

DECISION

Dispute Codes MND MNSD FF
 MNDC MNSD FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for damage to the unit, site or property, to keep all the security and pet deposit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for the return of double his security deposit, compensation for money owed for damage or loss under the Act, and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on December 24, 2009. Canada Post receipts were provided in the Landlord's evidence. The Tenant is deemed to have received the hearing documents on December 29, 2009, five days after they were mailed, in accordance with section 90 of the *Act*.

The Landlord appeared, provided affirmed testimony was given the opportunity to present his evidence orally, in writing, and in documentary form. No one attended on behalf of the Tenant despite the Tenant filing her own application for dispute resolution and despite the Tenant being served with the Landlord's application in accordance with the *Act*.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on March 15, 2009 and ended when the Tenant vacated the rental unit on November 30, 2009. Rent was payable on the first of each month in the amount of \$600.00. The Tenant paid a security deposit of \$300.00 on March 15, 2009 and a pet deposit on approximately May 14, 2009.

The Landlord testified that he left the Tenant a blank condition inspection report form which the Tenant completed during the first couple of days of the tenancy and returned to the Landlord. The Landlord argued that he had to complete the move out inspection report in the absence of the Tenant as she failed to stay to conduct the walk through with the Landlord's father. The Landlord stated that he informed the Tenant and her Social Worker that he would not be home on November 30, 2009 and that his father would complete the move out inspection with the Tenant when she advised him she was finished moving out. The Landlord stated that when his father went down to check on the Tenant at 3:00 or 3:30 p.m. the Tenant was gone. The move-out inspection form was completed by the Landlord in the absence of the Tenant.

The Landlord confirmed the tenancy ended when on October 29, 2009 he received the Tenant's written notice to end the tenancy effective November 30, 2009. The Landlord advised that he first received the Tenant's forwarding address when he received the registered mail package on approximately December 17, 2009, which contained the notice of dispute resolution filed by the Tenant. The Landlord filed his application for dispute resolution seven days later on December 24, 2009.

The Landlord stated that he purchased the house in December 2008 which was built in 1988 and had an unfinished basement. The Landlord testified that he built the one bedroom suite in the basement beginning in January 2009 and this Tenant was the first to occupy the rental unit.

The Landlord has applied for an estimated amount of \$1,600.00 in damages as follows:

- The carpet had to be steamed cleaned, at a cost of \$98.86, on December 19, 2009 as there were stains throughout and horrible pet smells.
- The Landlord paid \$701.70 to replace the existing sliding glass door on March 5, 2010 with new French doors and a new lock. The sliding door was original from 1988. The handle and sliding track were damaged during the tenancy and the lock was removed and nowhere to be found.
- One wall of bathroom tiles, which were new from January 2009, had to be replaced after the Tenant broke several tiles as supported by the photos. The drywall behind the tiles also had to be replaced once the damaged tiles were

removed. Repairs were completed and supplies purchased February 6, 13th, and 21, 2010 at a total cost of \$90.29 (\$32.51 + \$6.81 + \$50.58 + \$0.39).

- The bathroom door was damaged, as shown in the photos, but has not been replaced.
- The closet door was damaged, as seen in the photos, and has not been replaced.
- The toilet seat was broken and repaired by the Landlord, as supported by the photos.
- Approximately four slats off of the vertical blinds were ripped down, as displayed in the photos. The Landlord has not replaced the blinds.
- Several walls were damaged which required plastering, sanding, and painting which was completed by the Landlord.
- The Tenant left junk and garbage behind, as shown in the photos, which the Landlord had to dispose of.

The Landlord testified that the rental unit remained vacant until March 1, 2010, as they could not afford to repair the unit over the winter months.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Landlord's Application

After careful review of the evidence I find that I cannot accept the move-in inspection report submitted by the Landlord as it is not signed by the Tenant at the onset of the tenancy. That being said I do accept the Landlord's testimony that this rental unit was built new in January 2009 and that the patio entrance door was original from 1988. The photo evidence supports the damages were present for which the Landlord has claimed.

The evidence supports the Tenant did not have the carpet steam cleaned at the end of the tenancy in contravention of section 37 of the Act which provides a tenant must leave the rental unit reasonably clean and undamaged and #1 of the Residential Tenancy Policy Guideline which provides that the tenant is responsible for periodic cleaning of the carpets throughout the tenancy and at the end of the tenancy if the tenant is responsible for carelessly staining it. Therefore I find the Landlord has proven the test for damage or loss, as listed above, and I award him \$98.86 for carpet cleaning.

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 repair or replacement cost by the depreciation of the original item.

The Landlord has claimed \$701.70 to replace the existing sliding glass door new French doors because the lock and track were damaged on the sliding door unit. The sliding glass doors were 22 years old being original from 1988. The Residential Tenancy Policy Guideline provides the useful life of doors to be only 20 years; therefore the depreciated value of the Landlord's sliding glass doors and track to be NIL. That being said the lock was working at the onset of the tenancy and completely removed sometime during the tenancy. Based on the aforementioned I hereby approve the Landlord's claim in the amount of \$75.00 for the cost of replacing the lock.

The evidence supports the bathroom wall of tiles was damaged during the tenancy and these tiles were approximately two months old. Section 32(3) of the Act provides that a tenant of a rental unit is responsible for the repair of damage to the rental unit or a common area that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I approve his claim in the amount of \$90.29.

The remainder of the Landlord's claim involves items that were installed new in January 2009 therefore they were only two months old and never used prior to the onset of this tenancy. The damage shown in the Landlord's evidence is not considered normal wear and tear and therefore, in accordance with Section 32 of the Act, I find the Tenant is responsible for these damages as follows:

- Bathroom door - \$62.50
- Closet door - \$62.50
- Toilet Seat - \$20.85
- Damaged vertical blinds - \$35.00
- Wall repairs - \$30.00
- Labour to clean suite and remove Tenant's garbage left behind - \$75.00

As the Landlord has been partially successful with his claim I hereby award him recovery of the \$50.00 filing fee.

Landlord's Monetary Claim –I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and pet deposits, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Carpet cleaning	\$98.86
Lock replacement	75.00
Repair of bathroom tiles and wall	90.29
Bathroom door damage	62.50
Closet door damage	62.50
Toilet seat repair	20.85
Vertical Blind damages	35.00
Wall repairs – plaster, sand, paint	30.00
Labour to clean and remove Tenant's garbage	75.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$600.00
Less Security Deposit of \$300.00 plus Pet Deposit of \$300.00 plus interest of \$0.00	-600.00
BALANCE AMOUNT DUE TO THE LANDLORD	NIL

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for 40 minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of her application and the application is dismissed, without leave to reapply.

Conclusion

Landlord's Application

The Landlord is hereby authorized to retain the security deposit of \$300.00 plus the pet deposit of \$300.00 plus interest of \$0.00 for a total of \$600.00, as full satisfaction of his claim.

Tenant's Application

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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 18, 2010.

Dispute Resolution Officer