

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and one of the tenants.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the unit; for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 35, 37, 38, 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on December 1, 2007 as a 1 year fixed term tenancy that converted to a month to month tenancy on December 1, 2008, the tenancy ended on November 30, 2009. At the end of the tenancy the monthly rent was \$725.00 due on the 1st of the month and a security deposit of \$345 and a pet damage deposit of \$345 were both paid on November 30, 2007.

The landlord submitted into evidence the following documents:

- A summary of events dated June 16, 2010;
- A summary of the landlord's financial totalling \$1,544.48;
- A copy of a draft version of a fire report issued by the local fire and rescue department for a fire at the dispute address in February 2008 indicating the fire was accidental in nature;
- A copy of a handwritten note from the landlord to the tenants regarding work to be completed after the fire;
- A copy of a handwritten "Final Request" dated February 2, 2009 requesting payment for repairs completed by the landlord related to the fire;
- A copy of pages 1, 2, and 3 of a Condition Inspection Report – completed for the move in portion dated November 30, 2007 signed by the tenants and the landlord with a notation that the tenants refused to sign or agree and no forwarding address provided and a notation that the move out inspection was completed by the manager on November 29, 2009;

- A copy of pages 1 and 2 of a Condition Inspection Report – completed for the move in portion dated November 30, 2007 and comments in the end of tenancy column but nothing signed by either party;
- A copy of notes regarding the condition inspection;
- A copy of a handwritten note dated January 11, 2010 from tenant to landlord requesting a copy of the move out inspection and noting that the tenant had provided a forwarding address;
- Copies of invoices resulting from the fire for carpet in the amount of \$299.98; painting in the amount of \$325.00, for installation of carpet in the amount of \$157.50;
- A receipt for carpet cleaning dated December 12, 2009 in the amount of \$147.00; and
- 6 photographs of the rental unit at the end of the tenancy.

The tenant submitted the following additional documents into evidence:

- Two summaries of events one dated June 15, 2010 and one January 6, 2010;
- A copy of a hand written statement from a witness who was with the tenant at the move out inspection;
- Correspondence dated May 25, 2009 from the tenant to a property management company;
- A copy of an invoice for insertion of a tub surround dated March 26, 2009; and
- Confirmation from the tenant's insurer dated February 5, 2008 outlining what they received coverage for.

The landlord's claim is outlined in the following table:

Description	Amount
Bleach counters	\$20.00
Clean fridge, range, window sills and tracks, bathroom and kitchen floors	\$60.00
Install new blinds	\$135.00
Replace and install living room and bathroom wall fixtures	\$95.00
Replace smoke detector	\$30.00
Re-install divider	\$65.00
Repair bi-fold door and paint all damaged doors	\$30.00
Change deadbolt – tenants did not return all keys	\$55.00
Kitchen tap aerator and all stoppers from kitchen and bathroom	\$25.00
Carpet cleaning	\$147.00
Flea treatment, sanitizing & deodorizing	\$80.00
Fire damage – outstanding	\$782.48
Total	\$1,544.48

The tenant agreed to the landlord's claim regarding the following items: the room divider had been removed but the tenant did return it and offered to reinstall; the light

fixture in the living room; the missing fan assembly; missing sink stoppers, the fridge was not cleaned; and although the tenant had disconnected the smoke detector he states it was there at the end of the tenancy.

The tenant is unsure but doesn't dispute the loss of the kitchen aerator and all stoppers from the kitchen and bathroom. The tenant does not understand the need for flea treatment, sanitizing and deodorizing as he states his cat was never outside the rental unit.

The landlord testified that the amounts for the above claims are based on labour and the cost of supplies. He also noted that the tenants agreed to have carpets cleaned and the flea treatment, sanitizing and deodorizing when they signed the tenancy agreement. The landlord stated that new blinds are installed every time a new tenancy begins.

The landlord confirmed that they had turned down the tenants offer to reinstall the divider. The landlord indicated there was bi-fold door that wouldn't work and that there were several doors that were marked up and had knife marks in them as were the counter tops in the kitchen and bathroom.

The landlord claims that he had to change the deadbolts because the tenants had not returned all keys and because of this he had to change the locks for the security of future tenants, he indicated that he does this at the end of all tenancies.

The landlord claims the tenant agreed verbally to give him money for the costs associated with repairing the rental unit after the fire in 2008 when he received his settlement from his insurer. The tenant testified that he did not receive any settlement for damage to the rental unit and that he had been informed by his insurer that the landlord should have insurance for the structure.

Analysis

In order for one party to make a claim for compensation for damage or loss the applicant must meet the following 4 point test by showing:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the Act;
3. The value of the loss; and
4. That steps were taken to mitigate the loss.

