Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, damage to the rental unit, retention of the security deposit and pet deposit, and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard and to respond to the other party's submissions.

The landlord made this application in August 2009 and served the tenant with evidence in late November 2009. The tenants provided evidence a few days after receiving the landlord's evidence. Considering the Rules of Procedure concerning service of evidence, I accepted the documentary evidence provided by both parties in making this decision.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Has the landlord established an entitlement to compensation for damage to the rental unit?
3. Shall the security deposit and pet deposit be retained by the landlord or refunded to the tenant?
4. Is the tenant entitled to double the security deposit and pet deposit?
5. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony from both parties, I make the following findings. The parties entered into a tenancy agreement on July 30, 2003 and the tenant moved into the rental unit August 16, 2009 with her husband, two children, two dogs and one cat. The tenant paid a $600.00 security deposit on July 30, 2003 and a $650.00 pet deposit on August 17, 2003. There was no inspection report done at the commencement of the tenancy. Starting in 2006 the tenant was required to pay rent of $1,450.00, including a portion of utilities, on the first day of every month. The landlord conducted a move-out inspection without the tenant on July 7, 2009 and prepared an inspection report. On July 21, 2009 the tenant provided a forwarding address to the landlord, in writing, three ways: under the windshield wiper on the landlord's vehicle, at the landlord's door and in by mail.

Aside from the findings made above, the parties provided mostly disputed testimony that I have described below, in brief.

The landlord submitted that at the commencement of the tenancy the tenant viewed the rental unit and was to provide the landlord a list of deficiencies but that no list was provided. The landlord was of the position that the rental unit was in good condition at the beginning of the tenancy. The tenant explained that she viewed the rental unit when the previous tenants were still living in the rental unit and that the tenant had verbally told the landlord of deficiencies. The tenant claimed the rental unit was not clean and was in need of repairs at the beginning of the tenancy.

The landlord testified that she was informed by the tenant in June 2009 that the tenant would be vacating at the end of June 2009. The tenant testified that she personally told the landlord that she would be vacating the rental unit and gave the landlord a notice to end tenancy when she paid the rent at the end of May 2009. The landlord refuted the tenant's testimony by stating the tenant's son had given the landlord the rent at the end

of May 2009 and not the tenant. The tenant did not agree with the landlord's statements and described the conversation that took place that night.

The landlord testified the tenant was supposed to call the landlord when the tenant had finished moving; however, the landlord found the rental unit vacated and the keys left in the rental unit on July 2, 2009. The landlord tried phoning the tenant but received only a full voice mail so the landlord proceeded to conduct the move-out inspection without the tenant on July 7, 2009. The landlord and tenant finally had a conversation on July 18, 2009 and the landlord offered the tenant the opportunity to conduct an inspection; however, the telephone call ended when the tenant hung up the telephone. The tenant testified that her new house phone was not connected until July 8, 2009 but that the landlord had her cell phone number. The tenant submitted that other people were able to leave messages on her voicemail and that the tenant tried calling the landlord on several occasions. The tenant claimed she finally reached the landlord on July 18, 2009 and the landlord did not offer to conduct a move-out inspection with the tenant but only made accusations of damage.

The landlord is seeking compensation of $14,975.73 by way of an amended application, comprised of the following amounts:

Item(s)	Reason	Amount claimed
Loss of rent July – December 2009	Tenant has not provided notice to end tenancy	$ 8,430.00
Flooring replacement	Soaked with urine	4,882.87
Damaged refrigerator, cupboard doors, window screens, broken light fixture, bedroom doors, and fireplace screen	Damaged by excessive force or misuse	1,426.93
Cleaning and repairs (oil spills, missing lights, missing garage door opener)	Caused by tenant	135.93
		$ 14,975.73

Less: security deposit, pet deposit and interest	(1,294.28)
Total claim	$13,681.45

Upon enquiry, the landlord testified that the rental unit was re-rented as of September 12, 2009. The landlord was also asked to provide additional testimony concerning her claims for damages. The landlord provided the following statements:

