Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and one of the landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit; for the return of hydro charges; for punitive damages and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 29, 32, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on March 27, 2012 for a 6 month fixed term tenancy beginning on April 1, 2012 that converted to a month to month tenancy on October 1, 2012 for a monthly rent of $1,150.00 due on the 1st of each month with a security deposit of $575.00 paid.

The tenancy agreement included an additional clause that states the total rent amount of $1,150.00 includes $100.00 that would go directly to hydro charges each month and that any overages or underpayments would be reconciled every two months. The agreement includes an addendum that also stipulates the tenants are responsible for the payment of hydro utilities based on number of people in their unit and the basement rental unit.

The parties agree the tenancy ended when the tenants vacated the rental unit on October 31, 2012. The tenants submit that they provided their forwarding address in writing by leaving it at the landlord's father's store in mid December 2012. They state when they left it a copy was made and initialed by the person who received it but they

have lost their copy and have not been able to provide it as evidence. The tenants seek return of double the amount of the security deposit.

The landlord states that they have no record of receiving the tenants' forwarding address until he received a copy of their Application for Dispute Resolution sometime in mid May 2013. The landlord states that he was unable to provide evidence in a timely manner to the tenants because after filing their Application they moved again and it took him some time to find where the tenants lived.

The tenants agreed they had moved to a new home effective June 1, 2013 and they provided their new address to me during the hearing. The landlord testified that he filed his own Application for Dispute Resolution against the tenants on July 8, 2013. The landlord's landlord claim is set to be heard September 4, 2013 and includes a claim to retain the security deposit.

The tenants also disagree with the provisions of the tenancy agreement regarding the division of costs for hydro utilities. The tenants submit that when they saw the advertisement for the rental unit there was no mention of any utilities being included and it wasn't until they went to sign the tenancy agreement that the breakdown for hydro was explained.

As noted above the breakdown for each of the rental units was for the charges for hydro to be based on the number of occupants of each of the rental units. The tenants state they were uncomfortable with this arrangement but because of they did not have any other prospective homes at the time signed the tenancy agreement and move into the rental unit.

The tenants submit that they used very little hydro and that the tenant in the basement unit used substantially more than they did. They feel this arrangement was unfair to them and should not be allowed. The tenants seek compensation for this unfair division of charges in the amount of $400.00.

The tenants submit that when they originally looked at the rental unit they had identified a number of issues that they wanted the landlord to address prior to the start of the tenancy including substantial cleaning of the unit; a towel rack to be installed in the bathroom; cleaning of the fireplace; and patches and painting of the bedroom walls.

The landlord submits that the move in Condition Inspection Report that was signed by the male tenant does not record any of these problems identified in the tenants' submission. There is a written notation on the Report that states the landlord will check on when the fireplace was last cleaned and hook the dishwasher back up.

The tenants submit that when they moved in they discovered the dishwasher was not working and they requested a repair from the landlord but nothing was ever done by the landlord. The landlord submits that the tenancy agreement does not include provision of a dishwasher.

The tenants submit the tenants in the basement rental unit had a large dog and they let the dog out in the backyard which impacted their ability to use the backyard. Originally the tenants complained to the landlord about the dog feces and urine that resulted from the dog being let go in the yard and that the basement tenants did start to pick up the feces on a more regular basis. However, the tenants' young children could not go into the back yard safely because the dog was constantly let out in the yard.

The landlord testified that he did speak to the tenants in the basement about the dog feces. He also stated that he suggested to the tenants that they discuss with the basement tenants and perhaps they could work out details of use of the backyard that would be agreeable to both parties. He stated he never heard from the tenants again on this issue and thought it was resolved.

The tenants submit that due to financial difficulties they gave their notice to end the tenancy to the landlord in a written document dated September 29, 2013 indicating they would be vacating the rental unit on October 31, 2012. The parties agreed the landlord also issued a 10 Day Notice to End Tenancy for Unpaid Rent on October 4, 2012.

The tenants submit that they contacted the Residential Tenancy Branch to ask if their notice superseded the landlord's 10 Day Notice. They state they were advised that in order for the landlord to enforce the 10 Day Notice they would have to obtain an order of possession and that it would take the landlord longer to do that than the effective date of the tenants' notice of their intention to vacate.

The tenants submit that after the notice was given the landlord began an "aggressive campaign to show the home to potential renters." The tenants state the landlord showed the unit on October 11, 13, 14 and 14 as well as more viewings between the 16th and 21st of October and between October 22 to October 27.The landlord submits that he was already dealing with not rent coming in for the rental unit and he had to get it rented as soon as possible.

