Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNSD, FF

Introduction

In the first application the tenant seeks to recover deposit money after the end of the tenancy.

In the second application that landlord seeks a monetary award for unpaid utilities and for damages for cleaning and repair to the premises.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled any of the relief claimed?

Background and Evidence

The rental unit is the two bedroom main portion of a house. The house also has a basement suite the landlord rents to others. The landlord lives in a second house on the same lot.

The tenancy started at the end of October 2013. The monthly rent was $850.00. The landlord holds a $400.00 security deposit. Under the tenancy agreement the landlord received $25.00 per month as a pet damage deposit. She now holds $200.00.

The facts surrounding the ending of the tenancy are vague. At the start of the hearing the parties appeared to agree that there was a mutual agreement made in May 2014 to end the tenancy in the last week of June. The rent for the month of June (reduced by landlord) was paid.

The landlord claims outstanding Hydro charges and a daily rate between the date of the last bill to June 26th. The tenant agrees to the bill but doesn't agree to pay for days after the June 25th date she alleges the landlord changed the locks to the rental unit.

The landlord testified to the state of the premises at the end of June and particularly the flooring. She alleges that though the tenant was allowed pets, she permitted her dog to have a litter of pups in the spring and she permitted those pups to urinate on the carpeting in the home. She says that despite professional carpet cleaning the carpet in the living room and a bedroom floor had been ruined by dog urine.

The new tenant Ms. B.L. testified that she moved in on July 1st and that the urine smell from the carpet was so bad her boyfriend was physically ill. She complained to the landlord and as a result the floors were replaced within two days. She says both the house and yard smelled bad.

The tenant and her boyfriend Mr. G. argue that the flooring needed replacement anyway and that there had been discussions about Mr. G. assisting the landlord with flooring replacement during the tenancy. They testified that the landlord's claims for cleaning and repair are without justification and that, in any event, the landlord's agent, her husband Dave, changed the lock to the door of the rental unit on the morning of June 25, preventing the tenant from returning to clean and repair.

Analysis

The tenant does not dispute owing half the $281.47 Hydro bill for electric charges up to June 12 but disagrees owing for any after the claimed lock out on June 25th.

On the evidence presented, and particularly the evidence of Mr. G. who testified he attended at the premises in the late morning of June 25 to find that the tenant's key no longer worked and that furniture had been removed from the rental unit and placed outside, I find that the landlord changed the locks to the rental unit and denied the tenant possession on June 25.

As a result, I find that the tenant was only responsible for electric charges up to June 24th, a twelve day period after the $281.47 Hydro bill. I accept the landlord's estimated daily charge of $2.27 for twelve days. I award the landlord the amount of $167.97 for Hydro charges.

I disallow the claim for "dump fees." It is apparent from the text messages adduced at hearing that the tenant anticipated an hour of cleaning to be done and a "dump run" to

be made when the landlord's agent changed the locks and thereby revoked the tenant's exclusive possession of the premises. The landlord's argument that she was worried about vagrants and the like breaking into the rental unit is simply not likely in the circumstances here; where the tenant is active at the premises, has it under lock and key, is in constant touch with the landlord, at least by text, with other tenants living below and with the landlord living close by. The landlord was wrong to effectively retake possession by permitting or allowing the locks to be changed and the tenant's access to be affected before the tenancy ended. She cannot claim for cleaning or removal of items the tenant might well have cleaned or removed but for the landlord's wrongful entry and lock change.

For the same reason I disallow the claim for weather stripping, paint, cleaning charges, yard maintenance and new light fixtures.

It is apparent that the tenant permitted a litter of puppies at the rental unit. The written statement of the carpet cleaner and the testimony of the new tenant leave little doubt but that the puppies urinated on the carpet throughout the house and it is apparent the carpeting was beyond saving because of the urine staining. In most circumstances a landlord would be entitled to charge a tenant with the cost of replacement, less an amount for the depreciate value of the carpet. Here however, it appears that the flooring was old and needed replacement. The landlord was unable to say how old it was. The tenant and Mr. G. confirm and it does not appear to be disputed that the landlord contemplated replacing it during the tenancy at no cost to the tenant. There is no objective evidence about the state of the carpet at move-in. The landlord failed to conduct the mandatory move-in condition inspection or prepare the mandatory report that would have recorded the state of the flooring at that time. In result, while I find the tenant damaged the carpeting to such an extent that replacement was required, it appears replacement was likely required anyway and so the landlord has suffered no loss. I disallow this item of the claim.

I disallow the claim for panelling and paint to repair the mould affected closet wall. Mould can be generated by tenant behaviour, for example: too cool temperature, high humidity resulting from a failure to use available fans/windows in a kitchen or bathroom. It can also be a structural failure, for example: where moisture leaks into the premises from a failed roof. In that case a tenant is not responsible. In this case the evidence does not prove how the mould was generated.

I allow the landlord's claim of $100.00 towards the cost of carpet cleaning. This was not something the tenant planned on doing but was a reasonable step for the landlord to

take in order to determine whether there was any life left in the carpeting damaged by the tenant's animals.

At the start of the hearing the parties agreed that the tenant provided the landlord with her forwarding address in writing on June 25, 2014. I find that the tenancy ended on June 25th when the landlord re-entered and changed the locks. Section 38 of the *Residential Tenancy Act* provides that once these two events have happened, the landlord has a 15 day period in which to either repay the deposit or make an application to keep it. In the event of non-compliance there is a doubling of the deposit money.

In this case the landlord did not repay the deposit and she did not make her application for dispute resolution claiming against the deposit until July 16th, the date the hearing letter was issued. The landlord is therefore responsible to account to the tenant for double the deposit, in accordance with s. 38.

The tenant's application does not specifically claim the doubling. Nevertheless, in accordance with Residential Tenancy Policy Guideline 17 "Security Deposit and Set off [*sic*]" I am to award a double unless the tenant specifically declines it, which she has not. The tenant is therefore entitled to a credit of $1200.00 against the landlord's claim, not just the $600.00 in deposit money.

Conclusion

In result the landlord is entitled to a monetary award totalling $267.97 plus the $50.00 filing fee. The tenant is entitled to recover the $882.03 remainder of the doubled deposits, plus her $50.00 filing fee. The tenant will have a monetary order against the landlord in the amount of $932.03.

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: September 23, 2014

Residential Tenancy Branch