- the flooring smelled strongly of pet urine which the landlord attempted to remove with professional carpet cleaning, including deodorizer, and skunk odor remover. The carpeting was new in November 2001 when she purchased the property but that the linoleum was older. The linoleum was replaced as the urine had seeped underneath it.
- The refrigerator was in good condition at the beginning of the tenancy but that at the end of the tenancy the liner was severely cracked, racks were broken off and it did not restart after the landlord unplugged it.
- The cupboard doors were scratched by the tenant's pets and the pantry door was broken. The landlord had the painters repair the cupboard doors.
- Window screens were damaged (2) or missing (4) and had to be replaced.
- Outside light fixture was broken and needed replacing.
- The fireplace screen was in good condition on June 30, 2003 but that it was damaged at the end of the tenancy and the landlord had to replace the mesh.
- The tenant failed to return the garage door remote provided by the caretaker.

The tenant provided the following responses to the landlord's claim for damages:

- The carpeting smelled musty throughout the tenancy and that the previous tenants had pets.
- The tenant had to shampoo the carpeting with her own cleaning machine at the beginning of the tenancy.

- The landlord's photographs of the stained underlay were of an area beside the fireplace that the tenant had furniture.
- The tenant was of the position that the carpeting was much older than what the landlord is stating. The tenant denied that urine went underneath the linoleum flooring.
- Scratches to the cupboard doors were from normal wear and tear.
- The cupboard doors may have been damaged by the new tenants and pointed to inconsistencies between the landlord's inspection report and letters to the tenant dated July 21 and August 14, 2009.
- The windows did not have screens except for one window and there were various window screens stored in the common laundry room that did not fit the windows of the rental unit.
- The light fixture was broken but there were problems with the fixture in the past and the tenant had asked for a replacement light fixture.
- The fireplace screen was damaged when they moved in and the tenant had verbally complained about it to the landlord.
- The tenant was never provided with a garage door opener.

Both parties acknowledged that the tenant had dealings with the caretaker hired by the landlord but that the caretaker has since died, thus, testimony from the caretaker was not possible.

The landlord provided copies of receipts and photographs of the rental property after the tenant vacated the property in support of her claim. The carpet cleaner's invoice indicates the carpets smelled strongly. The landlord submitted carpet samples to indicate that she replaced the carpet with carpeting of lesser quality.

The tenant provided photographs of the rental unit taken during her tenancy and written submissions that the house was not maintained during the six year tenancy, despite requests for repairs, and that the tenant even made repairs to the property. The tenant made submissions concerning issues with occupants residing in the basement suite,

including assertions the oil stains were caused by occupants of the basement suite. The tenant also submitted that at the end of June 2009 she requested the opportunity to participate in a move-out inspection with the landlord and the landlord indicated that one would be done at a later date. The tenant's two children signed a document confirming the submissions of their mother to be true.

Analysis

Condition Inspection Reports

The Act, as it is currently written, requires the landlord and tenant to participate in a move-in and move-out inspection together and the landlord must prepare and provide written inspection reports for the tenant. Prior to 2004 the Act did not require the parties to conduct inspections and prepare reports; therefore, I do not find either party extinguished their right to the security deposit due to the absence of a move-in inspection report. However, since the landlord has made a claim for damages to the rental unit against the tenant, the landlord has the burden to establish the condition of the rental unit at the beginning of the tenancy.

At the end of this tenancy the parties were required to conduct a move-out inspection in accordance with the requirements of the Act and Residential Tenancy Regulations. The Act and Regulations provide that the landlord must offer the tenant the first opportunity to participate in an inspection. If the tenant is not available for the time offered, the landlord must propose a second opportunity by providing the tenant with a notice in the approved form. The notice is called a "Notice of Final Opportunity to Schedule a Condition Inspection" and is available from the Residential Tenancy Office. In this case, I did not hear that the landlord had proposed a date and time for a move-out inspection. Rather, I heard disputed testimony regarding conversations that took place near the end of June 2009 and whether the tenant was reachable by telephone after the tenant vacated.

