Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC, FF
Tenants: MNDC, MNSD, AS, FF, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her agent and the male tenant.

While there was some discussion with each party on the service of evidence I find that both parties were served with each other's evidence with sufficient time to understand and prepare to respond to the claims made against them.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for the costs of re-renting a rental unit; for costs involved in pursuing this claim; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to an order to allow the tenants to assign or sublet the rental unit; to a monetary order for the return of rent; for return of double the security deposit; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 34, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by them on January 5, 2014 for a 1 year fixed term tenancy agreement beginning on February 1, 2014 for a monthly rent of $1,550.00 due on the 1st of each month with a security deposit of $775.00. The tenancy agreement indicates that the tenants must vacate the rental unit at the end of the fixed term.

The parties agree that at or around June 30, 2014 the tenants provided notice to the landlord that they would like to end their tenancy as of July 31, 2014. The tenants submit the landlord would not allow them to sublet or assign the tenancy of the rental unit and on July 11, 2014 the landlord informed them that they had found a suitable tenant effective October 1, 2014.

The tenants submit that they had previously indicated to the landlord that their parents were interested in taking over the lease. They submit that the landlords did not consider this request and rented it to the new tenant for October 1, 2014. When asked about this the tenants submit the landlord indicated in an email response dated July 11, 2014 that she was not giving the tenants permission to sublet.

The tenants also submit that their parents were interested only in subletting or assigning the tenancy for the remainder of the full tenancy and not for the period only between August 1, 2014 and September 30, 2014 and as such their parents did not move in to the rental unit. The tenants seek return of the rent they paid for the months of August and September 2014.

The tenants also seek return of double the security deposit. The parties agreed they participated in a move out condition inspection report at which time the tenant's forwarding address was provided to the landlord. The landlord filed her Application for Dispute Resolution on September 10, 2014 and I note that it did not include a request to retain the security deposit.

The landlord seeks compensation for the costs of traveling (including time and mileage) and showing the unit to prospective tenants. The landlord submitted into evidence a spreadsheet recording 14.6 hours travelling at $30 per hour ($440.00); 11.98 hours showing at $30 per hour ($359.00); and 440 kilometres at $0.50 per kilometre (220.00) for a total claim of $1,019.00.

The landlord also seeks compensation for the production of photocopies and postage for delivery of evidence and documents in support of her claim totalling $62.88.

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.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one

month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find there is no evidence before me that would suggest the tenants were allowed to end the tenancy for a breach of a material term of the tenancy agreement under Section 45(3) and as such the earliest they could end their obligations under the tenancy agreement would have been January 31, 2015.

Section 44(1) stipulates that a tenancy ends only if one or more of the following applies:

a) The tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    i. Section 45 (tenant's notice);
    ii. Section 46 (landlord's notice: non-payment of rent);
    iii. Section 47 (landlord's notice: cause);
    iv. Section 48 (landlord's notice: end of employment);
    v. Section 49 (landlord's notice: landlord's use of property);
    vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
    vii. Section 50 (tenant may end tenancy early);
b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
c) The landlord and tenant agree in writing to end the tenancy;
d) The tenant vacates or abandons the rental unit;
e) The tenancy agreement is frustrated; or
f) The director orders that the tenancy is ended.

Based on the evidence and testimony provided by both parties I find that the tenancy ended when the move out condition inspection was completed and keys were returned to the landlords on September 3, 2014, pursuant to Section 44(1)(d) – the tenants had vacated the rental unit. While the tenancy ended on this date this does not impact the tenants' obligations under the tenancy agreement for the rent that was due for the entire duration of the fixed term.

In regard to the landlord's claim, I find that while the tenants did breach the tenancy agreement by ending the tenancy early the landlord is normally entitled to compensation for the months that the unit was not rented to any other party for the duration of the tenancy agreement. However, there is nothing in this tenancy agreement requiring the tenants to pay for the costs associated with re-renting the unit such as a liquidated damages clause.

Further, I note that the tenancy agreement required the tenants to vacate the rental unit at the end of the tenancy and as such the landlord would have incurred the costs to re-rent the unit at the end of the fixed term. I find the landlord has provided no evidence to establish that these costs are anything more than the cost of doing business. I also find that these costs would have been occurred even if the tenancy when the full duration of the fixed term.

In addition, as to the landlord's claim for the costs of photocopies and postage to pursue this claim I note that the *Act* does not provide to allow me to grant compensation for these costs.

As a result, I dismiss the landlord's Application for Dispute Resolution in its entirety.

In regard to the tenants' claim for the return of rent for the months of August and September 2014, I note that it was the tenants who first breached the tenancy agreement and *Act* by issuing a notice to end tenancy prior to the end of the fixed term and the tenants cannot benefit from events that follow from that breach, even if the landlord did not allow them to sublet or assign their tenancy.

As to the tenants' claim that the landlord did not allow them to assign or sublet their tenancy, I find that while the landlord did indicate in an email that they were not providing permission to sublet at the time of the email this did not prevent the tenants from putting forward applications to the landlord for other potential sublet tenants.

I find the tenants have provided no other evidence that unequivocally rejects the option of assigning or subletting the tenancy. Rather, I find the landlord was merely providing the tenant with instructions on how they would proceed should the tenants find someone to sublet that they would have to be approved by the landlords and that the landlord would require specific criteria to approve. Therefore, I find that the landlord did not deprive the tenants the opportunity to assign or sublet.

As a result, I find the tenants are the only party who was in breach of the tenancy agreement by providing the landlord with notice to end the tenancy prior to the end of the fixed term. I also find then that the tenants were responsible for the payment of rent for the months of August and September, 2014. Therefore, I dismiss the portion of the tenants' Application seeking return of rent for these two months.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As I have found the tenants returned possession of the rental unit on September 3, 2014 and the landlord was provided with the tenants' forwarding address on that date I find the landlord had until September 18, 2014 to file an Application for Dispute

Resolution seeking to claim against the deposits to comply with Section 38(1). While the landlord did submit an Application for Dispute Resolution on September 9, 2014 she did not seek to retain the security deposit. As such, I find the tenants are entitled to return of double the security deposit pursuant to Section 38(6).

Conclusion

Based on the above I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$1,575.00** comprised of $1,550.00 double the security deposit and $25.00 of the $50.00 fee paid by the tenants for this application as they were only partially successful in their claim.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: October 06, 2014

Residential Tenancy Branch