Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, MNR, MND,MNSD, FF

Introduction

This hearing is convened to deal with an Application for Dispute Resolution by the landlord for monetary compensation for unpaid rent and damage to the property. The hearing is also to deal with a cross application by the tenant seeking a refund of the security deposit and compensation for damages.

The landlord originally applied for an order of possession but the tenants have already vacated the rental unit so this portion of the landlord's application is moot and need not be heard.

Both parties were present at the hearing and the hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, This evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence submitted and properly served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rent, utilities and repairs?

Is the tenant entitled to a refund of double the security and pet deposit?

Are the tenants entitled to additional compensation for damages and loss?

Preliminary Issue(s)

Service of Notice of this Hearing

The landlord stated that they did not have sufficient time to submit evidence for this latest hearing due to late service of the Notice of Hearing by the tenants.

The original hearing between these two parties was held on October 8, 2014 on cross applications by the landlord and tenant. On October 31, 2014, the landlord filed a request for a Review Consideration on the basis that they were unable to attend the hearing because of circumstances that were not foreseen and beyond their control. In a review consideration decision dated November 17, 2014, a new hearing was granted and scheduled to be heard on December 17, 2014. The landlord was ordered to serve the tenants with the Notice of this new hearing.

However, on December 17, 2014, the date of the new proceeding, the tenants did not attend the second hearing and a decision was rendered in their absence.

On December 24, 2014, the tenants then submitted an application for Review Consideration based on not being able to attend as they were not served and based on fraud. The tenants' request for a Review Consideration was successful and, in a decision dated January 5, 2014, a new hearing was ordered and scheduled to be heard on January 21, 2015. This is the matter before me today.

Based on the history of the dispute, I find that both parties have had an equal opportunity to submit and serve evidence in relation to their claims.

Accordingly, the hearing proceeded despite the landlord's allegation that they did not have sufficient notice to submit their evidence on time for the new hearing.

Background and Evidence

The tenancy began in 2012 and the monthly rent was $3,000.00. A security deposit of $1,500.00 and pet damage deposit of $1,500.00 are being held in trust by the landlord. The tenant moved out on January 16, 2014 and provided the landlord with a written forwarding address sent on February 8, 2014.

Neither party submitted a copy of the tenancy agreement into evidence.

Tenants' Claims

The tenant is seeking a refund of double their security and pet damage deposits as the landlord failed to make an application or refund the deposits within the required 15-day deadline under the Act.

In addition to the refund of the security and pet damage deposits, the tenants ares claiming damages. The tenants submitted a Monetary Order Worksheet detailing the specific claims and included a copy of the move-in condition inspection report dated May 23, 2012 and a copy of the move-out condition inspection report, dated January 16, 2014. In support of the listed claims the tenants attached copies of returned cheques, utility bills, photos, receipts written

estimates and statements. The following monetary claims were listed on the form:

- $120.75 for air condition repairs
- $553.56 for repairs to the pool heater
- $1,016.26 for pool algae cleaning services
- $1,093.43 for the water bill.

The tenants are also seeking a monetary order in compensation for repairs to the air conditioner, pool heater and costs associated with “opening the pool” for the season.

The tenants testified that they had an agreement with the landlord that the landlord would be responsible for opening the pool. However, according to the tenants, the landlord failed to ensure that the water was adequately treated and prepared for use as part of the pool opening process. The tenants stated that they were forced to pay for the cleaning and supplies to remove algae in the pool.

The tenants stated that the landlord also failed to respond to their requests for various repairs, leaving these up to them to arrange and pay for. The tenants submitted copies of communications regarding various repair issues.

According to the tenants, their air conditioner was disabled for the season by agents of the landlord and when the weather turned warm the tenants asked the landlord’s agent to activate it. The agent was not able to fix the problem and the tenant found it necessary to have it professionally serviced as a result at their own cost.

