

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlords for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed on the following facts. The tenancy began in May 2009 and ended on December 31, 2009. The tenants paid an \$847.50 security deposit and at the end of the tenancy the parties completed a condition inspection report in which damage to a kitchen cupboard was noted. On the condition inspection report the tenants indicated that they believed the damage was already in the unit at the outset of the tenancy but “pending quote from landlord, we will proceed.” The tenants provided the landlords with a forwarding address at the beginning of January and on January 13 the tenants received from the landlords a cheque for \$601.43 which represented a partial return of their security deposit. The tenants have not negotiated that cheque. The tenants agree that they owe the landlord \$92.90 for utilities.

The landlords testified that the tenants damaged the edge of a kitchen cabinet and provided photographs showing the damage. The landlords further provided a quotation showing that it would cost \$168.00 to have the damage professionally repaired. The landlords took the position that the tenants agreed on the condition inspection report

that they were responsible for the cost of the repair and that the cost could be deducted from the security deposit.

Analysis

Sections 38(1)(4) and (6) of the Act provides as follows:

- 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- 38(1)(a) the date the tenancy ends, and
 - 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - 38(1)(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- 38(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- 38(4)(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - 38(4)(b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- 38(6) If a landlord does not comply with subsection (1), the landlord
- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
 - 38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlords returned \$601.43 of the deposit on January 13, which is within the 15 day timeframe provided under the Act. The only amount that can be considered to have not been returned within the 15 days is the outstanding \$246.07. The tenants are barred from claiming double the entire deposit as most was returned to them.

I find that the tenants are liable for the damage to the kitchen cabinet. I find that the tenants would not have agreed to the cost of a repair if the damage had truly pre-existed their tenancy. The tenants' comments on the condition inspection report are unclear. The comments in my view appear to agree to pay for the cost of repairing damage in the event the landlords provide a quotation. I find that the principle of *contra proferentem* must be applied. This is a principle of contractual interpretation whereby an ambiguous contractual term is interpreted against the party that insisted on the inclusion of the term. In this case, the tenants imposed the term in the contract and I find that the term must be interpreted in the favour of the landlords. I find that the tenants agreed that they would pay the cost of repair to the kitchen cabinet provided the landlords provided them with an estimated cost of repair. I find that the landlords provided them with that quotation on January 13 and therefore I find that the landlords were justified in retaining \$168.00 from the security deposit as they had the tenants' agreement in writing pursuant to section 38(4)(a). I award the landlords \$168.00. I note that I also find the quotation for the work performed to be reasonable. If the tenants believed the repair could be effected for less in a do-it-yourself manner, they had the option of performing the repair while they lived in the rental unit. The landlords are not obligated to perform repairs themselves and it is open to them to use the services of professionals, which is what they chose to do.

As for the cost of utilities, I find that while the tenants acknowledged responsibility for the utilities, they did not agree in writing that the landlords could make that deduction from their security deposit. I find that the landlords wrongfully withheld \$92.90 from the security deposit and are therefore liable for double that amount, which totals \$185.80. I award the landlords \$92.90 for the utilities which the tenants agree that they owe and I award the tenants \$185.80 for double the portion of the security deposit that was wrongfully withheld.

As each party has been partially successful in their claims, I find that they must each bear the cost of their own filing fees.

Conclusion

The security deposit is \$847.50. No interest is payable under the provisions of the Residential Tenancy Regulation. Although the landlords are barred under section 38(6)(a) from making a claim against that portion of the security deposit which was wrongfully withheld, section 72(2)(b) of the Act permits me to deduct the landlords' award from the security deposit and I find it expedient to do so in these circumstances.

The landlords have been awarded a total of \$260.90. The tenants have been awarded \$185.80. Setting off these claims as against each other leaves a balance of \$75.10 owed by the tenants to the landlords. I order the landlords to deduct \$75.10 from the \$847.50 security deposit and I order the landlords to return the balance of \$772.40 to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$772.40. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. I note that the tenants currently have the landlords' cheque for \$601.43. If the tenants are able to successfully negotiate this cheque, it will serve to reduce the amount enforceable under the order.

Dated: June 03, 2010