It is unclear to me why the landlord did not propose a date and time for a move-out inspection report in June rather than wait for the tenant to vacate and contact the landlord. Had the landlord made a proposal for a specific date and time in June 2009 the landlord's obligation would have been met if the tenant accepted the proposal. If the landlord's proposal had been rejected to the tenant, the landlord could have served the tenant with a "Notice of Final Opportunity to Schedule a Condition Inspection" and satisfied the landlord's requirement to make a second offer of a condition inspection with the tenant. However, I do not find it unreasonable that the landlord would have expected to be able to reach the tenant after the tenant vacated. I do not find the disputed evidence concerning the conversations regarding the scheduling of a move-out inspection, the ability to contact the tenant after the tenancy ended, or the ability to contact the landlord after the tenancy ended, to be sufficient to determine whether either party extinguished their right to the security deposit or pet deposit. Therefore, I have proceeded to consider the landlord's claims for monetary compensation.

End of Tenancy

The landlord submitted that she had never received a written notice to end tenancy from the tenant and that the tenancy has not ended without such notice. Although a tenant is required to give at least one month of written notice to end a month-to-month tenancy, section 44 of the Act provides that a tenancy ends when a tenant vacates a rental unit. Therefore, I reject the landlord's position that the tenancy has not yet ended as I heard the tenant vacated the rental unit and the landlord has regained possession of the rental unit and re-rented the rental unit.

Claim for Damages and Loss

A party that makes an application for monetary compensation against another party has the burden of proof. Proof is based on the balance of probabilities. Where a party

provides an explanation of the facts in one way and the other party provides an equally probable explanation of events in another way, without more evidence, the party with the onus has not met their burden of proof and the claim fails. In establishing an entitlement to compensation from the tenant, the landlord must satisfy me of the following test for damages:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss;
3. The quantum of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

With respect to loss of rent, having heard the landlord re-rented the unit September 12. 2009 I deny the landlord's claims for loss of rent for September 12, 2009 through December 31, 2009 as the landlord did not suffer a loss during that time. I have considered whether the landlord has proven an entitlement to loss of rent for July 1, 2009 through September 11, 2009.

I was provided disputed evidence that the tenant gave written notice to end tenancy at the end of May 2009. The tenant has the burden to prove the tenant gave notice to the landlord as the landlord cannot be expected to prove something that was not received. The disputed evidence is not sufficient for me to determine that the tenant gave the landlord written notice at the end of May 2009 as she claims. Further, despite a considerable amount of testimony concerning this issue at the hearing, I did not hear a reasonable explanation as to why the tenant's evidence included a notice to end tenancy was is an original copy and not a photocopy. Accordingly, I am not satisfied that the evidence provided to me represents the notice given to the landlord, if written notice was given. I also placed little weight on the documents signed by the tenant's children as they were not present at the hearing and could not be questioned to verify their observations. Nor did I consider the tenant's children to be unbiased.

The tenant submitted that there was a showing of the unit to a prospective tenant in June 2009 and the landlord acknowledged receiving verbal notice sometime in June 2009. Thus, I am satisfied that at some time in June 2009 the landlord was aware of the tenant's intention to vacate. I award the landlord loss of rent for the month of July 2009 as I find, based on the balance of probabilities, that the tenant did not give sufficient notice to end tenancy.

The Act requires a tenant to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear. Damaging a rental unit in excess of reasonable wear and tear is a violation of the Act.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Structures, fixtures and appliances need to be repaired and replaced at reasonable intervals. Therefore, where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item in awarding amounts for damages.

Policy Guideline 37 provides for the normal useful life of items. The guideline indicates that carpeting and linoleum have useful lives of 10 years. Refrigerators and light fixtures have normal useful lives of 15 years. Cabinets have a useful life of 25 years. Upon careful review of the photographs provided by the parties and I find it more likely than not that the residential property is at least 30 years old and the flooring, refrigerator and fixtures to be original to the building or at least older than the normal useful life indicated above. Accordingly, I find it more likely than not that the flooring, refrigerator and light fixture to be fully depreciated due to their age. Therefore, I do not find it necessary to determine whether the tenant is liable for causing damage to these items as the landlord is not entitled to recover replacement costs for fully depreciated fixtures.

The tenant submitted that the pantry door fell apart and given the age of the cabinet door I find that to be a reasonable explanation.

