Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD The Return or Retention of the Security Deposit

MNDC Money Owed or Compensation for Damage or Loss

FF Recover the Filing Fee for this Application from the Respondent

Introduction

The hearing was convened to deal with an application by the tenant for the return of double the $2,000.00 security deposit under the Act. The tenant was also seeking reimbursement for the $50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of $5,990.59 for the damages. The landlord was also seeking reimbursement for the $100.00 fee paid for this application. .

Both the landlord and tenant were present and each gave testimony in turn.

Issues to be Decided for the Tenant's Application

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit?
  - Did the tenant furnish a forwarding address in writing to the landlord?
  - Did the landlord make an application to retain the deposit within 15 days of the end of the tenancy and provision of the forwarding address?

Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for cleaning, damage and other costs.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for loss and damages by establishing on a balance of probabilities that:
    - the costs were incurred due to the actions of the tenant.
    - the costs occurred due to a violation of the Act or Agreement
    - proof of the amount or value being claimed.
    - A reasonable effort has been made to minimize the damages.

The tenant had the burden of proof to establish that the deposit existed and that 15 days had expired from the time that the tenancy ended without the landlord either refunding the deposit of making application to keep it. The landlord had the burden of proof to show that compensation for damages and loss was warranted.

Background and Evidence

The parties testified that the tenancy began in on December 1, 2009 for a fixed term ending May 31, 2010 with rent of $1,900.00 and a security deposit of $2,000.00. No move in condition inspection report was competed.

A substantial amount of evidence was included by both parties.

The tenant testified that the landlord had not returned the tenant's security deposit of $2,000.00 within fifteen days after being given a written forwarding address by the tenant and, in fact, has not returned the deposit to date. The tenant submitted a copy of a letter notifying the landlord of the tenant's forwarding address in writing. The tenant is seeking double the security deposit pursuant to the provisions in section 38 of the Act.

The tenant testified that although they had paid rent to the end of the term of the tenancy, May 31, 2010, they had left at the end of April and offered the landlord access to the unit to do renovations on the home. The tenant stated that this permission was given under the condition that the landlord would take that opportunity to complete the condition inspection and promptly refund the tenant's security deposit at that time. The tenant testified that they returned to finish cleaning two items, the stove and a spot on the deck, that that landlord found not to be satisfactory. According to the tenant after these tasks were done they approached the landlord repeatedly seeking their deposit, and the landlord still refused to refund the deposit. The tenant testified that the keys were retained due to the landlord's uncooperative stance and the fact that the tenant had paid rent for the entire month of May and was therefore not required to relinquish possession and the keys until month end. However, the landlord suddenly changed the locks in mid May and denied the tenant access to the premises.

The tenant is still seeking the return of the deposit and feels entitled to receive double the deposit as the landlord failed to return the funds within 15 days.

The landlord acknowledged that the tenant had paid $2,000.00 deposit and that it was not returned to date. The landlord also acknowledged that the tenant had paid full rent for the month of May 2010 pursuant to the contractual obligation under the fixed term tenancy agreement but had vacated at the end of April. The landlord conceded that although he was granted free access to the unit, he felt it necessary to change the locks in mid-May due his fear that the tenant was dangerous based on the tenant's conduct.

The landlord testified that the tenant left the rental property in an unclean and damaged state and was seeking compensation of $5,990.99.

The landlord testified that although no Move-In Condition Inspection Report had been completed, the rental unit was in pristine condition when the tenant moved in. The landlord pointed out that this was supported by the fact that the tenants had readily accepted the rental unit without any stated concerns about the condition.

The tenant testified that at the time they took tenancy, they had requested a formal inspection as required by the Act but the landlord had curtly declined. The tenants stated that the rental unit was not in pristine condition when the tenancy began. The tenant stated that the carpets were not recently shampooed, the deck was not clean and in fact they had to do some minor repairs to the dryer vent.

The landlord testified that the unit had been freshly painted when the tenant moved in. However, when the tenant vacated the walls were found to be damaged in each room including 2 bedrooms, living room , dining room and kitchen. The landlord was claiming 50% of the cost of repainting the unit. The landlord referred to photos showing "examples" of the damage to the walls. The landlord submitted an invoice from the painter showing the cost of $890.00 and was seeking reimbursement of $445.00 from the tenant.

