Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND MNSD MNDC FF
MNR MNDC MNSD O FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a Monetary Order for, damage to the unit, to keep all or part of the pet and security deposits, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants.

The Tenants filed seeking a Monetary Order for the cost of emergency repairs, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, the return of all or part of their pet and security deposits, other reasons, and to recover the cost of the filing fee from the Landlord.

This hearing convened on November 2, 2010, for one hour and reconvened for one hour and forty five minutes for the present session on December 1, 2010. This decision should be read in conjunction with my interim decision of November 3, 2010.

The Landlord was instructed in the November 2, 2010 hearing that if she intended to amend the amount of her claim she was required to file an amended application with the *Residential Tenancy Branch* and serve the Tenants with a copy of the amended application and any additional evidence prior to November 20, 2010. The Landlord did not file an amended application and I note that the additional evidence submitted by the Landlord was received by neither the *Residential Tenancy Branch* nor the Tenants prior to November 20, 2010. The additional evidence served by the Tenants was not received by the Landlord prior to November 20, 2010, as instructed in my November 3, 2010 decision. Therefore all evidence submitted by the Landlord and Tenants after November 3, 2010, will not be considered in my decision, pursuant to section 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure.* The volumes of evidence

received by the *Residential Tenancy Branch* from each party prior to November 3, 2010 will be considered in my decision along with the participants' testimony.

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

On a procedural note all parties were advised at the onset of the hearing of the required appropriate behavior and conduct required during the hearing. Towards the end of the hearing it was evident the Landlord was becoming tired as she began to display inappropriate behavior. I cautioned the Landlord on four separate occasions that if she continued to interrupt or provide in appropriate responses then I would have to place her call on mute. From approximately 2:50 p.m. until the conclusion of the hearing at 3: 14 p.m. the Landlord's call was placed on mute on three separate occasions in accordance with section 8.7 of the *Residential Tenancy Branch Rules of Procedure.* Once the Landlord was added back to the hearing I confirmed which testimony she missed due to the music being played while her call was muted. She confirmed that she heard all of the Tenants' testimony however she did not hear her son's testimony. Her son was given the opportunity during the hearing to inform the Landlord of the testimony he had provided and the Landlord was satisfied that her son had been given the opportunity to speak and she had no further testimony to provide.

Issues(s) to be Decided

1. Have the Tenants breached the Act, regulations or tenancy agreement?
2. If so, has the Landlord proven entitlement to a Monetary Order as a result of the Tenants' breach?
3. Has the Landlord breached the Act, regulations or tenancy agreement?
4. If so, have the Tenants proven entitlement to a Monetary Order as a result of the Landlord's breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective September 3, 2009 which switched to a month to month tenancy after December 31, 2009. Rent was payable on the first of each month in the amount of $3,500.00 and the tenancy agreement lists a security deposit of $1,750.00 and a pet deposit of $1,590.00 as being paid by the Tenants on September 3, 2009. The Tenants paid rent for the full month of June 2010 however they vacated the rental unit prior to the move out walk through of June 21, 2010. The Landlord did not complete a move-in inspection report nor did she complete a move-out inspection report.

The Landlord's Agent testified that he did a move out walk through with the male Tenant on June 21, 2010 and confirmed that he signed the document provided in the Tenants' evidence which states he conducted a move-out inspection and found the house in the same condition as when the "rental began". The Agent stated that there was a strong odour of disinfectant in the house but that he signed the document just to get the Tenant gone. He returned to the rental property a few days later and found an overwhelming smell of urine which he believes was masked by the disinfectant odour when he inspected the unit. He also confirmed that he is the person in the photos provided in the Tenant's evidence.

The Landlord testified she received a payment in U.S. funds on August 25, 2009 from the female Tenant to hold the rental house until the male Tenant could see and accept the unit. It is this amount that was transferred in Canadian funds of $1590.00 to the tenancy agreement as payment of the pet deposit on September 3, 2009.

