DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant filed for return of double the security deposit. The landlord requested compensation for damage to the rental unit, retention of the security deposit, and damage or loss under the Act, regulations or tenancy agreement. Both parties requested recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party. Both parties confirmed service of documents upon them.

Issues(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Did either party extinguish their right to the security deposit?
3. Is the landlord entitled to compensation for damage to the rental unit or damages or loss under the Act, regulations or tenancy agreement?
4. Award of the filing fee.
5. Offset of awards.

Background and Evidence

The parties provided undisputed testimony as follows. The tenancy commenced December 1, 2007. The landlord collected a security deposit of $285.00 on November 29, 2007. The tenant was required to pay rent of $570.00 on the 1st day of every month. The tenant vacated the rental unit November 1, 2009 and the tenant provided the landlord with his forwarding address in writing.

In support of the tenant's application, the tenant submitted that he provided the landlord with a forwarding address on October 31, 2009 and did not authorize the landlord to make any deductions from the security deposit. The tenant also submitted that he was present for a walk through of the rental unit at the commencement of the tenancy but that he was not presented a move-in inspection report to sign and nor was the tenant provided a copy of the move-in inspection report until he was served with the landlord's evidence package for this hearing. As more than 15 days passed since the tenancy ended and the tenant provided a forwarding address to the landlord the tenant is seeking return of double the security deposit.

The landlord acknowledged receiving the tenant's forwarding address in writing before the tenant vacated but the landlord was of the position that the tenant had abandoned his right to return of the security deposit when he did not appear for the move-out inspection. A landlord arrived to conduct a move-out inspection at 2:00 p.m. on October 31, 2009 but when it was apparent the tenant had not vacated the inspection was re-scheduled 6:00 p.m.. When the landlord returned at 6:00 p.m. the tenant was not at the rental unit so the inspection was scheduled for November 1, 2009 by way of the landlord posting a Notice of Final Opportunity to Schedule a Condition Inspection on the rental unit door on October 31, 2009. The tenant did not appear at the move-out inspection on November 1, 2009.

In response to tenant's assertion that a move-in inspection report was not prepared with the tenant or presented to the tenant to sign, the female landlord explained that it is the landlord's business practice to not prepare a formal move-inspection report with the incoming tenant when an inspection report has just been prepared with the outgoing tenant. The landlord did not deny that the tenant was not presented with the move-in inspection report to sign. The landlord acknowledged that the tenant was provided a copy of the tenancy agreement but not a copy of the move-in inspection report.

In making the landlord's application the landlord claimed the tenant left the unit unclean and damaged and had abandoned possessions on the property. The landlord requested recovery of the following amounts:

Item	Reason	Amount claimed
Dump fees	Tenant's garbage and floor removal	13.00 5.25 13.75
Exterior light bulb	Missing	26.78
Handshower	Original Missing, replacement broken	8.55
4 doorstops	Missing	4.49
Paint roller, screws, caulk	Repairs and painting	69.45
Kitchen sink swivel aerator	Missing	5.32
Sink plug, aerator, washers	Repairs	21.12
Light fixture, paint roller	Broken and painting	17.63
Kitchen and entry lino	Vinyl tiles scratched and lifted	961.91
Laminate flooring	Carpet stained and burned	357.94
Total materials		$ 1,584.76
Labour	Cleaning, repairs, dump run	822.00
Total claim		$ 2,406.76

As evidence the landlord provided receipts for the materials, photographs, an accounting of time spent repairing and cleaning the rental unit, and a copy of the condition inspection reports. The condition inspection report is unsigned by the tenant at move-in and move-out.

In response to the landlord's claims, the tenant testified that the rental unit was old and in need of repairs and updating and that the landlord is trying to avoid having to repay the security deposit. The tenant pointed out that most of the receipts are in the

landlord's business name and that he is uncertain as to how many materials were actually installed in the rental unit. The tenant acknowledged that he did not clean the fridge because it did not work properly, he did not clean the floors because the floors were old and damaged, he did not take the garbage because the landlord was acting irate at the end of the tenancy and the landlord disposed of the garbage before the tenant's friend was able to take it away. The tenant testified as follows:

- The closet door hinges came out through normal use early in the tenancy and that he tried fixing it a few times but there was little wood to screw into;
- The smoke alarm was in the rental unit but it was old and needed replacement;
- The original handshower was old and insufficient and the tenant replaced it with his own;
- The tenant did not remove any door stops;
- The landlord's claim for an expensive mercury vapour exterior light is not the tenant's responsibility;
- The landlord installed an aerator when there was not one there before;
- The tenant did not damage the plumbing pipes;
- The walls needed cleaning but not repainting since they were painted right before the tenancy began;
- The carpet required cleaning but there were no burn holes in the carpet as the tenant did not smoke in the rental unit that he shared with his child;
- The old vinyl floor tiles were damage when his tenancy began; and,
- The tenant is unaware of a broken light fixture.

