Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following, among other things, in the details of the dispute:

> *I am asking the tenant to pay me one month rent which is $1000 for July.*
> [Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover loss of rent after the Tenants vacated the unit. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement,* pursuant to section 64(3)(c) of the Act.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 14, 2015. The Landlord filed seeking a $3,100.00 monetary order comprised of $2,100.00 in damages plus $1,000.00 for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord, her translator, and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord submitted two packages of evidence. On July 15, 2015 the Landlord submitted 2 pages of evidence and one C.D. to the Residential Tenancy Branch (RTB). On July 23, 2015, the Landlord submitted 24 pages of evidence and a duplicate C.D. to the (RTB). The Landlord affirmed that she served the Tenants with copies of the same documents that she had served the RTB. The Tenants acknowledged receipt of these

documents and electronic information on one C.D. No issues regarding service or receipt were raised. As such, I accepted the Landlord's submissions as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to $3,100.00 in monetary compensation?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on May 1, 2015 and was not scheduled to end until April 30, 2016. Rent of $1,000.00 was payable on the first of each month and on or before May 1, 2015 the Tenants paid $750.00 as the security deposit. No written condition report forms were completed at move in or move out.

The rental unit was described as a self-contained suite located in the main or lower level of the house. The House is two levels and the Landlord resides in the upper level with her family.

The Landlord testified that they are seeking $1,000.00 for July 2015 rent because the Tenants vacated the rental unit by June 27, 2015 without providing the Landlord with proper notice. The Landlord re-rented the unit effective August 1, 2015.

The Landlord submitted that she did not see the Tenant's dog for a few days and did not hear any noise form the suite so on June 27, 2015 she peeked in the windows and noticed the unit was empty. She then entered the unit and confirmed it had been vacated.

The Landlord also sought to obtain half of the cost to repair the back yard lawn as per the $2,661.75 estimate dated July 23, 2015, provided in evidence. She argued that the Tenants allowed their large dog to urinate and defecate in their garden and yard killing their lawn. The Landlord asserted that she had requested that the Tenants take their dog out of the property on a leash for it to go to bathroom but the Tenants refused and continued to let the dog into the back yard.

The Landlord submitted photographs of the back yard, garden, and of the inside of the rental unit. She stated the photographs were taken on May 26 and June 26, 2015. She argued that the Tenants did not clean the rental unit before moving out so they are also claiming $100.00 based on four hours of cleaning that the Landlord and her daughter had to complete.

The Tenants argued that the Landlord continuously asked them to move out because she did not like their dog; even though she gave them permission to have a dog. The Tenants testified and confirmed that they did not serve the Landlord written notice to end their tenancy; however, they did tell her when they found another place and were leaving. They confirmed that the Landlord told them they had to give her notice before they left which is why they told her when they found a place.

The Tenants submitted that the Landlord began showing their rental unit to prospective new tenants before they found another place. The Tenants asserted that they thought they had no choice but to move. The Tenants stated that they simply moved out because the Landlord kept telling them to do so.

The Tenants disputed the Landlord's claim for landscaping costs and argued the lawn was dead prior to them moving into the rental unit. The Tenants argued that the lawn was dead because the Landlord did not care for the lawn and did not water it, not because of the Tenant's dog. The Tenants noted that their dog could not have caused that much damage to the lawn during the short time they lived there. In addition, the Tenants stated that their dog was primarily in the garden and not on the lawn.

The co-Tenant P.W. stated that the Landlord forced him to move out even though the dog was not his. He stated that he tried to explain to the Landlord that the dog was the other Tenant's; however, the Landlord did not care and told him he had to move out with the other Tenant.

The Tenants submitted that the Landlord should not be allowed to keep any portion of their security deposit as they were forced to move out even though they had a tenancy agreement.

