Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit and a cross-application by the tenants for an order compelling the landlord to return double the security deposit. Both parties participated in the conference call hearing and confirmed that they had received the application and evidence of the other. T.P. represented both tenants throughout most of the hearing while C.M.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Should the landlord be ordered to return double the security deposit?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2012 and ended on April 1, 2013 and that the tenants paid an $850.00 security deposit, a $300.00 pet deposit and a $350.00 utility deposit. The parties further agreed that the landlord had repaid the pet deposit and had written a cheque for part of the security deposit, but had put a stop payment on that cheque. The landlord testified that he had issued a $350.00 cheque in repayment of the utility deposit, but the tenants denied having received that cheque.

The tenants claimed that at the end of the tenancy, they and the landlord walked through the rental unit together to inspect the unit. The landlord denied having inspected the entire unit and stated that on April 1, they only went into the kitchen. The parties agreed that a written report of the condition of the unit was not completed on that date.

The landlord testified that after the tenants had moved all of their belongings out of the unit, he wrote a note to the tenants asking them to schedule a condition inspection and

placed it on some of their belongings which they had placed outside the door for a later pickup. The tenants denied having received that notice. The tenants argued that the landlord had extinguished his right to make a claim against the security deposit as he had failed to complete a written report after their inspection.

The parties agreed that on April 1, the landlord asked T.P. to provide her forwarding address in writing and gave her a piece of paper on which to write the address. They agreed that the tenant just wrote "The forwarding address for mail for [tenant names] is" and did not complete the address. The tenant testified that she texted her new landlord to ask for the address and it was not until the end of the inspection that her new landlord texted the address. T.P. testified that upon receiving that text, she told the landlord that she could provide her forwarding address, he provided a new piece of paper and she wrote the address upon it and gave it to him. The landlord denied having received the address in writing on April 1.

C.M. and M.M. both testified that they saw the tenant provide the address to the landlord at the end of the inspection. C.M. specifically recalled that T.P. had the address in her phone and M.M. specifically recalled that the tenant offered the landlord the address and that the landlord did not have to ask her for it.

The landlord testified that he could not recall M.M. having been at the unit on April 1. The landlord argued that emails sent to the tenants on April 11 requesting their forwarding address proves that he did not have the address prior to April 11.

The parties agreed that the landlord was entitled to an award of $152.80 for outstanding utility charges.

The landlord seeks an award of $204.22 for the cost of repairing a door. The parties agreed that a door frame and the door jamb were damaged by the tenants during the tenancy. The landlord claimed that the entire frame and jamb had to be repaired. The tenants argued that as it was just the door jamb area that was damaged, the entire door frame did not require repair and they estimated that it should cost no more than $70.00 to effect the repair. The landlord claimed that he hired an outside contractor to perform the repair and that the contractor charged him for 7-8 hours of labour at $40.00 per hour, which the landlord is not passing on to the tenants because he found it to be excessive.

The landlord entered into evidence receipts totalling $63.22 for the parts to repair the door. The landlord also submitted an invoice which he wrote, totaling the cost of the materials and 3 ½ hours of labour. The invoice indicates that the purchase of material from the store is included in the labour cost. The landlord testified that the contractor's

time included time spent repairing other items in the unit which he claimed were damaged by the tenant but did not form part of the claim before me.

The landlord provided an estimate of $150.00 to repair the grass in the yard which he claims was irreparably damaged by the tenants' above ground swimming pool. The parties agreed that the landlord told the tenants that they would not need to pay for repairs if they returned to the unit to water the area and the tenants testified that they did so. The landlord testified that the tenants came just a few times and that the grass was not adequately repaired.

Both parties seek to recover the filing fees paid to bring their respective applications.

Analysis

First addressing the issue of the condition inspection report, section 35 of the Act requires the landlord to provide the tenants with 2 opportunities to participate in a condition inspection of the unit and complete a condition inspection report. Although the landlord claims he gave the tenants a note offering an opportunity to participate in an inspection, he did not do so on the prescribed form as is required by the Act and by section 17 of the Regulations. If the parties did conduct an inspection on April 1 as alleged by the tenants, the landlord failed in his obligation to complete a written report. Section 36 of the Act provides that when a landlord fails to comply with his obligations under section 35, he extinguishes his right to make a claim against the security deposit. I find that this is the case here and that the landlord's right to make a claim has been extinguished.