The Landlord advised the rental unit was a 3400 sq ft executive house built in 1972 which she purchased in 1984. There are 4 bedrooms, 2 full baths, 2 half baths, a living room, family room, dining room, a large eat in kitchen, and separate laundry room. The Landlord put approximately $150,000 worth of upgrades in the house in 1992, replaced the lower family room and living room carpets in approximately 1999 or 2000 and then replaced the stairs and upstairs carpets in 2002. She moved out of the unit in approximately December 2002 and had another Tenant occupy the house from January 2003 to August 2009. There was a bleach stain and another stain in the carpets prior to these Tenants taking occupancy of the house. She claims there were urine stains in every room of the house, at the end of the tenancy, causing the urine smell in every room. The Landlord is seeking the following monetary compensation:

1) $3,500.00 for one month's rent because the Tenants did not provide a full 60 days notice to cancel their tenancy in accordance with the terms of their agreement. The Landlord confirmed she received the Tenants' written notice on May 7, 2010 to end the tenancy effective June 30, 2010.
2) $200.00 ($150.00 + 50.00) for lawn maintenance. The Landlord states the lawn maintenance was the Tenants' responsibility while the Tenants provided opposing testimony stating the lawn was to be maintained by the Landlord's maintenance person.
3) $523.18 for carpet cleaning. The Landlord states she had to pay professional carpet cleaners for three separate cleanings of the carpets in her attempts to remove the urine smells. She later testified that she has since had to replace all of the carpets. She attempted to increase her claim to include the carpet

replacement costs and was reminded that she did not serve an amended application. The Tenants questioned the receipts they received by the Landlord stating the installation receipt was dated September 24, 2010 when the invoice for the purchase of the actual carpet is dated October 9, 2010. He questioned how an installer could install carpet that had not even been purchased.

4) $ 780.00 ($630.00 + 150) for cleaning the rental unit. The Landlord states she was required to pay three people for three days of cleaning after the tenancy and then had to have a repeat cleaning for the smells in the kitchen, laundry and bath area. The Tenants argued the rental unit had an awful smell from the beginning of the tenancy which they thought was mould inside a closet. They stated they cleaned the rental unit and it was clean at the end of the tenancy. They questioned why the kitchen, laundry and bath areas had to be cleaned so many times to remove what the Landlord alleges was dog urine when these areas had linoleum or tile floors.
5) $30.00 to repair a broken window screen. The Landlord was not able to provide the exact age of the window screen that was broken and testified she had the screen repaired June 29, 2010.
6) $120.00 for the Handyman to repair the dining room door which was off its runner and the family room window jam. The Tenants argued the Landlord's receipts for these repairs were not from professional companies and that they were hand written on blank paper or generic receipts. These repairs were the result of normal wear and tear of this aged house.
7) $38.82 for cleaning materials and urine eliminator as supported by the receipts provided by the Landlord.

The Tenants provided testimony and acknowledged that the Landlord received their written notice to end tenancy May 7, 2010 to end the tenancy less than 60 days later on June 30, 2010. The Tenants are seeking the following monetary compensation from the Landlord:

1) $6,680.00 for the return of double the security and pet deposits 2 x($1750.00 + $1590.00) because the Landlord delayed in returning the deposits and they were seeking the doubling provision under section 38 of the Act as noted in their documentary evidence.
2) $415.00 to cover the costs of $50.00 for lawn maintenance plus $365.00 for plumbing and sewer drain servicing. The Tenants referenced a copy of a letter sent to the Landlord November 2, 2009 via registered mail for which they provided in their evidence that the Landlord signed to accept delivery of the letter. They stated this letter supports their claim of existing issues with the rental house; that the Landlord was responsible to care for the yard as it was her

3) $269.79 for the repairs to the bathroom door. The Tenants claim the female Tenant was locked in the bathroom when the door failed to open so they had no choice to break it down to get her out. The Landlord claims the Tenants were fighting and the male Tenant purposely damaged the door so he should be responsible to pay for the repair.
4) $166.95 to repair the heating system. The Tenants argued that the heating system failed due to lack of maintenance and they had no choice but to hire a contractor to repair the boiler system as it was winter. The Landlord states she did not approve the repair therefore she should not have to pay for it. The female Tenant testified she always called the Landlord but she refused to bring anyone in to complete the repairs. At one point she said the Landlord told her that she would rather evict them than to pay to have any work done. The Landlord denied she said she would evict the Tenants in this conversation.
5) $147.00 ($63.00 + $84.00). The Female Tenant stated the electricity failed on the upper floor and when she called the Landlord she again refused to have the electricity fixed. The Landlord argued that she did not give the Tenants permission to hire an electrician and that she believes there was nothing wrong with the electricity. She initially stated the Tenants did not call her and then later provided testimony about the telephone call made by the female Tenant about her concerns with not having electricity in the upper floor.
6) $240.00 to repair the back gate. The Landlord stated she should not have to pay to repair a gate that was broken by the Tenants' dogs and she contends the gate was not repaired properly because it was not aligned causing it to get stuck. She argued the dogs were much larger than miniature size and that the gate and fence was not that old. The Tenants argued that their dogs are considered a

