Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and the tenant's agent.

The landlords testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 15, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed. The landlords confirmed that their evidence was served to the tenant approximately two weeks before the hearing.

Residential Tenancy Branch Rule of Procedure 3.1 states that together with a copy of the Application for Dispute Resolution the applicant, in this case the landlords, must serve the respondent, in this case the tenant, with copies of, among other things, the details of the monetary claim and any other evidence the applicant intents to rely upon.

Rule 3.5 states that for evidence not available at the time the Application was submitted to the Residential Tenancy Branch the applicant must serve the respondent **as soon as possible** and at least 5 days prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between. In the case before me the deadline to meet this requirement would have been June 23, 2014.

Section 59(2)(b) of the *Act* requires that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Section 59 (3) stipulates a person who makes an Application for Dispute Resolution must give a copy of that Application to the other party within 3 days of making it.

This requirement is to ensure, in the interest of natural justice, that the responding party has an opportunity to understand the claim against them in order to prepare for the

hearing. While the Residential Tenancy Branch Rules of Procedure allow for evidence to be served after the initial Application is served, I find when an Application for Dispute Resolution does not disclose the full particulars of the claim and the applicant attempts to serve that evidence 2 weeks prior to the hearing, the respondent has not been sufficiently informed of the claim to make a reliable response.

However, the tenant's agent indicated that despite receiving the landlords' evidence late she was prepared to proceed with the hearing.

At the outset of the hearing the landlords reduced their claim from $1,200.00 to $850.00. The landlords also clarified that their claim for damage to the unit is for $350.00 and $500.00 was for "back rent".

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent or utilities; for damage to the rental unit and for cleaning; for all or part of the security and pet damage deposits; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act.*

Background and Evidence

Each party provided a copy of a tenancy agreement, however the agreement submitted by the landlord was the original tenancy agreement with an additional tenant named on the agreement and different terms. The parties agree the tenancy ended when the tenant vacated the rental unit on February 28, 2014.

The parties also agree the landlord has returned $600.00 of the security deposit to the tenant and has withheld $75.00 from the security deposit and the full $200.00 of the pet damage deposit.

The tenancy agreement submitted by the tenant was signed by the parties on May 16, 2012 for a 1 year fixed term tenancy beginning on June 1, 2012 that converted to a month to month tenancy beginning June 1, 2013 for a monthly rent of $1,350.00 due on the 1st of each month with a security deposit of $675.00 paid.

The tenancy agreement submitted by the landlord was signed by the newly named tenant on June 2, 2013 (now as a month to month tenancy) with the monthly rent changed to $1,450.00 due on the 1st of each month. The amended agreement also stipulated that the tenant's portion of utilities would increase from 2/3 to 80%.

While neither tenancy agreement stipulated that the landlords had charged a pet damage deposit the parties agree the landlord did charge the tenant $200.00 as a pet damage deposit during the tenancy.

The male landlord testified that he wanted the tenant to pay what she had agreed to pay in the contract. The landlords testified that the tenant had paid this additional amount for the months of May, June and July 2013 but did not pay the additional amount since August 2013. The landlords provided no explanation as to why they were seeking only $500.00 if the tenant had failed to pay $700.00 in total.

The landlords and tenant both provided into evidence a letter dated February 15, 2014 from the female landlord to the tenant stating, among other things that the tenant had agreed that she owed the landlord $100.00 per month for the months of December, January, and February for a total of $300.00. The landlords were requesting, in this letter, the payment of $1,375.52 for utilities including the $300.00 in “back rent”.

When asked why the letter only indicated $300.00 the male landlord testified that he didn’t know because he didn’t write the letter. The female landlord stated she could not recall why and the male landlord then interjected stating it was an error.

The tenant’s agent submits that the tenant had advised the landlords that her sister was going to move in for a few months and at that time they entered into the new agreement that increased the rent and utilities costs. She states the landlords were aware the sister would be moving out at the end of July 2013.

The tenant’s agent also submitted that the tenant had informed the landlords that her ex-husband may have been moving into the rental unit with her but that he never did. The tenant believes the landlord is attempting to collect this “back rent” for the period when she had indicated her ex-husband might have moved in.

The tenant’s agent indicated that the landlord had cashed the post-dated rent cheque in the amount of $1,350.00 for the month of March 2014 even though the tenancy had ended.

The landlords submit that they cashed the cheque because they thought it was a cheque for the outstanding utilities and rent that was identified in the letter of February 15, 2014. When asked when the male landlord received the cheque that he cashed on or after March 1, 2014 from the tenant he said that he had received several posted dated cheques and the bank automatically deposited them when their effective date arrived.

Later when asked to clarify when he received the cheque in the amount of $1,350.00 that he cashed to satisfy his claim for utilities and back rent that was identified in the letter of February 15, 2014 he stated he wasn’t sure. He confirmed that he never received direction from the tenant that he could use a rent cheque that he may have still had in his possession to cover the utility costs and additional rent.

As to damage to the rental unit the landlord has submitted into evidence a Condition Inspection Report that indicates the rental unit was generally left in good condition with

two exceptions. The first issue is that it was “dirty behind stove and fridge” and that there was crayon on the walls in the second bedroom. The landlord has also noted on the Report in the section of what damage the tenant is responsible for is a “broke door”. The Report is not signed by the tenant.

