DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlords and the tenants. The landlords have applied for a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, for an order to keep the security deposit, and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for return of the security deposit and to recover the filing fee from the landlord for the cost of their application.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Are the tenants entitled to the return of all or part of the security deposit?

Are the landlords entitled to a monetary order for damage to the rental unit?

Is the landlords' claim for compensation for damage or loss under the *Act,* regulation or tenancy agreement justified?

Are the landlords entitled to keep the security deposit in partial satisfaction of their claim?

Background and Evidence

This month-to-month tenancy began on February 28, 2009 and ended on February 20, 2010. Rent in the amount of $1,395.00 was due on the 1st of each month, and there are

no rental arrears. At the outset of the tenancy the tenants paid a security deposit in the amount of $700.00.

The landlords testified that the house was new. They bought it in December, 2006 and it had been occupied by the builder for about 6 months prior to the purchase.

The parties agree that a move-in condition inspection report was not done at the beginning of the tenancy because the landlords were moving out of the house while the tenants moved in. The landlords testified that they had arranged to meet on March 1, 2009 at the time the security deposit was paid, but the landlords didn't go back to the house on March 1, 2009. The tenants saw the landlords at their new residence and agreed the move-in inspection would be done later. The landlords testified that they mailed it to the tenants twice and left a copy at the door, all during the month of March, 2009. The tenants disagree, stating that the only inspection report they received was with the evidence package from the landlords for this dispute resolution hearing. Further, no move-out condition inspection report was done.

The landlords testified that the tenants had told them they would be moving out by February 28, 2010, and they wanted to ensure they were home when the house was shown to new perspective renters. The tenants had a phobia of people being in their home when they weren't there. They then told the landlord they would be staying. However, when the landlords arrived on February 22, 2010, the neighbours advised that the tenants had moved out on the 20th. The neighbours resided in the basement suite of the house, and these tenants resided in the upper unit. The tenants did not return the front door keys, mail keys or the garage door opener. Further, the landlords testified that they did not receive proper notice. The landlords also stated that they have not applied for loss of revenue because they were able to re-rent the house.

The landlords testified that the tenants had received a notice from the District of Mission stating that the water mains in the neighbourhood were being cleaned to remove algae or debris, and that it was very important that no water be used, including flushing of

toilets between 10:00 p.m. and 5:00 a.m. on June 3 & 4, 2009. It also stated that additional notices may be issued later to complete adjoining areas. The tenants ignored the notice, used the water sometime during the times listed on the notice, and did not notify the landlords or the tenants in the basement suite about the notice they had received. As a result, the debris that the city flushed out of the main water lines was sucked into the house which affected the pressure reducing valve. Too much debris resulted in a broken pressure reducing valve and debris entered into the hot water tank. The tenants in the basement suite called the landlords to complain that they had no water pressure and were unable to shower. The cost to the landlords was $1,470.00 to replace the hot water tank and a new pressure reducing valve, for which a receipt was provided in advance of the hearing. The landlords also testified that the same size and type of tank was purchased; no upgrade to the existing type was purchased.

The tenants testified that they did receive the notice from the District of Mission at the beginning of June. There was a drop in water pressure, and the tenants contacted the District on June 16, who sent a service person who removed the pressure reducing valve and cleaned it. Within the next few days, the pressure had dropped again. The tenants then contacted the landlord, who took apart the pressure reducing valve and had problems putting it back together. They then had lots of water pressure, and the tenants believe that's what caused the debris to enter the hot water tank. They further testified that the notice delivered by the District was left on the front porch, and when questioned about why they did not notify the landlords, the tenants stated that the notice ought to have gone to the tax-payer, and he had no knowledge of that. When asked if the tenants had flushed the toilets during the times indicated on the notice, the tenant replied that his child may have flushed it, but the service person told him that that would not have caused a problem other than silt on the pressure reducing valve. The landlords testified that they received a letter from the District of Mission stating that the tenants had been negligent, but could not produce the letter because her child coloured on it.

The tenancy agreement, a copy of which was provided in advance of the hearing, states that no animals shall be kept on, in or about the rented premises without prior consent

and approval of the owner, and the tenant shall not allow puppies or kittens under any circumstances. The landlords testified that they were aware that the tenants had a dog and the tenants had told them that the dog would be kept in the garage when they weren't home, but the landlords were not aware that they had a puppy, who chewed the bottom of the pantry door. When questioned about the puppy, the tenants told the landlords that they did have a puppy, but had to get rid of it because their daughter was allergic. They also had a Chihuahua and a disabled cat, as well as the tenant's mother's small white dog, which she took care of when her mother was working. The landlords priced out a new door, and the only place they could find a door like it was at Home Depot, which is priced at $784.00 including taxes. The landlords also provided photos of the 2 man doors to the garage, which show damage to the weather stripping, the door frames, and scratches on the thresholds. The cost to replace the doors is $447.98, weather stripping at $71.62 and $33.58 for vinyl door sweeps. The trim around the doors has been chewed right through and cannot be sanded or painted, and the replacement cost was quoted at $97.02. The landlords testified that they could do the work themselves, and therefore, no labor charges would apply. They also testified that dog feces were left on the garage floor after the tenant moved out. This is disputed by the tenants who testified that the feces in the garage has black hair in it, and that it was not possible for a dog to do as much damage in 2 or 3 weeks as claimed by the landlords. Further, the weather stripping already had damage when they moved in. The tenants testified that they did not notice any damage to the pantry door when they moved in, nor when they moved out.

