# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD, MND, MNR, MNSD, MNDC, FF

Introduction

In the first application the tenants seek recovery of a $500.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*").

In the second application the landlord seeks a monetary award for early termination of the tenancy and for cleaning, repair and maintenance costs incurred after the tenants left.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenants failed to leave the premises reasonably clean but for reasonable wear and tear? Has the tenancy been ended early entitling the landlord to claim for money?

Background and Evidence

The rental unit is a two bedroom basement suite. The landlord lives in the upper part of the home.

The tenancy formally started April 1, 2014 thought the tenants moved in about three weeks earlier and paid a proportionate amount of rent to the landlord.

Originally the parties entered into a six month fixed term tenancy at a rent of $1000.00 per month. After that agreement expired a second written agreement was entered into for a term ending March 1, 2015 at a monthly rent of $850.00. That agreement provided that at the end of the fixed term “the tenancy may continue on a month to month basis or another fixed length of time.”

When the second fixed term tenancy ended the landlord wanted to start a third fixed term tenancy but the tenants did not agree. No further documentation was signed. The tenants continued to pay $850.00 per month.

In June or July 2016 the tenants gave the landlord a written Notice to end their tenancy August 31, 2016.

The tenants vacated in late August. They keys were returned but for one, which the tenants kept so as to return to retrieve some items.

The landlord re-rented the premises for September 1, to a new tenant, Ms. H.

The landlord testifies that the tenants ruined the living room carpet by allowing their dogs to urinate on it. She says that when her new tenant moved in the carpet smelled “rank” and the new tenant refused to move in until it was fixed. As a result the landlord and the new tenant ripped up the carpet and the landlord took it to the dump.

The landlord herself rents the home from a management company (the “head landlord”). The owner of the home, who is also, apparently, the operator of the management company, paid for the purchase and installation of a new carpet at a cost of $766.08. The landlord was equivocal about whether she is responsible to pay the head landlord for that cost.

The landlord says the tenants failed to clean the premises adequately and that her own efforts to clean are of a value of $125.00.

The landlord says she had to remove trash left by the tenants at a cost of $50.00.

She says that the tenants were responsible for half the cost of maintaining the yard of the premises. It is agreed the yard, front and back, was common property. She did all the lawn mowing, once a week for seven months of each year, and claims the tenants should have done half of it. She has received a quote from a person who mows lawns and who charges $45.00 plus tax to mow a lawn. The landlord claims $35.00 for each mowing she thinks the tenants should have done for a total of $1417.50.

The landlord claims $847.50 because she feels that the tenants ended the tenancy early. Her own tenancy agreement with the head landlord, what might be called "the head lease," ran until September 30, 2016 and it is her view that the tenants were bound by the terms of that tenancy agreement to pay rent for September 2016.

Clause 3.1 of the head lease is a liquidated damages clause, assessing $847.50 as liquidated damages for administrative costs of advertising and re-renting in the event the tenant ends the tenancy before the end of the term of the lease.

The tenant Ms. M. testifies that she cleaned thoroughly before leaving the premises. She testifies, and the landlord did not dispute, that when she returned to the property on August 29, 2016, the lock to the door had been changed and her key no longer worked. That is why, she says, the items claimed as trash by the landlord, various bins and household implements, were not removed.

She says the carpeting was professionally cleaned at the end of the tenancy. She produces a receipt to that effect. She denies the carpet smelled and, in any event, says she has witnessed the landlord's dog urinating on it.

She says that she performed significant yard work during her tenancy.

Analysis

The Effect of the Head Lease and the Liquidated Damages Clause

I find that the terms of the tenancy agreement between the landlord and her head landlord were not binding on these tenants and had no effect on their rights or obligations.

They are not parties to the head lease.

The written tenancy agreement between the landlord and the tenants does not refer to the head lease and incorporate any of its provisions into it.

The landlord refers to an extract she indicates she found on the Residential Tenancy Branch website. It states, among other things, that a sub-tenant "only has the same rights and obligations outlined in the original tenancy agreement – the agreement with the sub-tenant cannot contradict the original tenancy agreement."

This statement would appear to be contrary to the common law, which provides that a tenant who is at liberty to sub-let may demise for any less term than she has herself at such rent and subject to such covenants as may be agreed upon (*The Canadian Law of Landlord and Tenant* (1922, Williams).

I can find no statutory basis for concluding that the common law on the aspect of what may or may not be included as a term in a sub-let tenancy agreement has been altered other than to impose a set of basic standard, mandatory terms in all residential tenancy agreements in the province.