The tenant testified that when they moved in, the unit was not recently painted and that the walls were already marred by normal wear and tear. The tenant stated that the scrapes shown in the photographs were not present when the unit was vacated by the tenant. The tenant disputed the entire claim for painting.

The landlord testified that the tenant failed to properly clean the rental unit before vacating and that the landlord had to spend 24 hours cleaning the kitchen, carpets, bathrooms, floors and windows and the landlord is claiming $240.00 for this labour. The landlord had submitted photos of the deck, oven and carpeting.

The tenant disputed the claim and stated that two people had spent 8 to 10 hours thoroughly cleaning the unit before moving out. The tenant agreed that after the landlord objected to a soiled spot on the deck and the fact that the oven was not clean, they returned and cleaned the area of the deck in question and the stove. The tenant testified that this was verified by the landlord's own photo evidence. The tenant pointed out that, in any case, the landlord had since replaced the deck surface, bought a new stove and re-carpeted the stairs after the tenant had left. The tenant's position was that

the unit was left reasonably clean as required by the Act and in fact they had returned the premises in a better condition than when they took possession. The tenant did not agree with any portion of the landlord's claim for cleaning.

The landlord testified that the tenant damaged the cement retaining wall and fence and left an area of the driveway damaged as well. The landlord submitted photos showing some close-up views of the cracked cement where the metal fence rail was attached. The landlord testified that the retaining wall was approximately 15 years old and had not been previously damaged. The close-up photos of the driveway appear to show a spot where the surface was compromised along the paved edge and the landlord explained that this occurred from the tenant's insistence on driving over the edge of the surface despite repeatedly being warned not to do so by the landlord. The landlord submitted an invoice for $609.00 for resurfacing the driveway and repairing the cement retaining wall and fence.

The tenant testified that no contact had ever been made with the fence and that there was never any incident in which the concrete was left cracked by the tenant or by contact with the tenant's car. In regards to the purported damage to the driveway, the tenant stated that the photograph did not clearly show the damage being alleged. The tenant testified that there was never any discussion with the landlord in regards to the purported deterioration of the edge of the driveway caused by the tenant's car. The tenant objected to being charged for driveway and wall refurbishments that the landlord chose to have done.

The landlord gave testimony that, because the tenant did not hand in the keys as soon as the tenant moved out, the landlord was compelled to change the locks in mid-May for safety reasons due to fear of the tenant. The landlord was claiming compensation of $92.99 for locks based on the invoice submitted into evidence. The landlord presented correspondence that was in evidence that contained the landlord's written description of an incident where tenant reacted in a hostile manner on May 11, 2010 upon finding that the locks had been changed by the landlord. The landlord's position was that the

tenant's conduct gave the landlord a right to change the locks and take possession of the unit. The landlord stated that it was clear that the tenant had permanently vacated the unit despite having paid rent for May. The landlord was also claiming $100.00 for replacement of the garage door opener which the tenant had not surrendered. No invoice was submitted to verify this expenditure, but the landlord testified that this was a cost incurred.

The tenant acknowledged that the keys were not returned to the landlord in May 2010 as the landlord refused to finalize the tenancy by returning the security deposit. The tenant stated that they had never received a key for the patio doors that was included in the landlord's claim. The tenant stated that the original keys were no longer functional since the landlord changed the locks mid-May. The tenant did not agree with the landlord's claim for the cost of changing the locks. The tenant acknowledged that the garage door opener was not returned, but agreed to return the opener to the landlord with the proviso that this can be accomplished without personal contact with the landlord. The tenant stated that this was because he wants to avoid being wrongfully accused of threatening conduct towards the landlord.

The landlord testified that, the tenant's actions in cleaning the surface of the deck with caustic chemicals resulted in leaks and the landlord had to have the deck completely resurfaced and submitted an invoice for $3,200.00 of which the landlord was claiming 50% amounting to $1,600.00. The landlord referred to the photograph showing that the tenant had used the chemicals to clean a small portion of the deck that had previously been left soiled by the tenant's placement of an item on the deck. The landlord testified that the deck finish was approximately 17 years old but was intact before this tenancy.

