Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND MNSD MNDC FF
MNSD

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant filed seeking a Monetary Order for the return of double her security deposit.

Service of the hearing documents by the Landlords to the Tenant was not done in accordance with section 89 of the *Act*. The Landlord served the hearing documents by placing them in the mailbox at the Tenant's forwarding address. The Tenant confirmed receipt of the hearing documents on June 6, 2010. The Tenant's Advocate requested that the Landlords' application be dismissed. After explaining to the Tenant that if I dismissed the Landlord's application they would be at liberty to reapply which means this matter would simply be postponed. Given that the Tenant has been in receipt of the hearing documents for over four months I gave the Tenant the option to proceed today with both applications and not postpone the matter to a future date. The Tenant requested that we proceed with both applications today.

Service of the hearing documents by the Tenant to the Landlords was done in accordance with section 89 of the *Act*, sent via registered mail on October 1, 2010. The Canada Post tracking number was provided in the Tenant's evidence. The Landlord's Agent confirmed receipt of the Tenant's hearing documents and evidence.

The Tenant's Advocate advised that she has not seen the Landlord's evidence. The Tenant confirmed that she received the Landlords' evidence this morning, October 26, 2010, and that this package was forwarded to her by the resident at her service address. She stated that the resident forgot to inform her of the documents and simply

sent them to her via regular mail. There was no mention of which date the resident at the service address received the Landlords' evidence. Neither Landlord (2) nor the Advocate knew if or when a copy of the Landlords' evidence was sent to the Tenant's service address.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1) Have the Landlords proven entitlement to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

2) Has the Tenant proven entitlement to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a written tenancy agreement effective July 31, 2007 for a six month fixed term that converted to a month month tenancy after January 31, 2008. Rent was payable on the first of each month in the amount of $720.00 and the Tenant paid a security deposit of $360.00 on July 8, 2007. The Tenant vacated the rental unit on June 1, 2010. No move-in inspection report was completed at the onset of the tenancy and no move-out inspection report was completed at the end even though a time had been set to conduct the inspection.

The Tenant testified that she was seeking the return of double her security deposit because someone told her that she was entitled to double because the Landlord was late in returning it to her. She is of the opinion that she is entitled to the return of her deposit because she left the rental unit in better condition than what it was when she first moved into the unit. She provided the Landlord with a forwarding address, in writing, when she requested the return of her security deposit in a letter served to the Landlord on June 6, 2010.

Landlord (2) testified and confirmed that she was not present at the rental unit on June 1, 2010 and that she did not arrive until approximately June 3, 2010. She stated that she was told the Tenant left the kitchen tap running while she had left the unit, which caused the rental unit to flood. This flooding caused a delay in completing the move out inspection. She saw the after math of the flood when she attend a few days later which

is when she saw the damage to the walls that appeared to be caused by the Tenant's cat. She confirmed the Tenant had an agreement with Landlord (1) that the Tenant was allowed to put up wallpaper over the areas that were previously wallpapered however Landlord (2) stated the Tenant did not complete the job. She confirmed she did not know how old the house was but that her mother, Landlord (1) has owned the house since approximately 1991. The rental unit when occupied has always been occupied by tenants.

Landlord (2) advised they are seeking monetary compensation of $400.00 to cover the costs of the repairs to the walls and $150.00 for cleaning the curtains and the carpets. She then stated that they only vacuumed the carpets and did not steam clean them. She said that this was cleaning that the Tenant should have completed before moving out. Landlord (2) could not confirm the age of the existing wallpaper at the onset of the tenancy and noted that Landlord (1) attempted to paint the rental unit just prior to the Tenant occupying it. She advised that a family friend assisted with removing all of the wall paper, patching the walls underneath, and painting the entire rental unit which took approximately 12 to 14 hours to complete.

The Tenant advised that her photos which were provided in evidence were taken sometime between 2008 and 2009. She confirmed that she did not wash the curtains at the end of the tenancy but argued that she had cleaned them only a few months prior to the end of the tenancy. She confirmed that she left the rental unit on June 1, 2010 and returned at approximately 4:00 p.m. to find the floor covered in water. She was very concerned because she had left some of her possessions, such as her computer and vacuum, on the floor and they were in contact with the water. Her neighbour had attend the unit with her and when they saw the water they went to the electrical panel to turn off the electricity only to find that it had already been turned off. She approached Landlord (1) who was in the garden to ask what had happened to which the Landlord (1) replied she did not have a key to the unit.

The Tenant stated that she stayed at the rental unit until 11:00 p.m. that evening assisting the Landlord with cleaning up the flood. She asked the Landlord at that time if she wanted her to stay and repair the wall paper and the Landlord told her "just go". She stated that she offered to provide the Landlord with the wallpaper required to repair the walls but that she was afraid to go back to the rental unit because the Landlord's Agent had threatened her. The Tenant stated "I don't deny that the wallpaper was damaged. I returned later that afternoon to clean and repair the unit." She stated that walls were in better condition than before she moved in. The existing wall paper was more than 20 years old and someone had attempted to remove it. It was pulled up from the bottom and ripped in several spots. She confirmed Landlord (1) had attempted to

paint the unit the day before she moved in but that she painted over remaining wallpaper and glue residue which made it look worse.