Residential Tenancy Policy Guideline 19, "Assignment and Sublet" states: "While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement" and "The sub-tenant's contractual rights and obligations are as set out in the sublease."

And so while a sublease *can* be very similar to the original tenancy agreement, there is no rule that it *must* be the same.

I must conclude that the website statement has misled the landlord. She is not entitled to rely on the rights and obligations in her head lease as incorporating the liquidated damages clause (or the fixed term provision) contained in it into her tenancy agreement with the two tenants here.

The tenants did not break their fixed term tenancy. The last fixed term ended March 1, 2015. The parties did not agree to an additional fixed term and so the tenancy evolved into a month to month tenancy, which the tenants were entitled to end on one month's written notice pursuant to s. 45 of the *Act*. Residential Tenancy Policy Guideline 38, "Fixed Term Tenancies" provides:

> If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month-to-month tenancy on the same terms.

The landlord's claim for $847.50 for ending the tenancy early must be dismissed.

The Carpet

The landlord has put herself in a difficult position, by failing to conduct either a move-in or move-out inspection and preparing the corresponding reports, as required by ss. 23 and 35 of the *Act*. The reports are intended to serve as a testament to the condition of the premises at those times. Without them, a decider of fact is largely left to weigh the credibility of the testimony of the parties.

In this case, each side gave testimony in a straightforward and credible manner. There is no basis to prefer one's evidence over the others.

The tenant Ms. M. says the carpet did not smell. She says that her dogs were housetrained and did not urinate on the carpet. She had the carpet professionally cleaned at the end of the tenancy. The bill from the cleaner makes no mention of any reservation or qualification about the job done, as is common were smells and spots could not be removed by the cleaner.

The carpet is said to be about six years old. The tenant testified that the tenants residing there before her had pets as well.

The landlord says, corroborated by an unsigned statement from the new tenant Ms. H., that the carpet smelled "rank" and needed to be replaced.

The parties did a cursory "walk through" at the end of the tenancy but it appears that the carpet was not an issue until the new tenant began moving her belongings in.

On this competing evidence it has not been shown on a balance of probabilities that the carpet was in such a state at the end of the tenancy as to require removal and replacement. The landlord's claim for removal and replacement of the carpet is dismissed.

Cleaning

According to s. 37(2) of the *Act*, a tenant is obliged to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear at the end of the tenancy.

Again, a proper move out inspection and report would have revealed either what needed cleaning or at least what the parties disagreed needed cleaning. In the event of disagreement, each would have had the opportunity at that time to acquire evidence, a photograph perhaps, of the disputed item. Because the landlord failed in her inspection and reporting obligation, the tenants have not had that opportunity and have been put at a distinct disadvantage at this hearing.

On the competing evidence, the landlord has failed to establish that the premises were not reasonably clean at the end of the tenancy. This item of the claim is dismissed.

Trash Removal

The tenant Ms. M.'s undisputed evidence is that when she returned to the rental unit on August 29, her key no longer worked in the lock. She states that she had returned to collect the items the landlord photographed as having had to take to the dump.

The tenants paid rent for August and had given notice effective for the end of August. Without some specific agreement on the matter, the landlord was not entitled to re-enter and change the locks before then. Her doing so prevented the tenants from retrieving their belongings.

In these circumstances the landlord cannot claim for having to remove and dispose of the items claimed. This item of the claim is dismissed.

The Tenants' $500.00 Security Deposit.

Section 38 of the *Act* requires that, once a tenancy has ended and once the landlord has received her tenants' forwarding address in writing, the landlord is obliged to either repay the deposit money or make an application for dispute resolution to keep all or a portion of it. The landlord must do one of those two things within 15 days or else suffer the penalty of having to account to the tenants for double the amount of the deposit.

Section 38 doesn't apply in cases where the landlord has the tenant's written authorization or pre-existing arbitrator's order to keep any or all of the deposit money. That is not the case here. The landlord has neither in this case.

Here, the tenancy ended August 31, 2016. The landlord agrees that she had the tenants' forwarding address in writing by September 8, 2016. Her application against the deposit money was made February 28, 2017, well outside the 15 day period.

The landlord is responsible to account to tenants for double the deposit money; an amount of $1000.00

Conclusion

Each of the landlord's monetary claims must be dismissed.

The tenants are entitled to recover her $500.00 security deposit, doubled to $1000.00, plus recovery of the $100.00 filing fee for their application. The tenants will have a monetary order against the landlord in the amount of $1100.00.

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: March 22, 2017

Residential Tenancy Branch