Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

On October 25, 2013 the tenant applied requesting compensation for damage or loss under the Act, return of the security deposit and filing fee costs.

On January 27, 2014 the landlord applied requesting compensation for damage to the unit, unpaid rent, to retain all or part of the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The parties confirmed receipt of the others evidence at least 5 days prior to the hearing. One evidence package given to the Residential Tenancy Branch (RTB) by the tenant on December 18, 2013 was not served to the landlord; that evidence was set aside.

The tenant said that although she had received the landlord's cross application and fifty-eight page evidence submissions just 5 days prior to the hearing; she was prepared to proceed with the hearing. The landlord had made the cross application and served the hearing package and evidence, in accordance with the Rules of Procedure; but only just within the required time-frame. The tenant was offered the opportunity for adjournment, but she declined.

At the start of the hearing the parties agreed that the matters related to the washing machine had been settled; the landlord reduced his claim by $200.00 and the tenant reduced her claim by $199.75.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Is the tenant entitled to compensation for damage or loss under the Act?

Is the landlord entitled to compensation for damage to the rental unit; unpaid rent and damage or loss under the Act?

Is the landlord entitled to retain the security deposit?

Is either party entitled to filing fee costs?

Background and Evidence

The tenant has requested compensation for a loss of quiet enjoyment in the sum of $750.00, equivalent to rent she paid in September 2013. The tenant has also applied requesting return of $675.00 paid in October 2013.

The landlord has applied for compensation in the sum of $750.00 for September 2013 rent and $675.00 for October 2013 rent. The landlord confirmed that he has received these payments, but applied to ensure that the tenant's claim was countered.

A copy of the tenancy agreement was supplied as evidence. The parties agreed that the tenancy commenced on August 1, 2013 as a fixed-term ending June 30, 2014. There was a co-tenant; although the parties talked in terms of separate rent payments. Rent was $1,600.00 due on the 1st day of each month. A security deposit in the sum of $800.00 was paid.

A move-in condition inspection report was completed; a copy was supplied as evidence.

On August 30, 2013 the tenant sent the landlord an email, giving notice she would vacate on September 1, 2013. The tenant paid $750.00 for September rent; she and her co-tenant made separate payments of rent to the landlord. The tenant confirmed that another occupant was quickly located in October 2013, who moved in with her co-tenant. On October 31, 2013 the co-tenant and the occupant signed a new tenancy agreement with the landlord, commencing November 1, 2013; agreeing to pay $1,525.00 rent; although that tenancy agreement indicated rent of $1,600.00.

On September 23, 2013 the tenant wrote the landlord a letter in which she agreed to allow the landlord to retain her October rent cheque she had issued in the sum of

$675.00. The tenant had confirmed, in writing, that the landlord could keep her share of the October rent, to cover a loss in rent revenue the landlord was going to experience until the end of the fixed term. This allowed the landlord to quickly mitigate the loss of rent income that might have occurred for the balance of the term. The tenant had agreed she would cover the resulting loss of rent revenue in the sum of $75.00 from November 2013 to June 2014, inclusive. The tenant's October 2013 rent payment covered this commitment made by the tenant. A copy of the tenant's written agreement was supplied as evidence.

On October 30, 2013, the tenant's co-tenant completed a move-out inspection report. A written forwarding address was supplied and agreement was reached, in writing, allowing deductions from the security deposit. A copy of this initialled agreement was supplied as evidence. The co-tenant received $400.00 of the $800.00 deposit; she immediately returned that sum to the landlord as payment toward the deposit owed for the new tenancy. The balance of the deposit, after deductions were agreed to in writing, was $275.00.

The tenant confirmed receipt of the $275.00 security deposit balance, on November 8, 2013. The cheque was sent with a letter issued by the landlord, outlining the agreement made by the co-tenant.

The landlord said he applied requesting payment of September 2013 rent; but only as insurance against the tenant's claim for return of the rent paid. The landlord also requested payment, as agreed in writing, of $675.00 for October 2013 rent. There was no dispute that this amount had also been given to the landlord.

The tenant said she suffered a loss of quiet enjoyment as the consequence of her use of the washing machine and resulting treatment by the landlord. There was no dispute that the tenant had placed a large quilt in the machine and that a leak had occurred on August 4, 2013. The rental unit was situated above another unit; the landlord was concerned that damage may have occurred to that unit.