The landlord responded to the tenant's position by stating that it was the tenant that was irate at the end of the tenancy. The landlord explained that the landlord's business involves high-end homes and the materials he has claimed were used in the rental unit. The landlord acknowledged the rental unit is old and that they are maintained in such as way as to keep the rents affordable. The landlord was of the position the tenant had given notice to end the tenancy as of October 31, 2009 and was clearly not prepared to vacate and clean the unit by that time.

Analysis

Tenant's application

Section 23 of the Act provides for move-inspection requirements at the beginning of a tenancy. Section 23(5) of the Act requires that both the landlord and tenant must sign the move-in condition inspection report and the landlord must provide the tenant with a copy of the inspection report in accordance with the regulations. Section 18 of the Residential Tenancy Regulation provides that the landlord must give the copy of the inspection report to the tenant promptly but no later than 7 days after the inspection is completed. Having heard undisputed testimony that the landlord did not present the inspection report to the tenant for the tenant's signature or give the tenant a copy of the move-in inspection report within 7 days, I find the landlord violated section 23(5) of the Act.

Section 24(2) of the Act provides that the right of a landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not complete the move-in inspection report and give the tenant a copy of it in accordance with the regulations. I find the landlord extinguished the right to claim against the security deposit with respect to the move-in inspection report requirements.

I am satisfied that the tenant failed to appear for the move-out inspection despite the landlord giving the tenant the opportunity to participate and that in accordance with section 36(1) of the Act the tenant extinguished his right to return of the security deposit.

In light of the above, both the landlord and the tenant extinguished their right to the security deposit under different provisions of the Act. However, to do nothing with the security deposit unjustly benefits the landlord since the landlord has possession of the security deposit. Residential Tenancy Policy Guideline 17 provides that:

> In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the

> inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

I find the policy guideline provides a just and fair solution to determining the right to the security deposit where both parties extinguish their right to it. Since the landlord breached the Act first, the landlord has lost the right to claim against the security deposit.

Under section 38(1) of the Act, a landlord must make a claim against the security deposit or return the security deposit to the tenant with interest within 15 days of the tenancy ending or the tenant providing a forwarding address in writing. If a landlord does not comply with section 38(1) the landlord must pay the tenant double the amount of the security deposit pursuant to section 38(6) of the Act.

In this case, the landlord received a forwarding address from the tenant October 31, 2009 but did not return the security deposit to the tenant and did not make an application to retain the security deposit until December 2, 2009 which is more than 15 days after the tenancy ended. Therefore, I find the landlord violated section 38(1) and must pay the tenant double the security deposit plus interest on the original amount of the security deposit.

The tenant is awarded double the $285.00 security deposit plus interest of $4.67 plus the $50.00 filing fee for a total award of **$624.76**.

Landlord's application

In accordance with the notice to end tenancy given by the tenant and the requirements of section 45 of the Act, the tenancy was to end on October 31, 2009. Section 37 of the Act requires the tenant to vacate the rental unit by 1:00 p.m. on the day the tenancy ends, unless otherwise mutually agreed upon by the parties. Section 37 of the Act also requires the tenant to leave the unit reasonably clean and undamaged except for reasonable wear and tear, and return the keys to the landlord. Upon hearing the

testimony of both parties, I am satisfied the tenant failed to meet his obligation to have completely vacated and cleaned the rental unit by 1:00 p.m. on October 31, 2009. Therefore, I find the tenant liable to compensate the landlord for cleaning necessary to bring the rental unit to a reasonable state of cleanliness and for garbage removal performed by the landlord after that time.