The landlords’ total claim for the repair of damages and cleaning was $350.00; however, they did not provide any evidence of what those costs were or how they were broken down.

The landlord submits that despite the tenant’s claim that the fridge and stove were not on rollers they were in fact both on rollers. He submits that as a result he spent 3 hours cleaning the rental unit and seeks compensation of $125.00 for this cleaning – a rate of $41.00 per hour.

The landlord also seeks compensation for the replacement of a door that he submits was damaged during the tenancy. He submits that because it was ok at the start of the tenancy and was damaged during the tenancy it was the tenant’s fault. The tenant submits that the damage resulted because the landlord tried to affix a hook to a hollow core door. The landlord seeks $125.00 for the replacement door and $90.00 for its installation.

The landlord also seeks compensation for painting the walls that had crayon on them. He testified that he was unsure when the unit was last painted. He stated that the unit was painted just prior to the tenancy before this tenancy, but he could not identify when specifically that was. He thought perhaps a year or two before this tenancy began.

As the landlords’ total claim in this portion of their Application totals $350.00 and the claims for cleaning and replacing the door total $340.00, without any other evidence, the landlords’ claim for painting is $10.00.

Analysis

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.

While the landlords had submitted documentary evidence a large part the landlords’ evidence was their oral testimony to support their claim. The largest portion of their documentary evidence included several utility bills and letters of complaint from a tenant

in another rental unit about this tenant – both of which were not relevant to the Application that was before me.

As such, I must rely on the credibility of the landlords' testimony. I find that the male landlord provided vague and sometimes contradictory testimony. In addition, the landlords did not really appear to have any understanding of the value of their losses in relation to their claim.

For example:

- The landlords claimed $500.00 for "back rent" but then testified that the tenant had failed to pay $700.00 and submitted into evidence a document that outlined that the tenant owed the landlord $300.00 for "back rent"; and
- The landlords claimed $350.00 for costs associated with cleaning and repairs and during the hearing the male landlord calculated his costs as totalling $340.00 before even considering how much it cost to paint the rental unit and as such his total claim for painting was $10.00.

In relation to the landlords' claim for "back rent" I accept the parties entered into a new tenancy agreement on June 2, 2014, increasing the tenant's rent by $100.00 per month.

Based on the above, I prefer the tenant's testimony that the landlords were aware the additional tenant was going to be living in the unit only for a few months and that the amounts sought by the landlords were in relation to the tenant's notification to the landlords that her ex-husband *may* be living with her and not based on the new tenancy agreement signed.

Therefore I find the landlords have failed to establish the parties had not reverted back to the original tenancy agreement and that the tenant owes the landlords any amount for "back rent". I dismiss this portion of the landlords' claim.

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.

In relation to cleaning I find the tenant failed to pull out the fridge and stove for cleaning. Residential Tenancy Policy Guideline #1 stipulates that a tenant is only responsible for cleaning behind large appliances if they are on rollers.

The tenant disputes that the fridge and stove were on rollers and the landlords claim that both appliances were on rollers. However when one party provides testimony that contradicts the other party's testimony the burden is on the party making the claim to provide additional evidence to support their claim.

I find, in the case before me, that the landlords have failed to provide any such evidence that would establish that the fridge and stove were on rollers. As such, I find the landlords have failed to establish the tenant was required to clean behind the fridge and stove in accordance with Policy Guideline #1. I dismiss this portion of the landlord's claim.

In regard to the landlord's claim for the replacement door, I find that despite the tenant's position that the door was damaged because the landlord had installed a hook on a hollow core door her claim does not address how the tenant was using the hook. For example, the installation of such a hook in itself may not cause damage, however, inappropriate usage such as overloading the hook may.

As such, I am satisfied that the door required replacement due to the tenant's actions. However, while the landlord testified the door cost him $125.00 to purchase he has provided no evidence to establish this as fact. I accept that the landlords would be entitled to compensation for its installation, however I find the rate of $90.00 to be excessive and grant a nominal amount of $50.00 for both the purchase and installation.

As to the landlords' claim for painting I accept that the tenant failed in her obligation to leave the 2nd bedroom walls undamaged and the landlords are entitled to claim for repainting the bedroom, subject to consideration of the useful life of building elements, as outlined in Residential Tenancy Policy Guideline #40.

Policy Guideline #40 lists the useful life of interior paint to be 4 years. As per the landlords' testimony I find the unit was painted at least 3 years before the end of the tenancy and as such the landlords' claim is reduced by 75% of the $10.00 claimed. I therefore find the landlords are entitled to $2.50 for painting.

Despite testimony from both parties regarding utility costs and the cashing of a rent cheque after the tenancy ended these matters were not before me and I make no findings of fact or law in relation to them.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **$77.50** comprised of $50.00 door replacement; $2.50 for painting and $25.00 the $50.00 fee paid by the landlords for this application as they were only partially successful.

I order the landlords may deduct this amount from the balance of the security deposit and pet damage deposits held in the amount of $275.00 in satisfaction of this claim. I grant the tenant a monetary order in the amount of **$197.50** for the return of the balance of the deposits.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant 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: July 03, 2014

Residential Tenancy Branch