In the absence of more evidence concerning the condition of the fireplace screen, bedroom doors and window screens at the beginning of the tenancy, and giving the tenant a garage door opener, I find the disputed evidence to be insufficient to find the landlord met her burden to prove these items were damaged or went missing because of damage or negligence on part of the tenant. I also find insufficient evidence the tenant is responsible for the oil stain since the residential property was also occupied by tenants in the basement suite.

Having heard the tenant had three pets in the rental unit, I find it more likely than not that there would have been pet stains and odour in the carpeting and I hold the tenant responsible for the carpet cleaning and deodorizing costs and the sealing of the sub-floor. I also award the cost of replacement light bulbs to the landlord as light bulbs should be replaced by the tenant during the tenancy. The landlord is awarded $308.60 for carpet cleaning, $275.89 for deodorizer, $210.00 for sealing floor, and $4.74 for replacement light bulbs. The total award for damages is $799.23.

In light of the above findings, I find the tenant's pets and the tenant's lack of professional carpet cleaning likely impacted the landlord's ability to re-rent the unit to a certain degree; however, I have already awarded the landlord loss of rent for July 2009 and I find that to be sufficient compensation for the strong smell in the rental unit. Having already awarded the landlord loss of rent for July 2009, I have considered whether the condition of the rental unit was the major contributing factor for the vacancy experienced August 1 – September 12, 2009. As described previously, I find the landlord needed to make the majority of the repairs and updating to the rental unit due to the age of the fixtures and the loss of rent for the period of August 1, 2009 – September 12, 2009 is not the responsibility of the tenant.

Security deposit and pet deposit

The landlord has requested retention of both the security deposit and pet deposit with this application. I heard undisputed testimony that the landlord received the tenant's forwarding address three ways, including a letter left at the landlord's door on July 21, 2009 and by way of mail sent July 21, 2009. In accordance with section 90 of the Act, a document that is left in a mailbox or mailslot or affixed to a door or another conspicuous place is deemed to be received three days later and a document mailed is deemed to be received five days after mailing. Leaving a document under a windshield wiper is not sufficient service of a document and I will not consider that document served. Therefore, I find the landlord was deemed to be in receipt of the tenant's forwarding address, in writing, on July 24, 2009 and July 26, 2009.

Section 38(1) provides that upon receiving the tenant's forwarding address in writing, the landlord is required to either return the deposits to the tenant or make an application for dispute resolution, if the tenant has not given the landlord written authorization to retain the deposits. The time limit for returning the deposits or making an application is 15 days after the later of the date the tenancy ends or the landlord receives the forwarding address in writing. The landlord initiated this application on August 11, 2009 which is more than 15 days after the landlord received the tenant's forwarding address.

Section 38(6) provides that if the landlord does not comply with section 38(1) of the Act, the landlord must repay the tenant double the deposits. This provision is not discretionary, and I must order return of double the deposits unless the tenant specifically waives entitlement to double. Therefore, I find the tenant entitled to double the deposits, plus accrued interest.

Monetary Order

In accordance with section 72 of the Act, I award the landlord one-half of the filing fee paid for this application and I offset the amount owed to the landlord against the amount owed to the tenant for the security deposit and pet deposit. I provide the tenant with a Monetary Order calculated as follows:

Double security deposit ($600.00 x 2)	$ 1,200.00
Double pet deposit ($650.00 x 2)	1,300.00
Interest on security deposit	21.25
Interest on pet deposit	23.02
Less: damages awarded to landlord	(799.23)
Less: loss of rent – July 2009	(1,450.00)
Less: one-half of the filing fee	(50.00)
Monetary Order for tenant	$ 245.04

The landlord is ordered to return $245.04 to the tenant forthwith. The tenant is provided a Monetary Order to serve upon the landlord to ensure payment.

Conclusion

The landlord was partially successful in this application and has established an entitlement to recover $2,299.23 from the tenant. As the landlord made this application more than 15 days after receiving the tenant's forwarding address in writing, the tenant is entitled to return of double the security deposit, double the pet deposit and accrued interest on the deposits. I have provided the tenant with a Monetary Order for the net amount of $245.04 to serve upon the landlord.

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 06, 2010.

Dispute Resolution Officer