DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing convened on May 21, 2010, and reconvened for one hour for the present session on July 13, 2010 at 1:30 p.m. This decision should be read in conjunction with my interim decision of May 25, 2010.

Issues(s) to be Decided

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

Background and Evidence

At the onset of today's hearing the parties acknowledged the affirmation for testimony and confirmed receipt of the interim decision dated May 25, 2010. Neither party had questions or concerns about the decision so the hearing continued.

The Landlord began her testimony by describing the details of her claim as follows:

- The Landlord initially attempted to thwart odours in the rental unit by purchasing a deodorizer for $29.77.
- When the deodorizer failed to work the Landlord had the baseboards, carpet and underlay removed from the rental unit as supported by her photographic evidence. She is seeking $3,604.89 for the cost to replace the carpet. The Landlord has based her claim on an estimate and argued that she had the work completed by entering into a cash deal or side deal so she did not have a receipt to support that the work was completed. She believes the work was completed over Christmas and New Year's Day 2009 / 2010.

- She is seeking reimbursement for paint thinners and primers which were purchased to repair the walls at a cost of $55.38 plus $108.48 less personal items of $33.98, $8.36, and $12.98.
- The Landlord provided a receipt for $35.45 from the local landfill and is seeking reimbursement for the disposal of the urine stained carpet and underlay.
- The last item being claimed for is $178.75 for the cost to purchase new baseboards. The Landlord confirmed that the baseboards had not previously been replaced and were original from when the house was built. The Landlord did not provide a receipt for this purchase in her evidence as she did not purchase the baseboards until January 9, 2010.

The Landlord testified that she first approached the Tenant in September or October 2009 and asked the Tenant if she was interested in purchasing the property. When the Tenant declined they made arrangements to attend the unit to take photos and inspect it to determine what would need to be done before the property could be sold. The Landlord claims she had no knowledge that the Tenant had two dogs in the rental unit and argued that she had not been advised by the Tenant nor had there been any evidence of dogs when she attended the rental unit. After the Tenant provided notice to end the tenancy the Landlord considered listing the house for sale. The property was listed in early February 2010 and title was transferred to the new owners on February 19, 2010.

The Landlord argued that she made arrangements with her friend to handle the move out inspection as she was scheduled to be away on vacation. When she returned from her vacation on November 15, 2009, she attended the rental unit where she found an odour coming from the carpets. She argued that she also found dog feces on the carpet in one of the bedrooms. She attempted to remove the odours with the use of an ozone machine with deodorizer and when that failed she felt she had to remove the carpets and underlay completely. She attempted to reuse the baseboards but they too had an odour that could not be removed.

The Landlord later confirmed the security deposit was not returned to the Tenant and argued she did not receive the keys back until December 5, 2009 when she found an envelope in the mail box which contained a copy of the carpet cleaning receipt and the rental unit keys.

The Tenant testified that her notice to end tenancy was provided to the Landlord at the end of September 2009 and that the Landlord showed up the very next day to take pictures of the rental unit. The Tenant stated that she had the dogs since November 2007 and that she thought her spouse had acquired permission shortly after they occupied the rental unit.

The Tenant argued that she had never left the dogs unattended in the rental unit and that she would take the dogs across the street to her parent's house whenever she was away. She also stated that the Landlord had previously been in the rental unit and would have seen the dog beds, the bag of dog food, and the dog dishes. The Tenant stated that she never had a complaint of odours in the rental unit and commented that there was no mention of an odour during the move out walk through or at any other time the Landlord attended the rental unit. She stated that her dogs are well trained and never urinated in the house.

The Tenant confirmed she had the carpets professionally cleaned and admitted that they may not have done the best job cleaning but that she did provide the Landlord with a copy of the receipt as requested. She argued that she had already had the carpets cleaned before receiving the request to have a specific cleaner perform the work. She disagrees with the Landlord's claim for paint products as she filled the nail holes and painted over them with the paint left by the Landlord. She also claims the baseboards were in fine condition and that she did all of the cleaning as required after the Landlord's friend walked through the unit. The Tenant claims she was told by the Landlord's friend that she did a good job cleaning and that she would get the security deposit back as soon as the keys were returned with a copy of the carpet cleaning receipt. It was at this

time the Tenant advised the Landlord's friend that her forwarding address was her parent's address which is directly across the street from the rental unit.

The Tenant's Witness testified and confirmed that she heard from a friend of the Landlord's who advised that the two women inspected the unit on October 29, 2009 and that additional cleaning was required. She assisted the Tenant on October 30, 2009 to ensure the items were completed as requested. She later received a telephone call to advise a "wonderful job was done" to ensure the unit was cleaned and the security deposit would be returned.

The Witness stated that on November 15, 2009, she left a message for the Landlord informing her the keys and carpet cleaning receipt were at the Witness' home and available for pick up. When she did not hear back from the Landlord she placed the envelope containing the keys and the carpet receipt in the mail box.

The Witness confirmed that she often looked after the Tenant's dogs at her residence as the Tenant did not leave the dogs unattended. The Witness confirmed that she has lived directly across from the rental unit for many years and has seen numerous tenants occupy the unit over the years.

In closing the Landlord argued that she never received the telephone message from the Tenant's Witness and confirmed she made no attempt to discuss the return of the keys with the Witness, even though she had had previous dealings with the Tenant's parents and knew they lived directly across the street.

Analysis

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

After careful review of all the testimony and evidence, in the absence of a move-in or move-out inspection report, and in the presence of opposing testimony, I find the Landlord has failed to provide sufficient evidence that the Tenant violated the Act, Regulation, or tenancy agreement which caused an odour in the rental unit or damage to the carpets, underlay, and baseboards. While the tenancy agreement does not provide for the presence of dogs, there is insufficient evidence to support the damage was caused during this tenancy or by this Tenant's dogs.

In addition, the Landlord did not provide evidence of the actual amount required to compensate for the loss of the carpet, underlay, and baseboards, or the exact dates of when the product was purchased or the work was performed.

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 evidence supports the carpets were fourteen years old, except for the master bedroom carpet which was six years old, and the baseboards were over thirty years old. The *Residential Tenancy Policy Guidelines* provide that the normal useful life of a carpet is ten years while that of baseboards and trim is fifteen. That being said all of the items being claimed as being damaged, except for the master bedroom carpet have exceeded their useful life and therefore have a depreciated value of zero.

It is for the above reasons that I find the Landlord has failed to prove the test for damage and loss as listed above and I hereby dismiss her claim.

The Landlord has not been successful and therefore I decline to award recovery of the filing fee.

The evidence supports the Landlord did not complete move-in or move-out inspection forms in contravention of sections 23 and 35 of the Act. Section 24 of the Act provides that if a landlord does not complete the condition inspection reports and give the tenant a copy then the right of a landlord to claim against a security deposit for damage to the residential property is extinguished.

In this case the tenancy ended on October 31, 2009 and the Landlord had the Tenant's forwarding address prior to the end of the tenancy.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than November 15, 2009. The Landlord's application was not filed until December 17, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that

if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. Therefore the Landlord is hereby ordered to pay the Tenant **$858.01** which is comprised of double the security deposit plus interest (2 x $425.00 plus interest of $8.01 on $425.00 from October 1, 2007 to July 15, 2010).

Conclusion

A copy of the Tenant's decision will be accompanied by a monetary order for **$858.01.** This Order must be served upon the Landlord and may be filed in Provincial Court 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: July 15, 2010.

Dispute Resolution Officer