The landlord argued that it was normal procedure to remove the air conditioner fuse and store it in the tool shed for the winter. The landlord stated that the tenants did not need to have a service call to activate the air conditioner. The landlord pointed out that they had hired a property manager to assist the tenants with repair and maintenance issues. This property manager was not present at the hearing, but the landlord stated that their agent could have helped the tenants with the air conditioner instead of the tenants calling a service technician.

In regard to the pool heater, the tenants testified that the heater was not functioning on the day they moved in. The tenants testified that, after trying to get it going, they finally called a pool specialist who found numerous other condition issues and they incurred costs of $553.56 just to ensure that the heater was operating and safe. The landlord disputed these allegations and stated that the

tenants merely had to enlist the help of the property manager to light the pilot light and the expenses would not have occurred. The property manager the tenants' dealt with was not at the hearing to give testimony.

In regard to the costs to remove algae from the pool, the tenants stated that it was the landlord's duty, as part of their responsibility to open the pool for the season, to ensure that the water was clean. The tenants testified that they followed instructions on removing algae and spent a lot of time and money doing this job. The tenants feel that they have a right to be compensated.

The landlord agreed that it was their responsibility under the tenancy agreement to "open" the pool, but they stated that this did not include the initial water conditioning. The landlord's position is that the algae treatment of the water was a normal maintenance regime that fell to the tenants as part of their use of the pool.

In regard to the claimed water expenses, the tenants stated that, because of the landlord's failure to open the pool and treat the standing water, they had to empty the pool to clean it and the bill for water was higher as a result.

The tenants testified that they were never billed for water during the tenancy and never received a copy of an invoice for the water bill for the period from August 2013 to January 2014 until after they vacated the unit. The tenants pointed out that the landlord's failure to deal with the matter in a timely manner resulted in extra penalties for which the tenants feel they are not responsible.

Landlord's Claims

The landlord is claiming compensation of $22,700.00.

The landlord's application mentions that the tenants were evicted for rental arrears, and the landlord testified at the hearing that they are owed $3,000.00 for unpaid rent for January 2014. No copy of the 10 Day Notice to End Tenancy for Unpaid Rent is in evidence to confirm the amount of the arrears.

Although the landlord did not complete or submit any Monetary Order Worksheet along with their application to provide a detailed breakdown of the individual damage claims, the landlord's application did provide the following information:

> *"Tenants were evicted for non payment of rent. Substantial damage –was done to property. Damage included breakage of landlords property, snooker table and antique light and floors throughout due to severe scratching, gouging and damage due to furniture moving and pets far in*

excess of normal wear and tear. Yard repairs due to neglect and no use of irrigation despite there being a comprehensive system in place."
(Reproduced as written)

The landlord submitted copies of communications discussing these issues and submitted photos of the damaged areas. Also submitted were copies of invoices and estimates for $496.30 to repair the irrigation system, $17,377.46 for flooring, $473.47 for a pool table repair, an estimate of $556.00 for a replacement light fixture, a bill of $496.30 for the pond pump, an invoice for $400.00 for yard repairs and an outstanding water bill of $1,093.43.

The tenants argued that the landlord has not sufficiently proven the above claims. The tenant pointed out that the move-in condition inspection report confirms that the wood floors were already marred by scratches when they moved in. The tenants made reference to notations in the report stating that the flooring was already scratched before these tenants took possession. The tenants stated that the move-out condition inspection report makes no mention of a broken light fixture, irrigation pump or damaged snooker table.

The tenants stated that they should not be responsible to pay the water bill or fund landscaping and yard repairs

Analysis Tenant's Claims

With respect to the return of the tenants' security deposit, I find that the Act states that the landlord can only keep the deposit if, after the end of the tenancy, the landlord makes an application for dispute resolution and obtains a monetary order to retain the amount for proven damages or losses caused by the tenants.

The landlord must either make the application or refund the security deposit within 15 days after the tenancy has ended and they receive a written forwarding address. Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord must pay the tenant double the amount of the security deposit.

I find that the tenants provided the landlord with their written forwarding address in February 2014. The landlord did not refund the security deposit and pet damage deposit and waited until May 28, 2014 to make their application to keep the deposit for debts and damages.

