Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Emerald Power Consulting Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a monetary order and an order authorizing her to retain the security deposit and a cross-application by the tenant for a monetary order and an order compelling the landlord to return his security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on May 1, 2013 at which time the tenant paid a $1,050.00 security deposit. The tenant testified that he vacated the rental unit on May 3, 2014 while the landlord was uncertain and believed he stayed in the unit as long as May 9. The parties further agreed that rent was set at $2,140.00 per month.

Both parties claimed costs of sending registered letters and the landlord also claimed for the cost of sending documents to the tenant via courier. Under the Act, the only litigation related expense I am empowered to award is the cost of the filing fee. For this reason, I dismiss the claims for other hearing related costs.

I address the parties' remaining claims and my findings around each as follows:

Landlord's claims

Lock replacement: The landlord seeks to recover $50.00 as the cost of purchasing new locks for the rental unit and $73.50 as the cost of installing those locks. She testified that the tenant returned one set of keys to the rental unit on May 9 but did not return the other set of keys until May 22. In that interval, she had noticed that the shower head was missing out of the bathroom and phoned the tenant to advise that he had to replace it. The tenant replaced the shower head and the landlord testified that she felt uncomfortable knowing that the tenant had access to the unit during that 2 week period and changed the locks for that reason. The tenant testified that he went back to the rental unit specifically because the landlord had asked him to return the shower head. He did not return for any other reason. He further testified that his assistant had retained one set of keys because he had an arrangement with the landlord to advertise the suite and show it to prospective tenants. He provided as evidence a series of emails in which he and the landlord discussed him showing the unit to tenants. The landlord denied having entered into such an arrangement.

I find on the balance of probabilities that it is more likely than not that the landlord agreed that the tenant could keep one set of keys as he was advertising and showing the rental unit during May. The landlord was clearly aware that he was advertising and showing the unit and trying to find prospective tenants and it stands to reason that she would permit him to retain keys for that purpose. I find that the tenant returned the last set of keys on May 22 and as the landlord did not change the locks until May 23, I find there was no reason for her to exhibit this concern. I therefore find that the tenant should not be held liable for the cost of changing the locks and I dismiss this claim.

Loss of income: The landlord seeks to recover $2,140.00 in lost income for the month of May. The parties agreed that the tenancy was set to run for a fixed term which expired on April 30, 2014. The tenancy agreement shows that the tenancy was to revert to a month-to-month tenancy after the fixed term expired. The landlord testified that she did not receive notice from the tenant that he was vacating the unit until 2 days before the end of April. The tenant claimed that he verbally advised the landlord several months in advance that he would be vacating at the end of the fixed term. The landlord claimed that she immediately began advertising the unit but was unable to find a new tenant for the month of May. The tenant testified that the landlord advertised the unit for $2,500.00, which was $360.00 per month more than what he paid during the tenancy. The landlord testified that she could not recall the exact rate at which she advertise the unit, but believed she advertised in the $2,140.00 - $2,300.00 range.

The tenant testified that he advertised the unit for $2,140.00 per month and provided oral and documentary evidence showing that on May 6, he found a tenant who was

willing to rent the unit immediately. The tenant contacted the landlord who advised that rent was $2,300.00 per month. The landlord claimed that she asked for more than $2,140.00 per month merely as a negotiating tool and that if she had had opportunity to meet the prospective tenant, she may have reduced the price. The tenant testified that the prospective tenant was willing to meet with the landlord but the landlord was only willing to meet if the renter would agree to pay $2,300.00 per month. The landlord denied having imposed such a restriction.

Section 52 of the Act requires that a notice to end tenancy be put in writing. I find that the tenant did not comply with the requirements of the Act as his notice to the landlord was verbal. Section 7(2) of the Act requires that a landlord who claims compensation for loss must do whatever is reasonable to minimize the loss. I find it more likely than not that the landlord advertised the rental unit at a rate greater than what the tenant was paying. This reduced the number of interested candidates and I find that her actions were unreasonable. I therefore find that she has not complied with s. 7(2) in minimizing her losses. I accept that the tenant vacated the rental unit on May 3 and that on May 6 he found a new, suitable tenant who could have moved into the rental unit as early as May 7. I therefore find that the tenant should be held liable for occupational rent for the first 6 days of May and I award the landlord $414.19.

