Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, MNDC, FF
Tenants: MNR, MNDC, 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 the landlord and the female tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to a monetary order for storage costs; for a refund of hydro costs; for a reduction in the value of the tenancy; for a loss of quiet enjoyment; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 38, 67, and 72 of the *Act.*

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on November 1, 2012 for a 6 month fixed term tenancy agreement beginning December 1, 2012 for a monthly rent of $1,200.00 due on the 1st of each month with a security deposit of $600.00 and a pet damage deposit of $100.00 paid.

The tenants submitted a copy of an addendum to the tenancy agreement that includes terms that allowed the landlord access to the shop on the property and her property within the house with a 24 hour verbal notice and for yard work.

The tenancy ended on June 30, 2013 and the parties agree the landlord has returned the $100.00 pet damage deposit.

The landlord submits that when the tenancy began the stove top had no damage. She states that a few months into the tenancy the tenant reported to her that stove top was damaged and that it has not been repaired. The landlord seeks compensation in the amount of $603.99 to replace the stove top based on a written estimate submitted into evidence.

The tenants submit that they did nothing to cause any damage to the stove top and that it must have been damaged prior to the start of the tenancy. The Condition Inspection Report submitted by the landlord recording the condition of the rental unit at the start and end of the tenancy states only that the stove top was clean at the start of the tenancy and that the stove top was cracked at the end of the tenancy.

The landlord also seeks compensation for the payment of rent from April 2013 in the amount of $285.60. The parties agree that on March 23, 2013 the tenants contacted the landlord to identify that there was a strong sewer odour and some water in the rental unit. The tenant submits that as a result of having to call in a plumber that the landlord refused to pay the tenant's deducted the amount from their next rent payable.

The landlord provides, in her written submission that she had "assumed" that it was not necessary for her to attend that evening and that it was not an emergency. She goes on to state in the submission that she believed the problem was a plug in the line because the tenant had had guests the week before and advised the tenants that it would be their responsibility to have it fixed.

The tenant submits that when the landlord informed them that it was their responsibility she called in a plumber and had the work completed. From the receipt, the system was flushed out and tested and that a clean out cap was required. There is nothing in the receipt that indicates the cause of any blockage.

The tenant further submits that after she paid the plumber she provided the landlord with the receipt and then withheld the amount from the payment of rent for April 2013.

The tenants seek return of double the amount of the security deposit. The tenants submitted into evidence a copy of an email dated May 27, 2013 providing the landlord with the notice of their intention to end the tenancy on June 30, 2013 and provide the landlord with their forwarding address.

The tenant submits that while they had agreed to let the landlord store items in what they referred to as the "glass room" they did not agree that the landlord could store items in more of the basement. The tenants submit that as a result of the landlord's storage they had to find their own storage for items at a cost of $1,165.00 for the duration of the tenancy.

The tenants submitted a copy of an email to the landlord dated January 16, 2013 asking when the landlord plans to remove "some of your stuff out of the furnace room so we

can bring some of our stuff from storage that we are paying for...We have no issues with you leaving the couch and TV stand downstairs, and having your glass room that we agreed on but we are paying $175.84 for storage unit a month. Would be nice not to have that expense too."

The tenants also seek compensation in the amount of $636.40 for additional hydro charged during the tenancy because the landlord's enrollment with a special hydro program to reduce hydro costs for homeowners was not possible due to a lack of a second meter on the rental unit. Neither party provided any documentary evidence to explain the program. While the tenants had submitted several hydro bills they did not provide any documentation from the hydro company calculating any additional costs due to failure to be in the program.

The tenants submit that the tenancy agreement included the provision of a dishwasher but that the dishwasher did not work from the start of the tenancy and that the landlord told her not to use the dishwasher. As such, the tenant used her own dishwasher. The Condition Inspection Report indicates that at the start of the tenancy the dishwasher leaked. The tenant seeks compensation in the amount of $280.00.

The tenant also seeks $200.00 as compensation for picking up after the landlord when the landlord would attend the property and do some yard work and then leave the debris lying about instead of completing the job and removing the debris. The tenant did not provide any evidence documenting that she had raised this issue with the landlord.

The tenant also seeks compensation in the amount of $250.00 for the inability to use a secondary bathroom. The tenant submits the landlord was suppose to complete repairs to the bathroom but never did and as such they could not use it. The tenant did not provide any evidence documenting any prior arrangements in regard to the secondary bathroom or that she had raised the issue with the landlord. The tenants submitted an advertisement for the rental unit listing 2 bathrooms in unit. The advertisement is noted as being posted on June14, 2013.

The tenants also seek compensation in the amount of $1,799.94 for the loss of quiet enjoyment resulting from the landlords continued and ongoing access to the rental property. The tenants submit that the landlord attended the property every 2nd day for an hour or two to either complete yard work or to gain access to the landlord's personal possessions in storage in the rental unit.

In support of this portion of their claim the tenants submit several text messages dating from May 17, 2013 to the end of the tenancy. In the messages between May 17, 2013 and June 17, 2013 the landlord indicates she is going to be attending the property and the tenant acknowledges these time. In messages dated after June 18, 2013 and later the messages show the tenants are requesting the landlord not attend on certain dates and times and the landlord's responses.

Analysis

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.

Based on the testimony of both parties and the Condition Inspection Report I find the landlord has provided sufficient evidence to establish that there was no recorded damage of the stove top at the start of the tenancy but that it was cracked by the end of the tenancy.