Despite this extinguishment, there is nothing in the Act barring a landlord from making a claim for damages apart from a claim against the security deposit and section 72 of the Act allows an Arbitrator to apply a security deposit to any amount awarded to a landlord. Therefore, the extinguishment has little practical effect in this case.

I find it more likely than not that the landlord first received the tenants' forwarding address in writing on April 1, the date on which the tenants claim to have given him that address. Both tenants and the witness M.M. gave consistent testimony that after having gone into the unit, T.P. provided her forwarding address in writing to the landlord. T.P. advised that it was sent to her via text message and C.M. testified that T.P. had it in her phone.

The landlord could not recall M.M. having been at the unit on April 1, but the consistent testimony of T.P., C.M. and M.M. leads me to believe that the landlord's memory has failed him on this point. I find it very likely that he received the forwarding address as

recounted by both tenants and their witness and that he simply misplaced it and cannot recall having received it.

The fact that the landlord later asked via email for the forwarding address is not conclusive proof that he did not have it prior to sending that email; rather, it simply shows that the landlord did not believe that he had it.

I have found that the landlord received the forwarding address in writing on April 1, 2013. The landlord did not file his application for dispute resolution until April 17, which is 16 days after both the end of the tenancy and the date he received the forwarding address. I find that pursuant to section 38(6) of the Act, the tenants are entitled to an award of double their security deposit. I therefore award the tenants $1,700.00 which is double the $850.00 security deposit.

As the tenants have not received the cheque for the repayment of the utility deposit, I award the tenants $350.00 which represents that repayment.

As the parties agreed that the landlord was entitled to the outstanding utility charges, I award the landlord $152.80.

As the tenants acknowledged having caused the damage to the door, I find that they are responsible for the cost of repairs. I find the tenants' $70.00 estimate to be unreasonable as it is clear from the landlord's receipts that the materials alone cost this much. I find that the landlord is entitled to recover the cost of the materials in addition to the cost of labour. The invoice appears to charge the value of both the actual store receipts and the contractor's labour for purchasing those materials. I am uncertain what is meant by the labour cost including purchasing material from the store and in the absence of a detailed invoice from the contractor, it is not possible to make a definite determination. Also, the landlord indicated that the contractor's time included the time to repair other items around the house which were not part of this claim.

I find that the 3 ½ hours of labour claimed by the landlord may be excessive as it may include labour for items not claimed in this application as well as the time spent traveling to and from the store, which expense I would find to be unreasonable. I find that in the absence of evidence from the contractor to support the time spent, an award of 2 hours of labour will adequately compensate the landlord. I therefore award the landlord $143.22 which represents 2 hours of labour at $40.00 per hour and $63.22 for materials.

While the parties agreed that the grass was damaged by the tenants' above ground swimming pool, the landlord failed to provide photographs showing the extent of the

damage to the grass which remained after the tenants had spent time watering it. Without photographs or some independent evidence showing the condition of the grass, it is impossible for me to determine whether the grass truly requires repair. Further, I am unable to compare the affected area with the area surrounding it and am unable to determine the extent of the damage. Without that ability, I cannot tell whether the repair the landlord wants to undertake would actually leave the lawn in better condition than it was before or whether it would simply restore it to its prior state.

For this reason, I find that the landlord has not proven his claim and I dismiss the claim for the repair to the grass.

As the tenants have been entirely successful in their claim, I find that they should recover the entire $50.00 filing fee paid to bring their application and I award them that sum. As the landlord has been only partially successful, I find it appropriate that he should recover just half of his filing fee and I award him $25.00.

Conclusion

The landlord has been awarded a total of $321.02 which represents utility charges, the cost of repairing the door frame and half of the filing fee. The tenants have been awarded a total of $2,100.00 which represents double their security deposit, repayment of the utility deposit and the filing fee. Setting off these awards as against each other leaves a balance of $1,778.98 owing by the landlord to the tenants.

I grant the tenants a monetary order under section 67 for $1,778.98. This order may be filed in the Small Claims Division of the Provincial Court 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: July 12, 2013

Residential Tenancy Branch