



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNDC, MNSD, FF

Tenants' application: MNDC, MNSD, OLC, FF

Introduction

This was the hearing of applications by the landlord and by the tenants. The applications were heard together by conference call. The landlord and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Are the tenants entitled to the return of their security deposit?

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The rental unit is a three bedroom duplex residence in Surrey. The tenancy began December 1, 2012. The monthly rent was \$1,255.00, payable on the first of each month. The rent included a \$60.00 per month electricity charge and the tenants were responsible for obtaining their own account and paying for natural gas.

The landlord testified that this was a troubled tenancy from the outset. There were parking issues that began soon after the tenants moved in; the tenants parked in the visitors' parking spots and stored unlicensed automobiles in the tenant parking area, according to the landlord the cars were purchased to be shipped offshore and re-sold. The landlord said there were other issues with noise and the tenants' insistence on taking garbage cans through the interior of the rental unit to put them out front for pickup

on garbage day. The landlord said there were repeated noise complaints from the occupants of the adjoining duplex. The tenant's response to complaints was to say that the neighbour was lying. The landlord also said that the tenants' rent cheques were returned due to insufficient funds on four occasions.

In mid-August, 2013 the tenant came to the landlord's door to advise that she and her husband were leaving August 20th for a six week vacation in Africa and that her minor daughter would stay in the rental unit during their absence. When the landlord objected to this proposal the tenant said that her older daughter would move into the rental unit with her baby and stay in the rental unit with the younger daughter and a third daughter during the parents' absence. The tenant gave the landlord her cell phone number, but failed to provide the landlord with an address and telephone number in Nigeria where they would be staying.

The tenants did not return to the rental unit after six weeks. The tenant's daughter, "C" told the landlord that her parents would be back in the middle of October, at the latest. The landlord attempted to communicate with the tenant via text message to the cell phone number she had been given, but the communications were returned as undelivered. On November 4th the landlord received a text message, apparently from the tenant, asking that the landlord withhold the deposit of the November rent cheque until November 10, however, it had already been deposited and was later returned marked "NSF". The landlord replied to the text and asked when the tenant would return to Canada. She received a reply that stated: "November 20th". On November 24th the landlord asked the tenant's daughter, C when her mother would be returning. She told the landlord that she would have her mother contact her to let her know, but the landlord did not receive a response.

On December 1st the landlord's tenant in the duplex adjacent to the rental unit arrived home to an overwhelming odour of burned oil in their unit. The landlord received a call from the tenant on her work phone on December 2, 2013. The tenant called from Nigeria to advise the landlord that she and her husband would be vacating the rental unit on December 31, 2013.

On December 2, 2013 the landlord's tenants in the adjacent unit observed a moving truck with loaded furniture taken out of the rental unit. The landlord attempted to contact the occupants of the rental unit on December 2nd. She knocked on the door on several occasions up to 11:00 P.M., but the house was completely dark and no one answered the door.

On December 3rd the landlord, who lives near the rental unit, came home late in the evening; she noticed that a front upstairs window was fully open and the house was completely dark. The landlord was concerned because the temperatures were below freezing. She knocked on the door, but there was no answer. She then noticed that the natural gas meter had been locked out and the gas turned off. Because heat and hot water is provided by gas, the landlord considered this to be an emergency situation due to concerns that the water pipes could freeze so she entered the rental unit. In her written submission the landlord said that:

Upon entering we found the home to be extremely cold and furnace, hot water tank and gas fireplace were not operating. A big screen TV was missing and the home was in horrible shape. There was garbage everywhere, the house stank of rotting food, urine and feces. There was food on the floor such as onions and tomatoes, garbage bags, dishes and containers with rotting mouldy food. The stove was filthy on top and inside. It was covered in grease and there were pots of burned grease inside the stove. It looks like there has been a grease fire inside the oven. The only food in the refrigerator was rotting food. We went upstairs and found that the upper front bedroom (C's bedroom) had been vacated including the bed and everything in the closet. One of the hall closets was empty. There was mess including dirty diapers everywhere. The master bedroom was locked. We found not only the front window wide open but the upstairs windows unlocked in the Front Bedroom and Middle Bedroom. (Note the next day when the locksmith opened the locked Master Bedroom we found both of those windows unlocked). We were very concerned about the situation. It was obvious that the daughters had ABANDONED the home, perhaps taken some of (the landlords') personal belongings, left the home unsecured, left a health hazard in the home of garbage etc. We were in the home till about 1 am on Dec. 4, 2013 (reproduced as written)

The landlord took pictures of the rental unit and she submitted copies as evidence prior to the hearing. On the morning of December 4th the landlord again entered the unit and she made arrangements to have gas service restored to the rental unit. She took the day off work to wait for the gas company to arrive to have the gas service reconnected in her name. The landlord was advised that the gas had been turned off on November 27th. The landlord had a locksmith attend the house to have the locks changed to protect the property and the tenants' possessions still in the rental unit. The locksmith opened the master bedroom and when they entered the bedroom they discovered both windows were unlocked.