The landlords further testified that 3 tiles in the front entrance were broken during the tenancy. They cannot find matching tiles to replace them, and must replace all the tiles in an area that is about 8 feet by 9 feet for a cost of $457.14 including taxes. This figure is for the tiles only, and the landlords testified that they would do the work themselves. The tenants testified that those 3 tiles were broken when they moved in.

Photographs of the cupboard door repair were provided by the landlords that clearly show that nails had been driven into the wood causing the wood to split. The landlords testified that the tenants did not tell them about it, and a quote from Open Space Urban

Cabinets was also provided, which shows a cost of $190.93 including taxes. The male tenant testified that he did contact the landlord who approved him doing the repair, and the tenant admitted to placing the nail in the cupboard which caused the wood to split.

The landlords testified that the tenants had asked to be permitted to reduce rent to update the lawn. Rather than reduce the rent, the landlords paid for soil and seeds, but the tenants didn't keep it up, and now the lawn is just moss and weeds. They contacted Nutri-lawn, who provided an estimate of $389.00 plus taxes to repair the lawn, and the invoice further states that major renovation is not needed due to the quality of the topsoil. The tenants testified that the landlords wanted to do the work and had dirt dumped in the front yard. They didn't show up to spread it, so the tenants rented a roller and did it themselves. The landlord provided the seed, but always had a reason to not show up to do the work. In addition, the tenants stated, it took 3 attempts for the landlord to paint the deck because he didn't have a key and the tenants had to let him in.

The landlords also provided a receipt for carpet cleaning at a cost of $175.00 and house cleaning in the amount of $280.00. They testified that the dishwasher was very dirty, and the windows and blinds were not cleaned by the tenants, although the tenants did clean the fridge.

The landlords testified that the house had been painted on February 25, 2009, just prior to the tenants taking occupancy. They testified that the tenants had asked to reduce the rent because there were others available for cheaper rent, but the landlords refused. They stated that their house was new with granite counters and was in pristine condition. The tenants argued that the house was not in pristine condition; that there was damage to the walls from dry-wall plugs, and that the landlords promised to come back to the house to patch holes in the walls and fix the garage door that wouldn't open, but didn't do it.

The tenants sent their forwarding address for return of the security deposit by courier on February 24, 2010, which was received the following day by the landlords. The tenants feel they were not given any opportunity to rectify any complaints of the landlords, and

due to the fact that they moved on February 22, 2010, there was ample time before the end of the month to do a move-out condition inspection report and to rectify any problems.

The landlords testified that the photographs they provided in advance of the hearing were taken on February 23, 2010, after the tenants had moved out. After the hearing had concluded, I received photographs from the tenants, which were taken, according to the testimony of the tenants, on February 22, 2010 after cleaning the house.

Analysis

The *Residential Tenancy Act* states that the landlord must return the security deposit or apply for dispute resolution within 15 days of receiving the tenants' forwarding address in writing. I find that the landlords made their application within the time prescribed.

In order to award damages to one party as against another, I must apply the 4 part test:

- That the damage or loss exists;
- That the *Act* or the tenancy agreement was violated, which resulted in the loss or damage;
- The value of the loss or damage; and
- What steps the claiming party took to mitigate that damage or loss.

The landlords have provided evidence with respect to elements 1 and 3, however, in regards to meeting element two of the test for damages, the landlord's position was that this damage was clearly committed by the tenants during the course of this tenancy. I find that this can only be established with clear verification of the condition of the unit at the time the tenancy began as compared to the condition of the unit after the tenancy had ended. The landlord had submitted an unsigned copy of the tenant's Move-In Condition Inspection Report. This document, according to the landlord, was left for the tenant's further comments and signature. However, it was never signed nor returned by the tenant and as such the weight of this evidence is not consequential.

Section 23(1) on the *Act* requires 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.

Section 23(3) and section 35 both state that the landlord must offer the tenant at least 2 opportunities for the move-out inspection. The *Act* places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and states that 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. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In regards to the landlord's allegation that the tenants did not cooperate, the *Act* does anticipate such situations. In particular, section 17 of the Regulation details exactly how the inspection must be arranged, as follows:

> (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
>
> (2) If the tenant is not available at a time offered under subsection (1),
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> (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
>
> (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
>
> (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Section 23(6) of the *Act* states that the landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Both sections 25 and 35, which deal with the start and the end of tenancy Condition Inspection Report requirements, contain similar provisions as outlined above.

An inspection must be done contemporaneously with the vacating of the unit as required by the *Act* and by engaging in an alternate procedure not sanctioned by the legislation, the evidentiary weight of the move-out inspection report was negated. The landlord's methodology also created a problem in that the landlord was seeking to obtain an order enforcing the *Act*, after having neglected to follow the *Act.* I find serious flaws in the Landlord's evidence regarding both of the condition inspection reports.

The tenants admitted to fixing the cupboard door with a nail that split the wood, which resulted in a cost to the landlord to replace. Proof of that cost was provided at $190.93 which I find can be attributed to the actions of the tenant.

Conclusion

I hereby order that the landlords recover the amount of $190.93 from the tenants.

I further order that the landlords return the security deposit in the amount of $700.00 to the tenants.

I order that the amounts be set-off from one another, and I hereby grant the tenants a monetary order in the amount of $509.07. This order may be filed in the Provincial Court and enforced as an order of that Court.

Since both parties have been partially successful with their applications, I decline to make an award in favour of either party for recovery of the filing fees.

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: May 06, 2010.

Dispute Resolution Officer