The tenant testified that soiled portion of the deck was cleaned by the tenant by hand and using non-caustic chemicals. The tenant testified that the deck was already well-worn and not maintained when the tenant arrived. The tenant pointed out that the photograph showing the small section that was cleaned verified that the remainder of

the deck surface was badly soiled and was already separating at the seams. The tenant's position was that expense of resurfacing was not the tenant's responsibility.

The landlord testified that the tenant had also painted a limited portion of the deck railing and referred to a photo showing a white railing with a slight discoloration in one spot. The landlord testified that this marred the finish and necessitated the complete re-painting of the entire expanse of the railing. The landlord submitted a copy of an invoice for $300.00 dated June 25, 2010.

The tenant denied painting any portion of the railing and considered the landlord's allegations to be without any valid basis in fact.

The landlord testified that it was necessary to replace the stove after the tenant left because the oven interior was permanently etched with a carbon deposit due to evident misuse by the tenant and the stove no longer functioned. The landlord provided a photo showing the oven with a black spot on the bottom surface. The landlord speculated that the tenant may have intentionally incapacitated the stove but acknowledged that he did not consult a repair technician to have it assessed or fixed due to the cost. The landlord purchased a new stove on May 18, 2010 for $776.63 and is claiming $388.00 against the tenant.

The tenant disputed every aspect of this claim and testified that the oven was functional. The tenant stated that if it had stopped working at any time during the tenancy, the tenant would have notified the landlord and requested that the stove be repaired.

The landlord testified that the carpeting on the stairs had been irreparably destroyed by the tenant and submitted photos showing that there were discolored areas on the steps. The landlord testified that the carpets were installed in 1993 and were in good shape when the tenancy began. The landlord was seeking reimbursement for 50% of the $672.86 cost from the in the amount of $336.00.

The tenant did not agree with any portion of this claim and stated that the carpet was old and was not somewhat stained from the outset.

Finally, the landlord was claiming $1,980.00 loss of rent for the month of June 2010. The landlord testified that because of the condition that the tenant left the premises in, the cleaning and repairs took all of May and into June 2010 to complete. The landlord had submitted a written statement from the new occupants who moved in on June 1, 2010 indicating that they were granted free rent for the month of June 2010 because the deck was being resurfaced. The landlord explained that some cleaning in one room also had to be done in June because of the back and forth traffic involved with the deck repairs. The landlord felt that it was the responsibility of the tenant to reimburse the landlord for this loss of income.

The tenant vehemently disagreed with this claim particularly as the fixed term was to officially end on May 31, 2010 tenant but as a courtesy had granted the landlord full access to the unit for the month of May, despite having paid rent for this period. The tenant testified that none of the claimed repairs nor cleaning were in any way attributable to the tenant. The tenant felt that allowing the landlord free run of the vacant unit for the whole month would furnish ample time to prepare or renovate the unit for new occupants as the landlord saw fit to do.

Analysis: Tenant's Application

The tenant has made application for the return of the security deposit. Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the forwarding address a landlord must either: repay the security deposit or pet damage deposit or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that the forwarding address was given to the landlord on or about May 12, 2010 and the landlord was obligated to either have returned the deposit or made an application for dispute resolution within the 15

days from that date. However, the landlord's application for dispute resolution seeking damages and to retain the deposit was not processed until June 7, 2010 which was beyond the fifteen days.

Section 38(6) If a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security deposit or any pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to receive double the $2,000.00 security deposit paid which would total $4,000.00

Analysis: Landlord's Application

An applicant's right to claim damages from another party is covered under, Section 7 of the Act which states 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 damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer. The party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant took reasonable measures to mitigate the damage or losses that were incurred.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. While a tenant of a rental unit must repair damage that is caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Provided that the unit was in pristine condition when the tenancy started, it would be a violation of the Act under section 37 (2)(a) for a tenant to fail to ensure that the rental unit was reasonably clean, and undamaged except for reasonable wear and tear upon vacating, failing which the tenant could be liable for any costs or losses that flowed from the tenant's failure to comply with the Act.

The landlord has presented photos clearly showing some damage at the end of the tenancy and provided receipts and estimates for expenditures . I find that this evidence may serve to satisfy elements 1and 3 of the test for damages.