miniature breed and they did not break the gate. They contend the fence and gate are what appear of an age that is past their useful life and the fence had been previously repaired as the rotten boards were replaced with new ones over time. They said the gate and several boards were warped due to their age. The Tenants argue the gate deteriorated from age and normal wear and tear and it was the Landlord's responsibility to replace it.

7) $100.00 to repair the closet doors. The Tenants state these doors had to be repaired and that the Landlord was notified of this in their November 2, 2009 registered letter. The Landlord contends these were broken by the Tenants and they should suffer the cost of the repair.

The hearing time was about to expire so I canvassed each participant individually and asked if they wished to reconvene the hearing to provide further testimony. Each participant responded that they did not want to reconvene the hearing and requested that I conclude the hearing and issue my decision.

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 Claim

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. Based on the aforementioned I find the

60 day notice requirement written into the tenancy agreement to be contracting outside of the Act which is prohibited under section 5 of the Act and is therefore not enforceable. I find the Tenants' May 4, 2010 Notice to end the tenancy effective June 30, 2010 to be provided in accordance with the Act. Therefore I dismiss the Landlord's claim for $3500.00 of loss of rent.

Upon careful review of the documentary evidence I note that the Landlord's maintenance person notes on one of his handwritten invoices that the back lawn has not been cut in 9 months because the gate was locked. I also note that the Tenants sent the Landlord a receipt from her maintenance person for lawn cutting in their November 2009 registered letter, only two months after the tenancy began. In consideration of this evidence and the Tenants' opposing testimony, I find that on a balance of probabilities the Landlord had made the arrangements for her maintenance person to maintain the lawn and there are no terms in the tenancy agreement pertaining to the payment of such services contracted by the Landlord. The Landlord cannot come at a later date and try to enforce terms that are not clearly provided for in the tenancy agreement pursuant to section 6 (3) of the Act. Therefore I dismiss the Landlord's claim of $200.00 for lawn maintenance.

The Landlord testified she had paid for her plumber to do extensive work on the rental house just prior to this tenancy. Shortly after the onset of this tenancy, not one but all three toilets in the rental house stopped working at the same time. There is evidence to support there was an unusual odour in the house from the onset of the tenancy and then a few days after the end of the tenancy, after the house had been closed shut, there was a horrible odour of what was suspected to be dog urine throughout the house. After careful review of the cleaning company invoices provided in the Landlord's evidence I note that the cleaners had to repeat cleanings for urine smells in the kitchen, laundry and bath areas which are all areas where there are plumbing fixtures connected to the main sewer drains and consisted of washable services that would not absorb dog urine. I have also given careful consideration to the photos taken of the rental unit during the June 17, 2010 move out walk through and the written statement signed by the Landlord's Agent that states the rental unit had been left in the same condition as when the rental began. Based on the aforementioned I find that on a balance of probabilities the odour in the rental house was not caused by dog urine throughout and on every floor surface in the house. Rather the odour was connected to the plumbing or sewer problems that were present prior to the onset of this tenancy. Therefore I find the Landlord has provided insufficient evidence to support her claim and I hereby dismiss her claim of $1,342.00 ($523.18 + 780.00 + $38.82) for three alleged attempts at carpet cleaning, professional house cleaning, and cleaning materials and urine eliminator.

That being said, the *Residential Tenancy Policy Guideline* provides that at the end of a tenancy the tenants are expected to steam clean or shampoo the carpets, regardless of the length of the tenancy, if they had pets which were not cage. In the absence of evidence from the Tenants that they did have the carpets professionally cleaned, I hereby approve the Landlord's claim for one professional cleaning of the carpets in the amount of $480.83.

