks, I find that section 25 of the Act places the responsibility for the cost of changing the locks at the beginning, or end of the tenancy on the landlord. Section 25(1) states that at the request of a tenant at the start of a new tenancy, the landlord must

> (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
>
> (b) pay all costs associated with the changes under paragraph (a).

Section 25 (2) states that, if the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

In regard to the cost of cleaning, I find that section 37 of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear.

In establishing whether or not the tenant had complied with this requirement, I find that the landlord had refunded the tenant's security deposit on May 3, 2012, which would appear to imply that the landlord accepted that the rental unit was returned in a satisfactory condition, otherwise the landlord would have made an application within the required 15 days to retain a portion of the deposit for the cost of cleaning. Moreover, I accept the tenant's allegation that the cleaning in question had occurred after the substantial renovation work was completed in the suite.

Accordingly, I find that the landlord's claim for the cost of cleaning the rental unit must also be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is not entitled to the monetary compensation being claimed for the loss of

revenue, the cost for changing the locks, nor for the cost of cleaning and I hereby dismiss the landlord's application.

Conclusion

The landlord's application is dismissed in its entirety without leave.

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: November 26, 2012.

Residential Tenancy Branch