

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord has submitted an Application for Dispute Resolution for a monetary order for damages to the rental unit and to keep all or part of the security deposit. The tenant has applied to for double the amount of the security deposit.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary Order for damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition the issue of whether the tenant is entitled to twice the security deposit must be decided, subject to Section 38 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on April 29, 2007 for a month to month tenancy that began on May 1, 2007 for a monthly rent of \$387.50 due on the 1st of the month. A security deposit of \$193.75 and a pet damage deposit of \$387.50 were paid on or before May 1, 2007;
- 22 photographs showing pet damage and damage from water leak;
- Correspondence from the landlord's insurance agency;
- A copy of a Condition Inspection Report used for both a move in and a move out report signed by both parties;
- A copy of a Mutual Agreement to End a Tenancy signed by the landlord but not the tenant;
- Copies of correspondence between the landlord and the tenant throughout the tenancy;
- Carpet estimates dated March 11, 2008;
- Scope of work documents from a restoration company; and

- A listing of expenses between August 21, and October 28, 2008 but no receipts provided.

The tenant has submitted the following into evidence:

- A summary of events leading to the dispute;
- A copy of the Condition Inspection Report;
- Correspondence between the landlord and the tenant;
- An estimate to replace the carpet dated March 11, 2008;
- 7 photographs showing the cat damage to the carpet;
- Two character reference letters.

The Condition Inspection report submitted and signed by both parties includes the tenant's forwarding address. In her testimony the tenant agreed that she gave up her claim to the pet damage deposit believes the deposit amount was sufficient to cover the damages. The tenant does not dispute the damage caused by the cats.

The landlord confirmed in his testimony that he did not forward the security deposit to the tenant or apply for dispute resolution through the Residential Tenancy Branch within 15 days of the end of the tenancy and the date he received the forwarding address.

The landlord submits the tenant is responsible for the flood damage because she was aware of the potential problem but did not report it to the landlord and waited until the tenant's roommate returned home when the roommate reported it to the landlord after having a shower the morning following her return from holidays.

The tenant's written submission and oral testimony outlines the events regarding the leak in the bathroom as follows:

1. Noticed water on floor on August 10, 2008, thought it was from not closing the shower door properly;
2. The tenant noticed the same thing on August 13, 2008;
3. The tenant told the roommate on August 18, 2009 who indicated to the tenant that she had noticed this before;
4. The roommate informed the landlord on August 19, 2009.

The roommate was not available for the hearing but both parties agreed to allow her to submit written testimony. The roommate has outlined the events as follows:

1. The roommate was away house sitting for a friend from July 22 to August 8, 2008;
2. Upon return no visible change in bathroom nor had tenant informed her of any problems;
3. Roommate on vacation on August 8 to August 17, 2008;
4. Still not made aware of any problems with the shower;

5. Morning of the 18th took a 5-8 minute shower and bathroom was completely flooded after shower;
6. Roommate indicates water had leaked 1.5 feet into hall and 2 feet into living room carpet and it took 5 large bath towels to clean up the water;
7. Informed landlord who tried using a sealant on the shower door and brought in drying fans;
8. Note placed on bathroom door stating not to use shower;
9. Roommate returned from running errands and found fans turned off and tenant had taken a shower and the bathroom was flooded again;
10. Roommate informed landlord;
11. Landlord cut hole in drywall and found cause of leak and repaired.

The landlord was unable to testify as to how long the leak had existed prior to its discovery in August of 2008. In her letter dated August 20, 2008 to the landlord the tenant indicates the reason she didn't inform the landlord right away was because of their relationship she felt it was better to wait until the roommate returned and she could inform the landlord. The tenant also noted in her letter that the water wasn't touching the carpet and she ensured everything was dry.

Analysis

Section 38 of the *Act* requires a landlord to return a security deposit to a tenant within 15 days of the end of the tenancy and receipt of the tenant's forwarding address or submit an Application for Dispute Resolution. Failure to comply with this subsection results in the landlord being required to pay the tenant double the amount of the security deposit.

As per his testimony, the landlord failed to comply with the requirement to return the security deposit and as such I find the tenant is entitled to double the amount of the security deposit and interest held.

In relation to the landlord's claim for damages related to painting and the replacement of the carpet due to the damage caused by the cats, the tenant had agreed that she was responsible for this damage but felt her pet damage deposit in the amount of \$387.50 should be sufficient for damages.

The *Act* defines a pet damage deposit as money paid on behalf of a tenant to a landlord to be held as security for damage to the residential property caused by a pet. The deposit is not a payment for damages that may have occurred over the course of the tenancy. The payment of a pet deposit is not representative of the tenant's total liability resulting from damage caused by pets.

As such, I find the tenant is responsible for the replacement of the carpets in the rental unit. The landlord submitted an estimate dated March 11, 2008 in the amount of \$3,254.81. I also find the tenant is responsible for repairs to walls for the damage

caused by the pets. The landlord has not provided specific costs associated with these repairs.

Section 38 (3) of the *Act* states a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant. To substantiate his claim, the landlord needs to show that the tenant exhibited neglect in this case.

Black's Law Dictionary, 7th Edition defines neglect as "the omission of proper attention to a person or thing, whether inadvertent, negligent, or wilful; the act or condition of disregarding." Black's further defines culpable neglect as "neglect that is less than gross carelessness but more than the failure to use ordinary care."

From the documents and testimony submitted, evidence of the leaks and flooding first appeared on August 10, 2008 and was reported to the landlord on August 18, 2009. No evidence was provided to contradict the tenant's claim that flooding amounted to no more than a small puddle on the floor until the roommate's shower on August 18, 2009.

The tenant testified that she thought there was a problem with the shower door, did not believe it to be a serious leak, and cleaned up the water immediately. The landlord's initial assessment of the leak also attributed the leak to a problem with the shower door.

In the roommate's written submission, she states the landlord had informed her that they could not use the shower for 4 hours and that a notice was placed on the bathroom door to not use the shower. Without a copy of the notice placed on the bathroom door, I cannot find that the tenant was adequately informed of the duration of the restriction or even if the tenant had taken her shower within that 4 hour period.

Based on the above I cannot find the tenant failed to use ordinary care or provide adequate attention to the events, I therefore dismiss the landlord's claim for damages relating to the flood.

As I have dismissed the landlord's claim for damages due to the flooding and since his listing of expenses lists his expenditure to the flooring company as \$3,917.40 I cannot determine if this expenditure included more than the carpet replacement required resulting from the damages caused by the cats. I therefore find the landlord is entitled to the amount of the estimate dated March 11, 2008 or \$3,254.81.

As well, from the evidence submitted I cannot determine the value of repairs, however, based on the photographic evidence I find a value of \$100.00 to be reasonable compensation for patching and painting.

In regards to each party's application for recovery of the filing fee, I find that as both parties have been at least partially successful they are both entitled to recovery of the filing. As both are entitled to recovery of the filing they will cancel each other out and no monetary order will be issued relative to the filing fee.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$2,957.55** comprised of \$3,354.81 carpet replacement less \$397.26 for double the amount of the security deposit.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: December 09, 2009.

Dispute Resolution Officer