The landlord said that she was awakened at 2 A.M. on December 5th by someone knocking at her front door. The person identified herself as the tenant's daughter, but the landlord did not recognize the voice and told the person that she would not answer the door to a stranger at that hour. She said that she heard the person talking on a cell phone outside the door. On December 5th the landlord received a telephone call from the tenant, who, according to the landlord, seemed concerned about what had occurred. The landlord said the tenant gave her an e-mail address to communicate with her.. The landlord told the tenant that she would not allow access to the rental unit to anyone unless the tenant first provided their names in writing to the landlord. The landlord gave the tenant her e-mail address and insisted upon written communications; she told the tenant that she would not accept verbal communications and required written authorization from the tenant for access to the rental unit. The landlord sent the tenant an e-mail and requested a list of the names of the people who would be staying in the rental unit. Later that day the landlord received a telephone call from the tenant's minor daughter who requested a key to the rental unit.

The landlord did not receive a reply to her December 5th e-mail. On December 7th a police officer attended at the landlord's house to discuss the tenant's daughter and her request for access to the rental unit. The landlord said she recounted the history of event to the police officer. Later, on December 7th the landlord received an e-mail from a party with a last name different from the tenant. The e-mail requested that the landlord provide a key to her daughter, N. The landlord thought the e-mail was spurious and perhaps concocted by the tenant's daughter. The landlord made further attempts to communicate with the tenant by e-mail. She did not receive a response until December 16th. The landlord received a further e-mail from the tenant on December 19th. The tenant said that she was back and needed to get her things from the rental unit by the following day and would be there between 9 AM and 10 AM. The tenant changed the arrangements several times. She moved the last of her belongings out of the rental unit on December 26th.

The tenant arranged to have the carpets cleaned on December 31st. The landlord said that this was in response to her complaints of bad odours in the rental unit, particularly a urine smell. The landlord said that the carpet cleaning did not remove the odour. And the smell was still apparent, both in the rental unit and inside the adjacent duplex. The landlord testified that she had to hire a cleaner to perform additional cleaning and had to remove all the carpets and underlay before treating the floors and sealing them to remove the smell.

The landlord said that she also discovered that there was a hole in the bathtub that was never reported to her; had it been reported it could have been patched, but because the

damage was not reported the landlord had to remove the tub to inspect for water damage to the floor and floor joists under the tub. The fibreglass tub had to be cut into pieces to remove it.

The tenant testified that on August 16, 2013 she advised the landlord in writing that she would be away on a business trip to Africa for six weeks and her daughters would stay in the rental unit during her absence; while she was away from the rental unit her daughter, C, also named on the tenancy agreement lived in the house with her other daughters. She said that her three daughters and an 11 month old child lived in the house during her absence. The tenant denied that the house was abandoned in December. She said that her daughters removed a few items from the house when one of her daughters moved to new accommodation. She said her daughter gave the landlord a written notice that the tenants intended to move out of the rental unit at the end of December, but the landlord changed the locks without any notice and prevented the tenants' daughter from returning to the rental unit. The tenant said that her daughters did not move out of the house at the beginning of December, but only moved a few things. She said they were prevented from returning to clean up the mess caused by moving because the landlord changed the locks to the rental unit and refused access until the tenants returned later in December. In her application for dispute resolution filed on January 31, 2014 the tenant claimed payment of the sum of \$1,850.00, claimed as compensation for the landlord's wrongful eviction by changing the locks. The tenant did not amend her application for dispute resolution, but in a monetary order worksheet date May 12, 2014, the tenant listed personal items with a claimed values of \$5,218.00 said to be missing from her bedroom in the rental unit. The items that she claimed were missing included an I-Pad, her husband's watches, several handbags and 12 pairs of shoes as well as jewellery, including gold chains and earrings. The tenant did not submit any photos or other documentary evidence with respect to the alleged missing items. The tenant said that the missing items had been in her locked room in the rental unit and they could only have been taken because the landlord had the locksmith open the lock that she had install on the bedroom. The tenant disputed the landlord's testimony that the windows in the master bedroom had been left unlocked. She said that her daughters did not have access to the room.

