Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

The hearing was convened to deal with an application by the tenant for the return of the tenant's security deposit.

The application was also convened to hear a cross application by the landlord for loss of revenue and damages and to retain the security deposit in partial satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided for the Tenant's Application

- Is the tenant entitled to a refund of double the security deposit paid?

Issues to be Decided for the Landlord's Application.

- Is the landlord entitled to compensation under section 67 of the *Act* for loss of revenue and other damages?

Background and Evidence

The tenancy began on February 1, 2013. The landlord testified that no move-in condition inspection report was completed. The tenancy ended on October 30, 2013. The monthly rent was $900.00 and a security deposit of $450.00 was paid.

The landlord testified that the tenant served them with their forwarding address in November 2013.

The tenant stated that the landlord did not refund the deposit within 15 days and the tenant is claiming a refund of double the security deposit in the amount of $900.00.

In regard to their cross application, the landlord testified that they are seeking monetary compensation for loss of revenue for the month of November 2013 in the amount of $900.00 because the tenant vacated the rental unit on October 31, 2013 without giving the landlord proper notice under the Act.

The landlord testified that on September 26, 2013 they had served the tenant with a One Month Notice to End Tenancy for Cause but only served the first page of the 2-page Notice. The form demanded that the tenant move out effective October 31, 2013. A copy of this Notice is in evidence.

The landlord testified that the tenants verbally disputed the Notice and told the landlord that they did not want to move. The landlord testified that the tenants also stated that the Notice was not valid.

According to the landlord, once they confirmed with the Residential Tenancy Branch that the Notice they had served was not valid due to the missing second page, they decided to withdraw the Notice. The landlord stated that, after verbally discussing the situation with the tenants, they then served them with a “rescinded” Notice, after which they fully expected the tenants to remain in the unit. A copy of the rescinded notice is in evidence.

However, according to the landlord, on October 30, 2013, the tenants suddenly moved out without giving the landlord any advance Notice at all. The landlord testified that, due to the tenant’s violation of the Act in failing to provide one month written Notice to vacate, the landlord suffered a loss of rent for the month of November in the amount of $900.00, which is being claimed.

The tenant testified that they received the first page of a One Month Notice to End Tenancy for Cause from the landlord terminating the tenancy effective October 31, 2013. The tenant testified that they chose to accept this Notice and moved out in compliance with the landlord’s demand that they must vacate by the end of October.

The tenant does not agree that the landlord is entitled to compensation for loss of revenue for the month of November 2013.

In addition to the loss of revenue, the landlord is seeking additional compensation for damages. The landlord testified that the tenant left the unit in need of cleaning and repairs after they vacated.

The landlord submitted a monetary work sheet listing the following claims:

- $91.00 for carpet cleaning with $31.00 rental cost and 3 hours labour at $20.00
- $45.00 for replacement blinds based on a quote
- $72.00 to clean walls and bathroom with $12.00 materials and 3 hours labour
- $200.00 to patch/paint walls including $120.00 for materials and $80.00 labour
- $70.00 for a replacement screen door based on an estimate
- $15.00 to purchase missing screen clips
- $130.00 estimated replacement costs of a broken window
- $200.00 to replace a stained carpet

The landlord's total claim for cleaning and repairs is $824.00.

The landlord acknowledged that no move-out condition inspection report was ever done with the tenant. However, the landlord's position is that the rental unit was in good, clean condition at the start of the tenancy as verified by a letter from the previous tenant. A copy of this letter was submitted into evidence. The landlord pointed out that the photos, estimates and receipts placed in evidence support their testimony that the rental unit was damaged and was left in a state that was not reasonably clean when the tenants moved out.

The tenants disputed all of the landlord’s claims for cleaning and repairs. The tenant pointed out that the landlord did not comply with the Act by failing to complete move-in and move-out condition inspection reports.