Refrigerator repair: The landlord seeks to recover $600.00 as the cost of replacing the door to the refrigerator. She testified that the door was in good condition at the beginning of the tenancy and at the end of the tenancy, had several dents in it. The landlord provided photographs of the door. The tenant testified that there was no condition inspection performed at the end of the tenancy and that had any damage been pointed out to him, he would have had it repaired at a much lower cost than the cost of replacing the door. The tenant suggested that the damage occurred after he vacated the unit.

I find that the refrigerator door was not damaged at the beginning of the tenancy and I find it more likely than not that it was damaged during the tenancy. I find it very unlikely that people viewing the rental unit would have opportunity or means to dent the door. The landlord has not yet repaired the door and as the new tenants appear to be using the refrigerator for its intended purpose, it is apparent to me that the damage to the door is merely cosmetic. I find that the damage to the door goes beyond what may be characterized as reasonable wear and tear, but I find that it would be unfair to require the tenant to replace the door as the refrigerator still functions properly. Instead, I find it appropriate to award the landlord a sum representing the loss of value of the refrigerator door. I find that $75.00 will adequately compensate the landlord and I award her that sum.

Cleaning:

The landlord seeks $150.00 as the cost of cleaning the stove, the balcony and the carpet on the upper floor of the rental unit. She provided photographs of the unit, but the photographs were so indistinct, it is not possible to determine what damage or soiling exists, if any. The tenant testified that he hired a cleaning service to thoroughly clean the unit at the end of the tenancy and provided an invoice to support this.

In order to succeed in this claim, the landlord must prove that the tenant failed to leave the unit in reasonably clean condition. The tenant is not required under the Act to leave the unit in spotless condition. I am unable to find on the evidence that the unit was not left reasonably clean and for this reason, I dismiss this claim.

Filing fee:

The landlord seeks to recover the $50.00 filing fee paid to bring her application. As the landlord has been only partially successful, I find it appropriate to award her $25.00, or one half of the filing fee.

Tenant's claims

Double security deposit:

The tenant seeks the return of double his security deposit. At the hearing, I explained to the tenant that the landlord is only required to pay double the deposit if she fails to return the deposit or file a claim against it within 15 days of the later of the end of the tenancy and the date she receives the forwarding address in writing. As both parties agreed that the landlord filed her claim before the tenant provided his forwarding address in writing, I find that the tenant has not proven his claim for double and the claim is dismissed.

Fob deposits:

The tenant seeks to recover $300.00 in deposits paid for access fobs. The landlord agreed that he had paid these deposits and that the fobs had been returned. I find that the tenant is entitled to recover the deposits and I award him $300.00.

Closet installation costs:

The tenant testified that when he moved into the unit, the closet was badly damaged, so he installed a custom closet with the approval of the landlord. He seeks to recover

$400.00 as the cost of supplies and $200.00 for his labour. He testified that the prospective tenant who offered to rent the unit for May 6 was willing to purchase the closet improvements and that the landlord had at one time considered paying him for the improvements, but did not communicate to him that she did not want them until after he had relinquished possession. The landlord insisted that she immediately told the tenant that she did not want to purchase the improvements and had advised him to remove them and fill any holes created.

With the landlord's permission, tenants may make improvements to a rental property, but are expected at the end of the tenancy to leave those improvements behind if the landlord agrees or to remove them and repair any resulting damage. The tenant was free to request that the landlord purchase the improvements, but without her express agreement, was obligated to remove the improvements. I find that the tenant abandoned the improvements and does not now have the right to claim compensation for what was abandoned. I dismiss the claim.

Filing fee:

The tenant seeks to recover the $50.00 filing fee paid to bring his application. As the tenant has been only partially successful, I find it appropriate to award him $25.00, or one half of the filing fee.

Conclusion

The landlord has been awarded $514.19 and the tenant $325.00. Setting off these awards as against each other leaves $189.19 owing by the tenant to the landlord. I order the landlord to retain $189.19 from the security deposit and I order her to return the balance of $860.81 to the tenant forthwith. I grant the tenant a monetary order for this sum under section 67. This order may be filed in the Small Claims Division of the Provincial 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: September 24, 2014

Residential Tenancy Branch