The tenant testified that she did not receive the landlord's evidence. The landlord provided proof that the landlord's documents and photographs were sent to the address provided by the tenant in her application for dispute resolution. The documents were mailed on April 17, 2014. Delivery was attempted and several notice cars were left at the address stating where the item could be picked up. The item was not picked up and was returned to the landlord on May 14, 2014. Failure to pick up registered mail is not a

valid excuse and I have considered the landlord's documentary evidence in arriving at my decision in this matter.

In their application the landlords claimed the sum of \$8,373.26, made up of the following amounts:

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| • Carpets disposal and treat floors: | \$709.76 |
| • Tub removal: | \$630.00 |
| • Tub replace: | \$4,236.14 |
| • Faucet: | \$87.36 |
| • Loss of two months' rent: | \$2,400.00 |
| • Cleaning: | \$310.00 |

Total:	\$8,373.26
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The landlord submitted photos of the rental unit as it was on December 4th, photos showing the state of the unit after the tenants vacated on December 31st, photos of carpet removal and floor treatment and pictures of the bathtub damage and removal process. The landlord submitted invoices for the claimed expenses.

Analysis

I accept the landlord's testimony that she found the rental unit apparently abandoned late in the evening on December 3, 2013. I find that the landlord acted reasonably when she entered the unit after she discovered the unit was vacant, the gas was turned off and windows had been left open. The photographs show that the interior of the unit was in a deplorable state. By this time the tenant and her husband had been away from the rental unit and out of the country for three and a half months. Given the chaotic state of the rental unit and the absence of heat in the unit, I find that the landlord was entitled to change the locks and to demand that the tenants inform her of her intentions and provide the landlord with written confirmation of permitted occupants.

Based on the landlord's testimony, photographic evidence and the statement from the adjacent occupant, I find that there was extensive soiling of the carpets and a pervasive odour problem caused by the tenants' and other occupants neglect and careless use of the rental unit. I find that the problems necessitated the removal of the carpets and treatment of the flooring as claimed by the landlord. The landlord has included the costs of carpet removal and floor treatment, but did not include an amount, or pro-rated amount for carpet replacement. The landlord bears the burden of proof and must

establish not only entitlement to damages, but proof of the amounts claimed; in the absence of documentary evidence to establish an amount, I deny any claim for the cost of replacing the carpets.

I accept the landlord's evidence that the bathtub was cracked during the tenancy and because of the location of the crack near the bottom of the tub, there was a real concern of water leakage and damage that required the removal and replacement of the tub. I allow the landlord's claims for the cost of removal and replacement of the tub.

Based on the evidence submitted, I find that the required repairs were executed as quickly as reasonably practicable and therefore the landlord is entitled to the two months of claimed loss of rental income in the amount of \$2,390.00, not \$2,400.00 as claimed.

I find that the cleaning as claimed, in the amount of \$310.00 was necessary due to the neglect, misuse and lack of cleaning by the occupants and the serious odour problem from urine and cooking odours. I do not allow the claim for faucet replacement in the absence of evidence that it was damaged due to misuse and was not merely a case of mechanical failure due to reasonable wear and tear.

With respect to the tenants' claims, I find that the tenants are not entitled to a monetary award in the amount claimed, or in any amount. I have already determined that the landlord did not act improperly when she secured the property after she found it vacant with the windows open and the gas supply disconnected by the utility company. The tenants were given access to the rental property when they returned from their protracted absence and they are not entitled to be compensated because the landlord secured the property and demanded written instructions from the tenant before granting access to occupants who were not tenants.

With respect to the tenant's claim for missing items, the claim was not properly brought by filing an amended application and the tenant has not proven that the items existed. She has also not shown that the landlord took them, or that the landlord's negligence somehow resulted in their loss. The landlord is not the tenant's insurer and the tenant's claim for missing property is one that the tenant would be expected to present to her insurer, if she has a tenant's insurance policy.

Conclusion

The tenants' application is dismissed without leave to reapply. I have allowed the landlord's claim for a monetary award in the amount of \$8,275.90. All other claims by

the landlord are dismissed without leave to reapply. The landlord is entitled to recover the \$100.00 filing fee, for a total award of \$8,375.90. I order that the landlord retain the security deposit of \$597.50 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$7,778.40. This order may be registered in the Small Claims 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: June 20, 2014

Residential Tenancy Branch