However, in order to satisfy element 2 of the test, the landlord would be required to furnish proof that the tenant actually caused the damage during the tenancy in violation of the Act. I find that move-in and move-out Inspection reports signed by both parties,

which are a requirement under sections 23 and 35 the Act, would have functioned as critical evidence to illustrate the “before-and-after” state of the unit as mutually agreed-upon by both the landlord and the tenant. In this instance, the landlord did not complete a move-in or move out condition inspection report. I find that the parties offered conflicting verbal testimony on the subject of the unit’s existing condition and cause of the damage and need for repairs.

I do not accept the landlord’s assertion that the fact the tenant accepted and moved into the unit without objection should serve as evidence that the premises were in pristine condition. I find that this testimony does not come close to carrying the same evidentiary weight that a completed move-in condition inspection report would do.

In regards to the claim for cleaning costs, the Act only requires that a unit be left reasonably clean and the landlord has not sufficiently proven that the unit was not left in a reasonably clean state by the tenant. I find that the proven existence of dust behind the dryer did not establish that the unit was not left reasonably clean. Under the Act, a tenant is not required to move appliances not on casters to clean. I accept the tenant’s testimony that the tenant performed adequate cleaning prior to leaving and that the tenant had even returned to address the two specific concerns pointed out by the landlord. In regards to the need for repainting, the landlord failed to sufficiently prove that the walls had been recently painted and did not establish that the damage shown in the photos had been left by the tenant. I find that the landlord has not met the burden of proof to justify allowing this claim.

I find that many of the landlord’s claims for damages had likely been impacted by the vintage of some of the finishes and appeared to pertain to maintenance matters or deterioration through natural wear and tear rather than overt damage inflicted by the tenant during the 5 months of their residency.

In regards to the driveway problem, the fence and retaining wall damage and the need to resurface the sundeck, I find that the landlord has not succeeded in adequately

proving that these finishes were not compromised by natural forces and deterioration through continued use over time that predated this tenancy. A tenant is not responsible for normal wear and tear and the landlord lacked independent evidentiary proof to indicate that this factor was *not* the cause. In regards to the deck surface, I find that the photographs clearly show an exposed seam on the surface that points to wear. I find that the claims do not satisfy element 2 of the test for damages and must be dismissed.

The claim for the cost of repainting the deck railing also failed to satisfy element 2 of the test for damages. The tenant denied being responsible for leaving a paint-mark on the railing. Even if the landlord had proven that the tenant marred this surface, this would hardly warrant the claim of $300.00 for re-painting the entire railing as claimed by the landlord. I find that his portion of the landlord's application must be dismissed.

In regards to the stove replacement, the landlord did not offer adequate independent verification that the range did not function. In any case, under the Act appliances are the responsibility of the landlord to repair and maintain. I find that this portion of the landlord's application has no merit and must be dismissed.

In regards to the cost of replacing the carpeting, I find that according to Table 1 of the Residential Tenancy Guidelines, the average useful life of carpeting is set at 10 years and the carpet in question exceeded this. Accordingly I find that this claim must be dismissed.

In regards to the landlord's claim for the cost of changing the locks, under section 25(1) the landlord would be required to re-key the locks for new renters at the landlord's expense upon request. The fact that the landlord chose to take this step prior to the expiry of the existing fixed term and during a period for which the tenant had paid rent certainly does not function to transfer this liability to this tenant. Therefore this claim is dismissed. I find that the landlord's claim for the cost of the garage door opener was not sufficiently supported by an invoice showing payment. However, I find that an order that the tenant return the garage opener still in the tenant's possession is warranted.

I find that the landlord's claim for $1,980.00 for loss of rent for June was not supported because the landlord failed to prove that the tenant was responsible for any of the repairs allegedly causing this loss. Moreover I find that the tenant's generous gesture in granting the landlord unobstructed access to the unit for the entire month of May despite having paid rent for this period, far exceeded the landlord's entitlement under the Act given the circumstances. I find that this portion of the landlord's claim has absolutely no merit and must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to monetary compensation of $4,050.00 comprised of double the deposit of $2,000.00 totaling $4,000.00 plus the $50.00 paid for the application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I further order that the tenant make arrangements to return the automatic garage door opener to the landlord.

Based on the testimony and evidence presented during these proceedings, I hereby dismiss the landlord's application in its entirety without leave to reapply.

August 2010 _____

Date of Decision

Dispute Resolution Officer