The Agent testified and stated that he is a tenant in the rental unit ant that he was the one who noticed the water seeping into his unit. He immediately told Landlord (1) about the flood and she went into the unit and turned off the tap. He witnessed the damaged wallpaper and confirmed that it needed to be replaced.

In closing the Tenant advised that she had two cats, a white medium hair length and a short hair cat. She contends that the curtains looked fine at the end of her tenancy. She was visiting the neighbour about three weeks later when she saw that all of the carpet had been removed from the rental unit. She believes the carpet was approximately thirty years old. She stated again that she offered to return to fix the walls but that Landlord (1) told to her to go. She contends that she left the rental unit in better condition than what it was at the onset of the tenancy.

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

Landlord's Application

Neither Landlord (2) nor the Agent could provide testimony pertaining to if or when copies of their evidence were served to the Tenant. The Tenant confirmed that the

Landlord's evidence was delivered to the service address provided by her. The Tenant has acknowledged that this address is not where she resides rather it is the next door neighbour to the rental unit. The Tenant confirmed the resident at her service address did not contact her about receiving the Landlord's evidence and simply mailed the package to the Tenant via Canada Post.

The Residential Tenancy Branch Rules of Procedure 3.5 and 4.1 stipulate that the applicant's and respondent's evidence must be provided to the other party at least five days before the dispute resolution proceeding. The Tenant only received the Landlords' evidence this morning therefore limiting the opportunity for her to respond. In the absence of evidence to support when or how the evidence was actually served to the Tenant's service address, I refuse to consider the Landlord's evidence in accordance with 11.5 of the Residential Tenancy Branch Rules of Procedure.

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.

In the absence of a move-in or move-out condition report I have relied on the testimony from all of the parties and the Tenant's photographic evidence to determine the following: a) the carpet was more than thirty years old; b) the curtains at the onset of the tenancy were old, worn out, and were replaced with curtains the Tenant provided and left behind at the end of the tenancy; c) the walls at the onset of the tenancy were in need of major repairs as they were covered with 20 to 30 year old wall paper that someone had attempted to remove and on other walls Landlord (1) attempted to paint over the remains of wallpaper pieces and glue. The Residential Tenancy Branch policy guideline # 37 provides that the normal useful life of carpets and drapes to be 10 years while interior painting has the useful life of 4 years. Based on the aforementioned I find the depreciated value of the carpet, the drapes, the wallpaper and paint to be zero.

The Landlords have sought compensation for items which they replaced themselves with the assistance of a family friend. They did not steam clean the carpet; rather they vacuumed it and then removed it. They did not repair the wallpaper; instead they removed all the wallpaper, repaired the drywall and painted the entire unit. They stated that they were not able to clean the drapes so they threw them out. There was no testimony provided in support of actual costs incurred to complete the repairs. Based on the aforementioned I find the Landlords did not restore the unit to the pre-existing condition, rather they made major improvements to the rental unit.

I note that while the Landlords testified that the Tenant allegedly caused a flood in the unit they have made no claim pertaining to this alleged incident. After considering the testimony provided by the Agent about Landlord (1) entering the unit to turn off the tap and the opposing testimony provided by the Tenant that Landlord (1) acted like she was not aware of the flood and that she told the Tenant she did not have a key to enter the unit, makes me question the credibility of the Landlords' testimony. I am required to consider the Landlords' evidence not on the basis of whether their testimony "carried the conviction of the truth", but rather to assess their testimony against its consistency with the probabilities that surround the preponderance of the conditions before me. Based on the aforementioned, I do not accept the Landlords' testimony that the Tenant left a tap running in the rental unit.

Based on the above, I hereby dismiss the Landlords' application, without leave to reapply.

As the Landlords have not been successful with their application, I decline to award recovery of the filing fee.

Tenant's Application

The evidence supports that the Tenant vacated the rental unit on June 1, 2010 and provided the Landlords with her forwarding address in writing on June 6, 2010.

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 or file for dispute resolution no later than June 21, 2010. The Landlord filed application for dispute resolution on June 11, 2010 and requested to retain the security deposit in partial satisfaction of their claim. .

Based on the aforementioned, I find that the Landlord has <u>not</u> failed to comply with Section 38(1) of the *Act* and that the Landlord is not 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 and pet deposit and the landlord must pay the tenant double the amount of the security deposit.

Based on the above, I find that the Tenant has not proven entitlement to return of double her security deposit and as a result the Tenant is only entitled to return of the original security deposit plus interest less any claims awarded to the Landlord.

I do not accept the Advocate's argument that the Tenant is entitled to double the security deposit because the Landlords' right to claim against the deposit was extinguished under sections 24 and 36 of the Act. As noted above, doubling of the security deposit is provided under section 38(6) of the Act only if the Landlord fails to comply with section 38 (1).

Tenant's Monetary Claim – I find that the Tenant is entitled to a monetary claim from the Landlords as follows:

Security Deposit Paid July 8, 2007	$360.00
Interest on security deposit from July 8, 2007 to October 27, 2010	7.72
Monetary Order in favor of the Tenant	**$367.72**

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **$367.72**. The order must be served on the respondent Landlords and is enforceable through the Provincial Court 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: October 27, 2010.

Dispute Resolution Officer