Section 23 of the *Act* requires a landlord and tenant to complete a move in inspection at the time the tenancy begins or when a tenant starts keeping a pet. The report must be signed by both parties and then a copy given to the tenant within 7 days of completion. In this case the only copy provided was provided by the landlord and shows an alteration to the bathroom and master bedroom for items updated since the start of the tenancy.

Section 35 requires a landlord to complete a move out inspection on or after the day the tenancy ends and that it must be signed by the landlord and tenant and a copy provided to the tenant within 15 days of completion. The move out condition inspection report submitted is not signed by either the landlord or the tenants. I therefore find the landlord has failed to comply with this section of the *Act*.

While the landlord was not compliant with the *Act* on this issue, this does not preclude him from filing an application for damages and as such, he must establish whether a loss exists. In this light, I have considered both the condition inspection report and the notes provided that document some of the landlord's claim.

I accept the landlord has suffered a loss for the items the tenant agrees to: the room divider installation; the light fixture from the living room, the missing fan assembly; missing sink stoppers, and the fridge was uncleaned.

The landlord also requests a replacement fixture for the bathroom, but the notes and the condition inspection report both indicate the fixture from the bathroom was in the dining room, as such I find the landlord has not suffered a loss for this item, I dismiss this portion of the landlord's claim.

I also accept, although not agreed to by the tenant, based on the evidence and testimony provided, the landlord suffered a loss for cleaning the kitchen floor and replacement of the smoke detector. Based, however, on the age of the doors in the rental unit, original to the building, I find the tenant is not responsible for their repair.

In the notes and inspection report there is no mention that the counters required bleaching; the window sills or tracks needed cleaning; the bathroom floor needed cleaning; the bi-fold door was damaged; missing aerator from the kitchen sink or any comment or notation of fleas or odours resulting from a cat. As such, I dismiss the landlord's claim to all of these items.

The landlord testified that the tenancy agreement had a clause that states at the end of a tenancy the landlord would keep from the security deposit and/or pet damage deposit any monies required for cleaning carpets and for treating the unit for fleas, sanitizing and deodorizing. Neither party provided a copy of the tenancy agreement.

Section 20 of the *Act* stipulates a landlord cannot require or include as a term of a tenancy agreement that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy. I do however, accept that through the notations made and the submission of the landlord's receipt for carpet cleaning the landlord is entitled to compensation for this cleaning.

The landlord testified that at the start of a new tenancy, and therefore I infer after the end of a previous tenancy, the landlord installs new blinds in each rental unit and changes the locks in each rental unit. As such, the tenant cannot be held responsible for those costs and I therefore dismiss this part of the landlord's claim.

As to the value of labour for cleaning the fridge and kitchen floor, I find the landlord's estimate of \$20.00, based on \$12.50 for cleaning the fridge and \$7.50 for cleaning the floor and the value of labour to install the room divider of \$65.00 to be reasonable.

Section 7 of the *Act* requires a party that files a claim for compensation for damage or loss that results from the other's non-compliance with the *Act* to do whatever is reasonable to minimize the damage or loss. As such, since the tenant offered to reinstall the divider and the landlord declined, I find that the landlord failed to mitigate any loss for this installation, I dismiss this portion of the landlord's claim.

As to the claim for the living room light fixture, fan assembly, sink stoppers, and replacement smoke detector, the landlord has failed to submit any receipts or confirmation of the value of any of these items, I find the landlord has failed to establish the value of this loss. I dismiss this portion of the landlord's application.

And finally, in relation to the damages the landlord is claiming from the fire of February 2008, I accept the landlord suffered a loss and that he has established the value of that loss.

The cause of the fire was noted as accidental, however does that conclusion absolve the tenant from any responsibility? Section 32 of the *Act* requires a tenant to repair damage to the rental unit that is caused by the actions or neglect of the tenant.

I submit that a reasonable person might expect some possibility of electrical problems when using a multi-outlet adapter and pushing furniture up against and distorting electrical cords, as such, I find the tenant is responsible for these costs.

In the hearing the landlord submitted that he did not file a claim with his insurance company for these losses as he stated it wouldn't reach the deductible, however the landlord provided no evidence of this claim to the hearing, as such, I cannot determine if the landlord was able to mitigate any, some or all of this loss through his insurance, I therefore dismiss this portion of the landlord's application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$192.00** comprised of \$20 cleaning the fridge and kitchen floor; \$147.00 for carpet cleaning and the \$25.00 of the fee paid by the landlord for this application, as the landlord was only partially successful.

I order the landlord may deduct this amount from the security deposit, pet damage deposit and interest held in the amount of \$701.28 in satisfaction of this claim and return the balance of the deposits and interest to the tenants.

I grant a monetary order in the amount of **\$509.28** to the tenants. This order must be served on the landlord 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: June 28, 2010.

Dispute Resolution Officer