

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property, for an order permitting the landlord to retain all or part of the pet damage deposit or security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of this application.

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

The landlords had submitted photographs in advance of the hearing, and the tenant stated that her evidence package received from the landlord is missing several of those photographs. As a result, only those that the tenant has are considered in this Decision.

Issues(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to retain the pet damage deposit or security deposit?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on July 1, 2006 and ended on February 28, 2010 after the landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use of

Property, and the tenants did not pay rent for the month of February, 2010, pursuant to the *Residential Tenancy Act*.

Rent in the amount of \$1,195.00 was payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$525.00 as well as a pet damage deposit in the amount of \$525.00. The rented unit is the upper floor of a house and the son of the landlord resided in the basement suite. The notice to end tenancy was issued because the son of the landlord wished to occupy the entire house.

The tenant also provided a letter dated June 14, 2010 stating that the male tenant did not reside in the unit beyond August 1, 2006 and does not share in the responsibility of this tenancy.

The landlord testified that damages to the house had occurred during the tenancy, and the landlord is claiming \$4,999.99 against the tenants for those damages. He stated that the bathroom had been remodelled and the tenant was told not to use abrasive cleaners on the tub, but did not follow those instructions and the bathtub now requires re-finishing at the cost of \$682.50. Further, the sink in the vanity of the bathroom has dye stains in the enamel, the porcelain is chipped and the stain cannot be cleaned off the cabinet doors. The sink was replaced at the cost of \$80.00.

The landlord further testified that the landlord's son had noticed water in his cabinets and asked the tenant about it, who replied that the toilet had over-flowed. Further, the fridge was leaking and the tenant had placed towels on the floor which caused water to run along the wall boards. The landlord is claiming labor in the amount of \$750.00, which includes repairing numerous picture holes in the walls. The landlord also claims carpet cleaning in the amount of \$238.74 and \$7.81 for replacing the door strip. The landlord is further claiming \$110.88 for cleaning curtains that had a pet odour and pet hair on them. The landlord also claims that the hardwood floor required refinishing and rugs had to be removed.

The tenant testified that she used soft soap and a terri-towel to clean the bathtub, but it didn't come clean so she used a sponge that had a soft scouring pad on one side. She stated that she showed the landlord, but the landlord refused to clean it, and it didn't get cleaned for $\frac{3}{4}$ of a year. Therefore, it was left and it started to peel. She showed it to the landlord's son, some caulking was done and he asked the tenant not to shower for 24 hours. Her son did have a shower and it was re-calked but it dissolved. After caulking it for the third time, it stuck because the landlord used a better quality product.

The tenant does not dispute the stains in the bathroom sink and cupboard doors. She further stated that the toilet overflowed twice during the tenancy and the water went into the furnace through a vent in front of the toilet. She stated that she paid about \$80.00 to service the furnace.

As for the fridge, the tenant testified that it leaked, and she wiped it up. There may be damage to the hardwood floor, but she does not agree that the water would go around the wall and there was no water on the carpet, only a thin stream in the kitchen.

The tenant claims that she should only be responsible for pet deodorizing, and that the weather stripping is reasonable wear and tear. She also provided a receipt dated July 21, 2009 by a professional carpet cleaner, 7 months before vacating the unit. She further pointed out that there is nothing on the condition inspection report about the curtains. Also, the paint was old, except for in the bathroom, and that re-painting was not entirely from her tenancy but also from the previous tenancy.

The tenant also provided numerous letter exchanges between the landlord and the tenant which show a somewhat volatile relationship between the parties. Also provided was a letter from the witness who was present during the move-out condition inspection, wherein he describes the actions of the landlords as being intimidating, confrontational, and using foul language to the tenant. The letter also states that the landlord "kicked them out" before the form was completed, and that it was signed under pressure even though it was incomplete. He further stated that the form was changed after the tenant had signed it.

The landlord has provided part of the move-out condition inspection report, but only 3 of 4 pages have been received. He also provided a copy of a letter addressed to the tenant dated March 6, 2010 which stated that he realized the report was not completed and asked that the tenant contact him within 48 hours of receipt of the letter and that both tenants attend again. The landlord's application for dispute resolution was filed on March 12, 2010.