The tenants testified that one co-tenant remained in the unit on the last day to do the final clean-up and spent 4 hours cleaning. The tenant testified that, despite the fact that they still had legal possession of the suite, the landlord appeared and demanded the key from the tenant. The tenant pointed out that, because of this, they could not possibly return to continue cleaning, even though they still had legal possession. The tenant testified that, contrary to what the landlord has testified, they did leave the rental unit in a reasonably clean condition, as required under the Act. The tenant stated that the rental unit was left in virtually the same condition as it was when they moved in.

Analysis – Tenant’s Claim for Return of Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends,

and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or make an application for dispute resolution to claim against the security deposit.

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit.

I find that the tenant did not give the landlord written permission to keep the deposit.

A landlord may keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by the tenant.

However, the landlord must either make the application for dispute resolution or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In this instance I find that the landlord had received the tenant's written forwarding address by October 31, 2013. I find that the landlord did not return the security deposit nor make the application for dispute resolution within 15 days of receiving the tenant's forwarding address. I find that the landlord did not make an application for Dispute Resolution until February 11, 2014.

Accordingly, I find that the tenant is entitled to receive a credit or refund of double the $450.00 security deposit in the amount of $900.00.

Analysis – Landlord's Claim for Cleaning and Repairs.

With respect to a monetary claim for damages and loss, it is important that the evidence furnished by each applicant/claimant 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, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established by comparing the unit's condition as it was when the tenancy began with the final condition of the unit after the tenancy ends. In other words, it can be deduced through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Completing move-in and move out condition inspection reports is a requirement under the Act under sections 23(3) and section 35. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, I find that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the landlord's failure to comply with the Act, and the absence of these reports, has hindered the landlord's ability to prove that the tenant caused the damage during their tenancy and the landlord's contention that the tenant should be held accountable for the costs of cleaning or repairs.

The landlord's testimony that the unit was in pristine condition at the start of the tenancy, was not supported by any evidence and the tenant is disputing this claim. The tenant testified that all of the claimed damage pre-existed their tenancy and I find that the landlord has not proven otherwise.

Due to insufficient evidence from the landlord and the lack of the move-in and move-out condition inspection reports, I find that I am unable to find in favour of the landlord with respect to alleged damage that actually occurred during the

tenancy through the actions of the tenant. I therefore find that the landlord's monetary claims fail to meet element 2 of the above test for damages.

In addition to the above, I find that the landlord failed to reasonably mitigate the losses because the landlord demanded the return of the keys and thereby deprived the tenant of access to the rental unit apparently prior to them finishing all of the final cleaning of the rental unit. Therefore I find that the landlord's claim for damages also fails to satisfy element 4 of the test for damages. Given the above, I find that the landlord's claim for cleaning and repairs must be dismissed.

Loss of Revenue

I accept that the landlord did lose $900.00 in rent for the month of November 2013. However, I find that the landlord's loss was not caused by the tenant's violation of the Act. I find that the landlord issued a One Month Notice to End Tenancy for Cause and, despite the fact that the Notice was likely not enforceable, the tenant chose to comply with the Notice and vacated in accordance with the landlord's notice.

In regard to the landlord's argument that they rescinded the Notice, I find that, once a Notice to End Tenancy is issued and served, it cannot be unilaterally withdrawn and can only be rescinded if both parties agree.

The Residential Tenancy Policy Guidelines provide the following guidance:

> "*A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties."*

In this instance, the tenant testified that they did not waive the Notice and, in fact acted in compliance with the flawed Notice by vacating on the effective date given by the landlord. Accordingly, I find that the landlord's monetary claim for loss of revenue must be dismissed.

Based on the evidence before me, I find that the total compensation owed to the tenant is $950.00 comprised of a refund of double the security deposit and the $50.00 cost of the application.

I hereby grant the tenant a monetary order in the amount of $950.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Based on the evidence before me, I hereby dismiss the landlord's cross application in its entirety without leave to reapply.

Conclusion

The tenant is successful in the application and is granted a monetary order for the refund of double the security deposit. The landlord is not successful in the cross application and the claims are dismissed 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: March 05, 2014

Residential Tenancy Branch