Accordingly, I find that the $1,500.00 security deposit and $1,500.00 pet damage deposit must be doubled. I find that the amount of the refund to be paid or credited to the tenant is $6,000.00.

In regard to the tenants' claims for the $120.75 for air condition repairs, I accept that they did approach the landlord's property manager as they claim and the manager was not able to assist them in restoring the unit thereby forcing the tenants to seek an air-conditioner professional. Therefore, I find that the tenants are entitled to be compensated $120.75.

In regard to the cost incurred for the pool heater, I find that this is a maintenance issue that would fall to the landlord under the Act. Although the landlord stated that the tenants merely had to ask their property manager to light the pilot light, the invoice submitted by the tenant contradicts this claim. Moreover, the landlord's manager was not at the hearing to testify what had transpired. Therefore, I find on a balance of probabilities that the tenants are entitled to be compensated $553.56 for the heater repair costs, which would be a landlord expense under normal circumstances in any case.

In regard to the $1,016.26 expenditures incurred by the tenants for algae removal, I find that the term of the tenancy agreement relating to pool maintenance is not clear and no copy of the tenancy agreement is in evidence. Section 6(3)(c) of the Act states that a term in a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Therefore, I find that I am not able to enforce the unclear term relating to the pool-opening tasks and algae removal and this portion of the tenant's application must be dismissed.

In regard to the claim for payment of water utilities in the amount of $1,093.43, I also find that the issue of who is responsible for payment of utilities to be a term that would have to be clearly stated within the tenancy agreement. In this case, no copy of the agreement was submitted into evidence and I therefore find this term to be unclear and unenforceable. This portion of the tenant's claim is also dismissed.

Given the above, I find that the tenants are entitled to total compensation of $6,674.31.

Analysis Landlord's Claims

Section 26 of the Act requires that rent be paid when it is due. I find that the landlord is entitled to be compensated $3,000.00 for rent owed by the tenants for the month of January 2014.

In regard to the landlord's claim for $496.30 to repair the irrigation system, $17,377.46 for flooring, $473.47 for a snooker table repair, $556.00 for a replacement light fixture, $496.30 for the pond pump, $400.00 for yard repairs

and an outstanding water bill of $1,093.43, I find that an Applicant's right to claim damages such as these from another party, is dealt with by section 7 of the Act.

Section 7 states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

In this instance, the landlord has alleged that the tenants left the floors of the unit damaged, while the tenants' position is that the unit was left in a similar condition as it was when they took possession, subject to additional normal wear and tear during the tenancy.

I find that the tenants' role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

I find that the move-in and move-out condition inspection report in evidence does indicate that there were already some pre-existing damage and scratches to the floors, as pointed out by the tenants. I find that the move-in and move-out

condition inspection reports make no mention of damage left to the irrigation system, damage to a snooker table, a broken light fixture, a damaged pond pump or a need for yard repairs.

I find that the landlord has not adequately met all elements of the test for damages to prove that the tenant caused the damage claimed by the landlord and the monetary claim for damages must therefore be dismissed.

With respect to the landlord's claim for water costs, I find that, in the absence of a tenancy agreement showing the specific terms for payment of utilities, I do not have sufficient information upon which to make a determination about the liability for payment. I find I must dismiss this portion of the landlord's claim on that basis.

Based on the evidence, I find that the landlord is entitled total monetary compensation of $3,000.00 for rental arrears. I find that the remaining monetary claims made by the landlord have not been sufficiently proven and must be dismissed.

In setting off the tenants' monetary award of $6,674.31 against the landlord's monetary award of $3,000.00, I hereby grant a monetary order for the remainder of $3,674.31 to the tenants. This order must be served on the landlord and may be enforced through an application to Small Claims Court if unpaid.

Each party is responsible for their own costs of the application.

Conclusion

The landlord and the tenants are each partly successful in their applications and the monetary claims are set off resulting in a surplus in favour of the tenant.

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: January 29, 2015

Residential Tenancy Branch