The landlord has also provided me with copies of utility bills, but did not provide any evidence of whether or not those bills have been paid by the tenant, or whether or not they are the responsibility of the tenant.

Analysis

Firstly, I accept the letter of the tenant that the male tenant only resided in the unit for about the 1st month of the tenancy that lasted almost 4 years, and the landlord was aware of that well before this hearing, and ought to have claimed only against the female tenant.

The *Residential Tenancy Act* states that the tenant is required to leave a rental unit in a reasonably clean state, not in a pristine state that the landlords may want in order to live in the unit, show to perspective tenants, or show to perspective purchasers. Further, a tenant is not responsible for reasonable wear and tear.

The *Act* also requires that the landlord provide the tenant with two opportunities to conduct the move-out condition inspection before a new tenant moves in. I find that the landlord failed to do so, having completed part of the process on March 1, 2010 with a tenant present, and then asking the tenant to leave so that he could complete it himself. He then sent a letter to the tenant wherein he "realized" the report had not been completed, but that was well after the landlord's son took over the unit, which is in breach of the *Act*. Therefore, pursuant to Section 36(2) the landlord's right to claim against the security deposit is extinguished.

Further, the onus is on the landlord to prove his claim. A claim for damages requires that a four-part test be applied:

- 1) That the damage exists;
- 2) That the damage is caused by a breach of the *Act*, regulation or tenancy agreement;
- 3) The amount paid to repair or correct the damage;
- 4) The efforts made by the claiming party to mitigate any loss.

I find that the bathtub could not have suffered such damage if it had been resurfaced properly before the tenant moved in. Therefore, the tenant is not responsible for resurfacing it again. I do not accept the landlord's claim that the tenant caused the damage by cleaning it with abrasive cleaners.

I find that the weather stripping is reasonable wear and tear.

With respect to the damage on the hardwood floor, the landlord has failed to provide me with any evidence of what the cost was associated with that damage. Further, the photographs were not provided to the tenant, and therefore the tenant did not have any opportunity to dispute or agree with that claim.

The tenant provided evidence of having the carpets professionally cleaned 7 months before vacating and the witness letter states that he cleaned them again with a rented steam cleaner, and provided photographs of the carpets that do not show unreasonable cleanliness. Further, the photographs from the tenant's evidence show carpets that had been pieced together and required replacing in any event, and therefore, the landlord's claim with respect to carpet cleaning is dismissed. The landlord's photograph was not provided to the tenant and therefore cannot be considered.

The tenant admitted to the stains on the vanity doors and sink in the bathroom, the landlord provided a receipt for payment of a bathroom vanity set, and I therefore find that the landlord is entitled to recover \$80.00 from the tenant.

I also find that the tenant would normally be responsible for cleaning the curtains, and the landlord has provided a receipt in the amount of \$110.88, however, the tenant testified that there was nothing on the inspection report about curtains. I have found that the inspection report portion that I have been provided with shows curtain damage in bedroom number 2, but I have only a receipt for cleaning, not repairing curtains. Further, I only have a portion of the inspection report and have no way of knowing which curtains were cleaned and which curtains required cleaning.

I must also point out that the purpose of the move-out condition inspection is not only to prove that damage exists at the end of the tenancy that did not exist at the commencement of the tenancy, but is also to give the tenant an opportunity to correct any damage or cleanliness issues before vacating the unit.

With respect to the other claims, I find that the landlord has failed to provide sufficient evidence to support those claims, in that the entire condition inspection report was not provided. The tenant's evidence that the landlord changed the form after it was signed and the landlord's letter dated March 6, 2010 are serious flaws that do not support the landlord's claims.

Conclusion

For the reasons set out above, the landlord's claim against the male tenant is hereby dismissed without leave to reapply.

Further, the landlord is entitled to damages against the female tenant in the amount of \$80.00. The landlord is also entitled to recovery of the filing fee in the amount of \$50.00. I order that the amount be set off against the deposits held in trust by the landlord, and I order that the landlord retain the amount of \$130.00 from those deposits. I further order that the landlord return the balance of the pet damage deposit and security deposit and interest in the amount of \$34.51, for a total sum of \$954.51 to the tenant forthwith, and I grant the tenant a monetary order in that amount.

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: July 07, 2010.

Dispute Resolution Officer