Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application by the tenants for a monetary order and an order for the return of their security deposit. Both parties participated in the conference call hearing.

At the hearing, the tenants advised that they had only received the landlord's evidence the night before the hearing. They asked that the landlord's evidence be excluded from evidence. I advised the tenants that the Rules of Procedure permit me to adjourn a hearing when a party needs more time to review evidence, not to exclude the evidence. I asked the tenants if they would like to request an adjournment and they chose to proceed.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began in May 2012 at which time a $900.00 security deposit, equivalent to one full month's rent, was paid and that a $900.00 pet deposit was paid in 2013. They further agreed that on May 20, 2014, 7 days after she filed her claim against the security and pet deposits, the landlord returned $900.00 to the tenants.

The tenancy agreement in effect at the end of the tenancy was signed on or about June 1, 2013 and purported to set a fixed term beginning on June 1, 2013 and ending 12 months later, "subject to the Landlord terminating the tenancy on one ... months written notice to the Tenant". The tenancy agreement also contains a liquidated damages clause which provides that if the tenants end the tenancy prior to May 31, 2014, they were subject to a $300.00 penalty.

The parties agreed that the tenants vacated the rental unit at the end of April and on May 3, returned keys to the landlord along with their forwarding address. The parties disagreed on how many keys were issued and returned. This dispute is addressed below under the landlord's claim.

I address the respective claims of the parties and my findings around each below.

Landlord's Claim

Cleaning: The landlord seeks to recover $250.00 as the cost of 10 hours of cleaning the rental unit. The landlord testified that the tenants did not clean the unit at all and testified that she paid a third party for 5 hours of cleaning and that she herself spent an additional 5 hours cleaning. The landlord provided photographs of the rental unit showing the condition in which the tenants left the unit. The tenants testified that they cleaned the unit with the exception of cleaning behind large appliances as they could not move those. They also provided photographs of the unit. Section 37(2) of the Act requires tenants to leave the rental unit reasonably clean at the end of the tenancy. There is no requirement that the tenants leave the unit spotless. Having viewed the photographs of both the landlord and the tenants, I find that the tenants failed to meet their obligation under the Act to leave the unit in reasonably clean condition. I find that they failed to clean behind the large appliances and they failed to clean the blinds, the refrigerator and the oven. Having found that the tenants' did not leave the unit reasonably clean, I find that if the landlord and her assistant spent 10 hours cleaning, they were cleaning the unit to a standard beyond what is required by the Act. I find that it would have taken the landlord no more than 2 hours to perform the required cleaning and I therefore award her $50.00.

Unpaid rent: The landlord seeks to recover $900.00 in rent for the month of May. The parties agreed that the tenants gave the landlord notice in March 2014 that they intended to vacate the rental unit at the end of April 2014. The landlord seeks an award of $900.00 arguing that the tenants were obligated under the terms of the tenancy agreement to remain in the unit for 12 months, paying rent until May 31, 2014. Having reviewed the tenancy agreement, it states that the lease term expires on May 31 and that the tenants are required to remain in the unit until that date, but it gives the landlord the option of ending the tenancy prior to the end of the fixed term on one month's notice. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is unconscionable. Section 3 of the Residential Tenancy Regulations provides that a term is unconscionable if the term is grossly oppressive or unfair to one party. I find that a term requiring the tenants to adhere to a fixed term but allowing the landlord to escape the fixed term is grossly unfair to the tenants. Fixed term agreements are designed to give both parties certainty and security that the tenancy will last for a specified length of time. In this clause, the landlord attempted to gain the benefit of that security while robbing the tenants of the same security. Because I have found that the term is unenforceable, I find that the tenants were in a month-to-month tenancy and were entitled to end the tenancy upon one month's written notice. I therefore dismiss the landlord's claim for unpaid rent.

Liquidated damages: The landlord seeks to recover $300.00 in liquidated damages pursuant to a term of the tenancy agreement. I have already found that the tenancy was a month-to-month tenancy as the fixed term provision is unconscionable and I find that the liquidated damages cannot be triggered as the tenants did not have an obligation to remain in the unit for a specified length of time. Further, the tenancy agreement clearly specifies that the provision is a penalty. Liquidated damages are designed to be a genuine pre-estimate of losses resulting from a breach and are not enforceable if they are a penalty. I find that the liquidated damages provision is unenforceable and I dismiss the claim for liquidated damages.

Light fixture and bulb replacement: The landlord seeks to recover the cost of replacing light bulbs at the end of the tenancy as well as replacing a missing light fixture. She testified that there were a number of bulbs that were either missing or burned out and that a light fixture was completely missing. The landlord testified that she spent $112.00 to purchase replacement bulbs and a new light fixture and paid $88.00 for installation of the bulbs and fixture. The tenants objected to the receipt provided by the landlord as it identified not only bulbs, but other items such as caulking and some type of cleaner having been purchased. The landlord argued that it didn't matter if other items were on the receipt because they

were for the rental unit and the tenants should be responsible for all of the costs incurred. The tenants testified that they were only aware of 2 bulbs having been burned out and noted that the landlord's photographs show just 2 non-functional bulbs. They further testified that the missing light fixture was removed by them because it had a lot of rust and they were afraid it would fall because it was lose. The landlord testified that she wasn't certain how many bulbs were burned out or missing but that she bought economy packs of bulbs because it was less expensive per bulb.