As such, I find the stove was damaged during the tenancy while the tenants were in possession of the rental unit. I therefore find the landlord is entitled to the replacement costs as presented in her evidence in the amount of $603.99.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety or anyone or for the preservation or use of the residential property, and are made for the purpose or repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

Section 33(5) states that the landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs and a receipt for the amount claimed. Section 33(7) stipulates that if a landlord does not reimburse the tenant in accordance with Section 33(5) the tenant may deduct this amount from rent.

From the submissions of both parties I find that despite the landlord deciding that an emergency did not exist she also decided that the cause of the blockage was the tenants and it was therefore their responsibility to deal with the situation. I note the landlord decided this without attending the rental unit and in the absence of any evidence as to what was the actual cause of the blockage.

I find the functionality of a sewer or septic system is critical to the functionality of any home and that when a blockage to that system renders it potentially unusable for any length of time the landlord has an obligation for a more immediate response than “dropping by the next day to have a look”. I also find that the landlord had no intention of even investigating whether or not it was a blockage caused by the tenants or some

other cause such as a failure in the system; she simple decided it was the tenant's responsibility and as such she saw no urgency on her part was required.

For these reasons, I find the tenants are entitled to compensation for the amount of $285.60 for the emergency repairs. As the tenants had deducted this amount from their April 2013 rent, pursuant to Section 33(7) of the *Act* I find the landlord is not entitled to receive this amount as unpaid rent and I dismiss this portion of the landlord's claim.

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.

From the evidence and testimony of both parties I accept the tenants had provided the landlord with their forwarding address prior to the end of the tenancy. As the tenancy ended on June 30, 2013 I find the landlord until July 15, 2013 to either return the deposit in full or file her Application seeking to claim against the deposit.

Residential Tenancy Branch records confirm the landlord filed her Application for Dispute Resolution that is the subject of this hearing on July 15, 2013 and as such I find the landlord has complied with the requirements under Section 38(1) and the tenants are not entitled to double the amount of the security deposit. I dismiss this portion of the tenant's Application.

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 storage costs, in the amount of $1,165.00 I find that the parties entered into a verbal agreement to allow the landlord to store possessions in the residential property. In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As such, I find that I am unable to determine what specific areas of the rental unit the landlord was allowed to store her personal possessions in. Further, despite the email of January 16, 2013 that is merely asking when the landlord intends to move out some of

her personal belongings I find the tenants did not demand an end to the storage of items in the rental unit.

In addition, I find the tenants took no further action after January 16, 2013 to seek having the storage areas vacated including seeking an order from the Residential Tenancy Branch to have the landlord remove possessions. I find by failing to do so the tenant took no steps to attempt to mitigate their loss and I dismiss this portion of their Application.

In relation to the tenants' claim for compensation, in the amount of $636.40, related to additional costs for hydro because the landlord's enrollment issues with a hydro program for homeowners, I find the tenants have provided insufficient evidence as to the requirement of the landlord to pass on any program savings to the tenant if the program is intended for homeowners. In addition the tenants have provided no evidence as to the amounts of savings that they may or may not be entitled too. For these reasons I dismiss this portion of the tenants' claim.

In relation to the tenant's claim for compensation for not being provided with a dishwasher, I accept that the tenancy agreement required the landlord to provide a dishwasher and that the tenancy agreement indicated that the dishwasher leaked. As such and based on the balance of probabilities I find the landlord knowingly failed to provide the tenants with the dishwasher for the duration of the tenancy. I also accept the tenant's claim of $280.00 to be reasonable compensation for this failure.

In relation to both of the tenants' claims for compensation of $200.00 for clean up and for $250.00 for failure to provide a secondary bathroom I find the tenants have failed to provide any evidence that they raised either of these issues with the landlord. Further, in relation to the secondary bathroom issue I also note that the tenancy agreement does not indicate how many bathrooms were being provided in the rental unit. For these reasons, I dismiss both of these portions of the tenants' claims.

While I agree with the tenant's position that by providing the tenants with text messaging notifications that the landlord was not providing verbal notifications of her intent to attend the property I note that the requirement for verbal notification in the tenancy agreement conflicts with the requirement under the *Act* for written notification.

In the case before me, I find that by using text messaging as their normal form of communication that was responded to by both parties as shown in the tenants' evidence that the landlord was, in fact, providing written notification pursuant to Section 29 of the *Act*.

Again, however, I note that in their text message responses submitted into evidence, with the exception of the responses after June 18, 2013 the tenants do not object to the landlord's attendance on the property either for maintenance or to access her personal possessions from storage. I also note there is no record that the tenants sought an order from the Residential Tenancy Branch seeking to restrict the landlord's access.

Therefore, I find the tenants failed to take any steps at all to mitigate any of their losses. I dismiss this portion of the tenants' Application.

As both parties were only partially successful in their claims I dismiss their respective requests to recover the filing fees for their Applications.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$323.99** comprised of $603.99 stove top replacement less the $280.00 the tenants are entitled to for failure of the landlord to provide a dishwasher.

I order the landlord may deduct this amount from the security deposit held in the amount of $600.00 in satisfaction of this claim. I grant a monetary order to the tenants in the amount of **$276.01** for return of the balance of the security deposit held.

This order must be served on the landlord. If the landlord fails 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: November 6, 2013

Residential Tenancy Branch