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. That being said, Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Based on the aforementioned I find the Landlord provided sufficient evidence to support her application to have the window screen repaired and I approve her claim of $30.00.

The evidence supports the Tenants notified the Landlord near the onset of the tenancy of the problem with the dining room door in their registered letter issued November 2, 2009. In the absence of a move-in inspection report I put more weight on the Tenant's letter than I do on the Landlord's testimony that this door was damaged by these Tenants. Therefore, I find the Landlord has provided insufficient evidence to support her claim and I dismiss her request for $120.00 to repair the dining room door.

The Landlord has been partially successful with her claim; therefore I award her recovery of $25.00 of the filing fee.

Section 24 of the Act states that the right of a landlord to claim against a security deposit and/or a pet deposit, for damage to the rental property is extinguished if the landlord does not complete the move-in condition inspection report and give a copy of it to the tenant in accordance with the regulations. That being said, this does not preclude offsetting monetary orders against the deposits currently held by the Landlord in accordance with section 72 of the act.

Landlord's Monetary Claim

I find that the landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits as follows:

Repair to the window screen	$30.00
Filing fee	25.00
Subtotal (Monetary Order in favor of the Landlord)	**$535.83**
Less Security $1750.00 + Pet $1590.00 plus interest of $0.00	- 3,340.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANTS	**($2,804.17)**

Tenant's Claim

The Tenants referred to section 38 of the Act and stated the Landlord delayed in the return of their deposits which is their argument for receiving the return of double their security and pet deposit.

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. There is no evidence before me to support that the Tenants provided the Landlord with their forwarding address in writing, at the end of the tenancy. Therefore, in the absence of evidence to the contrary, I find the Landlord filed her application for dispute resolution within the required time frames.

Based on the above, I find that the Landlord has not 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 security deposit. Therefore I dismiss the Tenants request for the return of double their deposits. This does not preclude the Tenants' right to the return of the initial deposit amounts plus interest.

The Tenants have sought $921.95 ($415.00 + $166.95 + $240.00 + $100.00) as reimbursement for costs for lawn maintenance, (which I have found above to be the Landlord's responsibility), plumbing and sewer drain servicing, repairs to the heating system, and repairs to closet doors. After careful consideration of the items claimed I find the Tenants followed normal processes by informing the Landlord of the required repairs and the Landlord refused to initiate the repairs so the Tenants had the repairs completed at their cost. The issues of sewer, plumbing, and heating system repairs, I find based on the evidence before me, are items which meet the test of emergency repairs, and therefore the Tenants were within their rights to have the repairs completed

and the responsibility for the cost of emergency repairs lies with the Landlord. I note that the lawn maintenance and closet door repairs were completed by the Landlord's contractor. I find the door repairs were required due to normal wear and tear and the responsibility for the cost lies with the Landlord. Based on the above I find the Tenants have proven the test for loss and I approve their claim of $921.95.

In the presence of the opposing testimony as to what caused the damage to the bathroom door I find the Tenants have provided insufficient evidence to prove the bathroom door repair was normal wear and tear. Therefore I dismiss the Tenant's claim of $269.79.

After careful review of the electrical invoices submitted by the Tenants and in consideration of the Landlord's opposing testimony I find there is insufficient evidence to support there was an electrical emergency or problem on the second floor of the rental unit. I note that while there are copies of invoices provided in evidence neither one provides information as to what work was completed, if any, by the electrician. Therefore I hereby dismiss the Tenants' claim of $147.00.

The Tenants have been partially successful with their application, therefore I award recovery of $50.00 of their $100.00 filing fee.

Tenants' Monetary Claim

I find the Tenants are entitled to a monetary claim as follows:

Balance of security and pet deposits owed to Tenant from above	**$2804.17**
Filing fee	50.00
TOTAL AMOUNT DUE TO THE TENANTS	**$3,776.12**

The Landlord is HEREBY ORDERED to pay the Tenants the amount of $3,776.12, pursuant to section 67 of the Act.

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **$3,776.12**. The order must be served on the Landlord 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: December 06, 2010.

Dispute Resolution Officer