The landlord bears the burden of proving her claim. Her photographs show that just 2 bulbs are burned out and as the tenants have disputed that more bulbs were burned out, I am unable to find that there were a significant number of non-functional bulbs. I find that the tenants should have replaced the broken light fixture when they departed and I would ordinarily hold them responsible for the cost of a replacement fixture as they appear to have discarded the old one. However, the Rona receipt does not seem to include a charge for a replacement light fixture and in the absence of proof of what the landlord spent to replace the fixture, I am unable to award the landlord anything for that cost. I find that an award of $2.00 will adequately compensate the landlord for the cost of bulb replacement and I award her that sum.

Carpet cleaning: The landlord seeks to recover $187.57 as the cost of purchasing a carpet cleaner and using it to clean the carpets. The tenants acknowledged that they did not clean the carpets at the end of the tenancy, but testified that they would have done so if the landlord had granted them access to the rental unit after they had surrendered the keys. As the tenants had an obligation to leave the rental unit reasonably clean upon their departure, I find that the landlord had no obligation to grant them access to the unit after they surrendered possession. I find that the carpets required cleaning and that the landlord should be compensated for the cost of that cleaning. However, the landlord chose to purchase a carpet cleaner which she now has in her possession and will continue to benefit from rather than hire someone to complete the cleaning. I find that the tenants should not have to pay for the ongoing benefit of the carpet cleaner. The landlord's invoice shows that she paid $21.99 plus $2.64 in tax for carpet cleaning solution and I find that she should recover $40.00 for two hours of labour. I award the landlord $64.63.

Washer and dryer: The landlord seeks to recover $1,761.98 as the cost of purchasing a stacking washer and dryer for the rental unit. She testified that approximately 3 months before the end of the tenancy, the tenants advised her that the dryer was taking an excessively long time to dry clothing. The landlord testified that the dryer was purchased in 2004 and that it was functioning properly at the outset of the tenancy. The tenants testified that they are certain the dryer was purchased in 2002 and argued that they did not do anything to cause it to break. In order to be successful in her claim, the landlord must not only prove that the dryer stopped functioning, but that the tenants did something other than use it for its intended purpose which caused it to stop working. I am not persuaded that any action of the tenants caused the dryer to stop working and I find the landlord has failed to prove her claim. There is no evidence whatsoever that the washing machine stopped working and therefore the tenants cannot be responsible for the cost of purchasing a replacement. I dismiss this claim.

Entrance door: The landlord seeks to recover $791.70 as the cost of replacing a metal entrance door. She testified that it was in good shape when the tenants moved in to the rental unit and at the end of the tenancy, it had a significant number of dents. The landlord provided a copy of the condition inspection report in which there is a check mark in section "R" beside "front and rear entrance" indicating that on move-in, the door was in good condition. The tenants provided their copy of the condition inspection report showing that there is no check mark next to that item on the report. In order to be successful in her claim the landlord must prove that the door was in good condition at the beginning of the tenancy and that the tenants unreasonably damaged it. I am not persuaded that the door was in good condition at the

outset of the tenancy. I find it more likely than not that the landlord placed a check mark in that box when she made her claim in order to support her claim. I find that the condition inspection report is not reliable in that respect and I find that the landlord has failed to prove that the damage to the door occurred during the tenancy. I dismiss the claim.

Paint: The landlord seeks $1,700.00 as the cost of repainting the rental unit. She testified that the unit was freshly painted at the outset of the tenancy and that at the end, there were a number of marks and holes in the wall which required repair and repainting. She did not provide a copy of the receipt for painting as she said she paid cash to an individual who did not provide a receipt. The tenants testified that the walls were not freshly painted when they moved in and there were several places where the paint was peeling. They argued that any marks on the wall could be characterized as reasonable wear and tear. In order to succeed in her claim, the landlord must prove that the walls were in good condition at the beginning of the tenancy and that the tenants caused unreasonable damage. She must also prove the amount of the loss she suffered. I find that there is some damage to some of the walls and I find that some of it goes beyond reasonable wear and tear. However, I find that the landlord has not proven that she paid to have the walls repaired and I am unable to find that she is out of pocket any amount of money for repairs. For this reason I dismiss her claim.