The tenant and landlord communicated via text message and email and the tenant said she found the landlord's messages harassing and disturbing. The tenant allowed the landlord to enter the home on several occasions, so that the machine could be checked and she found the landlord's communication aggressive. The tenant had allowed the landlord entry to the unit on several occasions and she found these entries excessive. Upon the advice of the landlord the tenant used the machine again and no leaks occurred.

The tenant believed the landlord was being unreasonable about the potential costs that could result from the leak so the tenant's father intervened.

A meeting occurred between the tenant's father and the landlord on August 21, 2013. The tenant said that this meeting did not go well and that neither her father nor the landlord was calm. The landlord told the tenant and her father that if the tenant agreed

in writing, to cover any damage that might have resulted from the leak he would cease communicating with the tenant. The tenant found the landlord discourteous. The tenant submitted that after this meeting she received angry test messages from the landlord.

The landlord said that his overriding concern was that damage may have been caused to the lower suite, as the result of the tenant overloading the washing machine. Until the landlord was able to establish if damage had occurred, he did not consider the matter settled. The landlord denied harassing the tenant and said his communication was reasonable, given the situation.

On August 24, 2013 the tenant wrote the landlord a letter outlining her responsibilities in relation to the washing machine and her agreement for repair payment. The landlord said this letter was absent any allegation of loss of quiet enjoyment.

Analysis

The tenant has requested return of double the deposit; however, I find that the tenant did receive the balance of the deposit within 8 days of the end of the tenancy. The co-tenant signed, agreeing to specific deductions from the deposit and the landlord then returned the balance to the tenant within the required time-frame. Therefore, I find that the claim for return of the security deposit is dismissed.

Section 45(3) of the Act set out how a tenant may end a fixed term tenancy:

> *(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

There was no evidence before me that the landlord had breached a material term of the tenancy; therefore; I find that the tenant was attempting to end a fixed term tenancy, in breach of the Act.

Residential Tenancy Branch policy suggests that where co-tenants have entered into a fixed term lease agreement and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

This is effectively what occurred. The tenant was not relieved of her responsibilities under the tenancy agreement; but mitigation occurred when a new occupant moved in and agreed to pay $675.00 per month toward rent owed for the balance of the term. The parties then reached a mutual agreement that the tenant would compensate the

landord for a loss of rent revenue to the end of June 2014 and payment was made. The tenant now wishes to range on that agreement.

I accept the policy suggestion that the tenancy ended effective September 30, 2013; when the landlord signed a new tenancy agreement. However, I find that the tenant's request to reverse the agreement she had reached with the landlord and, essentially her co-tenant, cannot be reversed. If the tenant had refused to make the payment for loss of rent revenue the landlord would not have signed a new tenancy agreement for $75.00 less per month and the 2 co-tenants would have continued to be responsible for the payment of rent. I find that the tenant's agreement to pay the loss of rent revenue also respected her co-tenant and protected her from being faced with a potential loss. Therefore, pursuant to section 62(3) of the Act, I find that the tenant's request for return of the payment made to the landord for loss of rent revenue is dismissed.

In relation to the tenant's claim for compensation as the result of a loss of quiet enjoyment, Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference*

From the evidence before me I find that the tenant has described what I consider more of an on-going discussion in relation to the malfunctioning washing machine versus any unreasonable disturbance or loss of privacy.

The tenant confirmed that the landlord only entered her unit with permission. When a tenant allows a landlord to enter the home, the landlord is in compliance with section 29 of the Act, which sets out the right of entry.

There was no dispute that the meeting between the tenant's father and the landlord was somewhat contentious; therefore, I cannot find that the landord was responsible for the tenor of that meeting any more than the tenant's father might have been responsible.

Further, there was an absence of any evidence that the tenant warned the landord she was feeling distressed by his actions or in any way suffering a loss of quiet enjoyment. The tenant described feeling harassed as the result of text messages, visits and different stories from the landord. Even if the landlord had sent text messages that the tenant found stressful, the tenant would have the burden of proving these message

were unreasonable and disturbing. In the absence of anything more than allegations of a loss of quiet enjoyment, I find that the tenant's claim for compensation is dismissed.

I find that the landlord's application was not required; he had received payment and was only required to counter the tenant's application. The landlord had previously received the compensation which he sought. Therefore, I dismiss the landlord's application and decline filing fee costs.

Conclusion

The applications are dismissed.

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: February 07, 2014

Residential Tenancy Branch