Upon review of the photographs, I am satisfied the rental unit was not left reasonably clean. I reject the tenant's position that he did not have to clean items that he did not feel were worthy of cleaning as there is no exemption from the Act that would permit the tenant to leave items dirty. I award the landlord the six hours of time spent by the landlord's wife to clean the rental unit and four hours for the landlord at $10.00 per hour. I also award the landlord the costs for hauling the tenant's garbage away but not the disposal of the old flooring and bathroom sink. The landlord is awarded $100.00 for cleaning, $13.00 in dump fees and $30.00 for time spent loading and taking the tenant's items to the dump.

Under section 32 of the Act, a landlord must repair and maintain the rental unit; however, a tenant is responsible for repairing or compensating the landlord for costs to repair damage caused by the tenant or a person permitted by on the property by the tenant beyond normal wear and tear.

In order to be successful in claiming damage to a rental unit, the landlord has the burden to show that damage was caused by the tenant or a person permitted on the property by the tenant and that the damage is beyond normal wear and tear. The burden of proof is based on the balance or probabilities, which means I must find the landlord's version of events more likely than the tenant's version. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. I have given little weight to the move-in condition inspection report since it was not presented to the tenant at the beginning of the tenancy. Without a reliable move-in condition inspection report as a

comparison it is difficult to utilize the move-out report to establish the tenant caused damages. Therefore, I have largely relied upon the photographs and the testimony from the parties in determining whether the landlord has shown that the tenant damaged the rental unit beyond normal wear and tear.

If it is established that there is damage caused by the tenant that is beyond normal wear and tear, an award for damages may be made provided the landlord can verify the amount of the loss and show that the landlord did whatever was reasonable to minimize the amount of damage or loss. 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. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37. Also, where the landlord upgrades the item replaced the increased cost of the upgrade is not the tenant's responsibility.

Upon review of the photographs and consideration of the testimony provided to me, I make the following findings with respect to the remainder of the landlord's claims for damage to the rental unit.

Tenants are generally responsible for replacing light bulbs that burn out during the tenancy; however, I was not satisfied that the tenant had been provided an expensive mercury vapour exterior light bulb during his tenancy. Thus, I do not find the landlord established an entitlement to recover the cost of such a light bulb from the tenant. This part of the claim is denied.

The closet door and its hinges appear old and likely installed years ago. I find it reasonable that the closet door screws came loose over time and use. I do not find the landlord proved the tenant pulled the closet door out of the frame and this portion of the landlord's claim is denied.

The replacement handshower is relatively inexpensive and I find it reasonable that it would require replacement at reasonable intervals and such replacement would be the landlord's responsibility. Having heard undisputed testimony that the original handshower was old, I find it likely the original handshower was at the end of useful life and the loss to the landlord was nil. I also find that caulking is a general repair and maintenance item required of the landlord and I do not award this cost to the landlord.

Based on the disputed verbal testimony, I do not find the landlord provided sufficient evidence to show the tenant removed four doorstops, damaged plumbing pipes, a light fixture, faucets or caused any aerators to go missing. I do not find sufficient evidence that the tenant's actions caused the rental unit to require painting as opposed to cleaning.

Further, the vinyl flooring that was removed was obviously very old and given a normal useful life of 10 years for vinyl flooring I find the old vinyl tiles were at the end of its useful life. I do not find the tenant responsible for paying for the cost of new flooring in the kitchen and entry. I have reviewed the evidence provided with respect to the carpeting and I cannot find sufficient evidence of burn holes. Thus, I accept the tenant's position that the carpets needed only to be cleaned. However, the landlord did not clean the carpets and I make no award for carpet cleaning to the landlord.

In summary, the landlord established an entitlement to recover time spent cleaning and disposing of the tenant's garbage in addition to the dump fee. The landlord's claim for damages have been dismissed as the landlord did not sufficiently satisfy me that the tenant damaged the rental unit beyond normal wear and tear or if there was damage that there was any useful life remaining in the items replaced. The landlord has established an entitlement to recover $143.00 from the tenant for damages and a portion of the filing fee. The landlord is granted an award total award of **$150.00.**

Offset and Monetary Order

In accordance with section 72 of the Act, I offset the landlord's award against the award to the tenant. I provide the tenant with a Monetary Order for the net amount of $474.76 to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenant was successful in his application and the landlord was partially successful in his claim. **The tenant has been provided a Monetary Order in the net amount of $474.76 to serve upon the landlords.**

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: April 1, 2010.

Dispute Resolution Officer