The tenants state that on October 20, 2012 the landlord attempted to illegally evict them by showing up with a U-Haul truck stating they wanted the tenants out right away. The male tenant testified he felt the landlord was attempted to intimidate him and force him to move everything out immediately. The male tenant called police and submits that after this point the family was afraid to leave the house as they were scared they would come home and their belongings would have been moved out.

The landlord submits that he had just arrived back from Alberta with the U-Haul and he had it for one more day. He stated that since the tenants were having financial difficulty and they were all prepared to move he thought he would offer them the use of the U-Haul and their assistance to move them out.

As a result of all of these circumstances and events during the tenancy, and in particular the events of the last month the tenants seek punitive damages in the amount of $2,000.00.

Analysis

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.

In relation to the tenant's claim for compensation for the division of the hydro obligations, I find that the parties entered into a tenancy agreement that included these terms and as such the parties are bound by the terms. I find the tenants have failed to provide any evidence that this portion of the agreement is a violation of the *Act*, regulation or tenancy agreement.

While I accept that the tenants in the basement rental unit may have used more hydro than these tenants they, by their own submission, were made aware of the terms prior to the signing of the tenancy agreement and cannot now seek compensation because they now believe it to be an unfair agreement. I dismiss this portion of the tenant's Application.

In regard to the tenant's claim for punitive damages in the amount of $2,000.00 I note that I have no authority to grant punitive damages, however, based on the tenants' submission and in the interests of administrative and natural justice I will consider whether the tenants have sufficient evidence to establish a claim for aggravated damages.

While punitive damages are intended to punish and deter blameworthy conduct aggravated damages are an award for non-pecuniary losses such as the loss of physical inconvenience or discomfort; pain and suffering; loss of amenities or mental distress.

From the tenants' testimony and submissions they seek damages for the condition they received the rental unit in; for the loss of use of the backyard; and for the landlords' treatment of the tenants during the month of October 2012. I find as follows:

1. I accept the move in Condition Inspection Report signed by the male tenant and the landlord as the record of the condition of the rental unit at the start of the tenancy. While the tenants submit that the unit was mostly uncleaned at the start of the tenancy they have provided no evidence to corroborate this claim or to

show that the Condition Inspection Report was defective in any way. As such I find the tenants have failed to provide any evidence the landlord breached any section of the *Act*, regulation or tenancy agreement in regard to providing the tenants with a unit ready for occupancy.

2. As the tenancy agreement does not provide for exclusive use of the backyard by the tenants I find that area was common to the occupants of both tenancies of the upper and lower rental units. Based on the submissions of both parties I find that the tenants were aware or should have been aware the landlord did not restrict pets on the property. I accept the tenants made the landlord aware of a situation regarding dog feces left in the yard by the lower tenants and that the landlord took reasonable steps to address the issue. The tenants however have provided no evidence that they informed the landlord that there continued to be an issue. As such, I find the tenants have failed to provide sufficient evidence of a breach of the landlord's obligations under the *Act*, regulation or tenancy agreement.
3. In regard to all events in October I find that for every claim the tenants submit in regard to the landlords' behaviour or treatment of the tenants the landlord has provided an alternate, and equally plausible, explanation of events. As the tenants are the party making the claim the burden is on them, when the landlord disputes their claim, to provide sufficient evidence to corroborate their position. I find they tenants have provided no evidence to accomplish any corroboration.

As a result of these findings, I find the tenants have failed to establish any violations of the *Act*, regulation or tenancy agreement sufficient to warrant an award of aggravated damages. I dismiss this portion of the tenants' Application.

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 security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While the landlord submits that he did not receive the tenants' forwarding address in the manner described by the tenants in December 2012 he does acknowledge that he received the tenants' forwarding address by mid May 2013, in the form of their Application for Dispute Resolution. I find the fact that the tenants moved from that address on June 1, 2013 has no impact on the fact the tenants had provided this address to the landlord as a current address at the time.

I accept the landlord has filed an Application for Dispute Resolution seeking to claim against the deposit and that he did so on July 8, 2013. However, as the landlord received the tenants' forwarding address in mid May he had until the end of May 2013 (likely) to either return the deposit or submit his Application for Dispute Resolution.

Even if I were to allow for the landlord to have received the address by the end of May 2013 he would have had until June 15, 2013 to file his Application to meet these

obligations. However, as the landlord failed to file his Application until July 8, 2013 I find the landlord failed to meet his obligations under Section 38(1) and the tenants are entitled to return of double the deposit in accordance with Section 38(6).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$1,175.00** comprised of $1,150.00 for double the security deposit and $25.00 of the $50.00 fee paid by the tenants for this application because they were only partially successful in their claim.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: July 16, 2013

Residential Tenancy Branch