The Landlord did not dispute any of the Tenants' testimony. She argued that the Tenant's dog was much larger than what they had expected and the dog was killing their vegetables. The Landlord confirmed that they asked the Tenants to move out. The Landlord stated that they did show the unit to prospective new tenants before the Tenants had moved out.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 23 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and complete a condition inspection report form in accordance with the Regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 24(2) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 23 (3) *[2 opportunities for inspection]*; having complied with section 23 (3), does not participate on either occasion; or does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Landlord did not complete a move in or a move out inspection report form. Therefore, the Landlord breached their entitlement to claim damages against the deposits first. Thus, the Landlord was required to return the security deposit to the Tenants within 15 days of the tenancy ending or receiving the tenants' forwarding address in writing in order to comply with section 38(1) of the Act. That being said, the Landlord is not prevented from making a claim for any other losses which resulted from this tenancy.

Section 14(2) of the *Act* provides, in part, that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment in writing.

Section 12(4) of the Regulation Schedule stipulates that a landlord may end the tenancy only for the reasons and only in the manner set out in the *Residential Tenancy Act* and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy office.

The parties entered into a fixed term tenancy agreement that was not scheduled to end until April 30, 2016. The undisputed evidence was the Landlord insisted that the

Tenants had to move at which time the Landlord began to show the rental unit to prospective Tenants.

I accept the Tenants' submissions that they felt they had no choice but to move given the Landlord's actions. In addition, in consideration of the Landlord's actions and the fact that she resides in the same location, I do not accept the Landlord's submission that she had no idea the Tenants were moving out or had moved out.

Based on the aforementioned, I find it was the Landlord who unilaterally ended this tenancy in breach of section 14(2) of the *Act* and in breach of section 12(4) of the Regulation Schedule. The Landlord had not served the Tenants with an official notice to end tenancy and did not seek a remedy through dispute resolution. I have also considered that it was the Landlord's actions which caused the Tenants to incur costs of moving only two months after they moved into the unit even though the Tenants signed a one year lease. Therefore, I find the Landlord provided insufficient evidence and I dismiss the claim for loss of July 2015 rent, without leave to reapply.

Section 37(2) of the Act provides 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.

Upon review of the photographic evidence submitted by the Landlord, I favored the Tenants' submission that the lawn was damaged or dead prior to them moving into the rental unit. The Tenant admitted that he had allowed his dog to urinate and defecate in the Landlord's garden which I find lends credibility to all of their submissions. Furthermore, I find the Tenant's submission that his dog could not have caused that much damage to the lawn during their two months living there to be reasonable given the circumstances presented to me during the hearing.

Based on the above, I find the Landlord submitted insufficient evidence to prove their claim and the claim for lawn repairs is dismissed, without leave to reapply.

In regards to the Landlord's claim for cleaning costs, the Tenants did not dispute the Landlord's submission that it took two of them four hours to clean the rental unit after the Tenants vacated. Based on the undisputed evidence, I find the Landlord provided sufficient evidence to prove their claim for cleaning. Accordingly, I grant the Landlord **$100.00** for cleaning costs, pursuant to section 67 of the *Act.*

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **$25.00**, pursuant to section 72(1) of the Act.

Monetary Order – I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Cleaning costs	$ 100.00
Filing Fee	25.00
SUBTOTAL	$ 125.00
LESS: Security Deposit $750.00 + Interest 0.00	-750.00
Offset amount due to the Tenants	**($625.00)**

The Landlord is hereby Ordered to pay the $625.00 balance of the security deposit to the Tenants forthwith. The Tenants have been issued a Monetary Order for **$625.00** which must be served upon the Landlord in the event the Landlord does not comply with my order. This order maybe filed with Small Claims Court and enforced as an Order of that Court.

Conclusion

The Landlord was partially successful with her application and was granted $125.00 in monetary compensation. Landlord's award was offset against the Tenants' $750.00 security deposit and The Landlord was Ordered to return the balance of $625.00 to the Tenants forthwith.

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 25, 2016

Residential Tenancy Branch