Locks: The landlord seeks $100.41 as the cost of replacing locks in the rental unit. She testified that the tenants did not return the keys for the deadbolt but only for the door knob lock. The landlord provided a copy of the paper on which the tenants gave their forwarding address and on which the tenants had written, “2 keys to be returned still.” The tenants testified that they returned all of the keys provided to them. I find it unlikely that the tenants would have in their own hand written that they had failed to return keys when in fact they had returned all of the keys issued. I find it more likely that not that the tenants failed to return 2 keys and I find that the landlord is entitled to recover the cost of changing the locks. I award the landlord $100.41.

Pressure washer and broken shelf: The landlord seeks to recover the $60.00 cost of replacing a broken shelf and $90.00 as the cost of paying someone to pressure wash the driveway. She testified that the shelf over the toilet was broken and had to be discarded and provided a photograph of the shelf on the ground. The landlord testified that the tenants’ car leaked oil on the driveway and that she had to pay someone to address the spotting with a pressure washer. She testified that she paid cash for the work. The tenants testified that the bathroom shelf was always wobbly and stated that when they moved out of the unit, it was still in the bathroom. They speculated that the landlord had tried to remove the shelf and broken it. They testified that the area with the oil depicted in the landlord’s photograph shows a common area and suggested that the photograph shows a damp spot rather than an oily spot.

In order to succeed in her claim, the landlord must prove not only that the bathroom shelf is broken, but that the tenants caused it to break through some action other than reasonable use. I am not satisfied given the construction of the shelf that it broke as a result of the tenants’ misuse rather than as a result of reasonable wear and tear. Because the oil staining is in a common area rather than in an area exclusively used by the tenants, I am not satisfied that the tenants are responsible for the cost of cleaning the oil spot. Further, because the landlord cannot provide a receipt showing that she paid for the work to be done, I find that the landlord has not proven the cost of the claim or her actual loss. I therefore dismiss these claims.

Filing fee: As the landlord has been only partially successful in her claim, I find that she is entitled to recover just half of her filing fee and I award her $25.00.

Tenants' Claim

Double security and pet deposits: The tenants seek an award of double their security and pet deposits. They argued that because the landlord collected double the amounts she was legally entitled to collect and did not return the overpayment until 20 days after their tenancy ended, she should be liable for double the deposits. Section 38(1) of the Act requires the landlord to file a claim against the deposits within 15 days of the end of the tenancy. The landlord filed her claim on May 12 and I find that she acted in accordance with the statutory provisions. Although she did not return the deposit overpayment until 20 days after the end of the tenancy, because she complied with her obligation to file her claim within 15 days, I find that she is not liable for double the deposits. I therefore dismiss this claim.

Lost wages: The tenants seek $367.50 as the value of wages lost when the tenants showed the rental unit to prospective tenants. They testified that the landlord needed them to be at home to show the unit because she didn't have keys and they had to be at the unit to grant her admittance. I find that the tenants had no obligation to be at the unit when the landlord showed the unit to prospective tenants. It was within their right to decline the landlord's requests for them to be at the unit and to insist that the landlord make a copy of the key for herself. I find that the claim is not based on the landlord's breach of the Act or tenancy agreement as is required under section 7 of the Act and for that reason I dismiss the claim for lost wages.

ICBC charges: The tenants seek to recover $1,324.67 as the cost of paying their vehicle insurance all at once instead of in monthly installments. They testified that the landlord refused to give mailbox keys to the tenants and instead delivered their mail to them. They claimed that the landlord failed to give them some of their mail resulting in their vehicle insurance being cancelled due to them missing monthly payments. The tenants have not proven to my satisfaction that the landlord withheld their mail and in any event, they have not proven that they suffered a loss other than the inconvenience of having to pay their insurance in a lump sum rather than it being broken down into monthly payments. The landlord is not responsible to pay for the tenants' car insurance and I dismiss this claim.

Snow removal: The tenants seek $1,507.83 as the cost of removing snow twice each week for 5 months each year. The tenancy agreement provides that the tenants are responsible for snow removal but they testified that they also shovelled the driveway and the area in front of the landlord's door in order to access their stairs. They claimed that the area was covered with snow and ice for most of the winter. In order to succeed in their claim, the tenants must prove that the landlord either violated the Act or their tenancy agreement. The tenants appear to regret having done the landlord the favour of removing snow from areas that she accessed and now seek to be compensated for it. I can find no evidence whatsoever that the landlord violated the Act or the agreement and I am not persuaded that this single property in the lower mainland experienced 5 solid months of snow when the rest of the lower mainland did not experience such weather. I dismiss the claim.

Filing fee: As the tenants have been wholly unsuccessful in their claim they will bear the cost of their filing fee.

Conclusion

The tenants' claim has been dismissed in its entirety. The landlord has been awarded $242.04 which represents $50.00 for cleaning, $2.00 for light bulbs, $64.63 for carpet cleaning, $100.41 for lock replacement and $25.00 for her filing fee. I order the landlord to retain $242.04 from the $900.00 in

security and pet deposits and I order her to return the balance of $657.96 to the tenants forthwith. I grant the tenants a monetary order under section 67 for $657.96. 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: October 14, 2014

Residential Tenancy Branch