



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application by the tenants for an order for the return of double their security deposit. The tenants were self-represented at the hearing and the landlord appointed an agent to represent her.

Issues to be Decided

Is the landlord entitled to an order permitting her to retain the security deposit?

Are the tenants entitled to an award of double their security deposit?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2008, although the tenants moved into the unit a few days prior to that, and ended on August 31, 2010. The parties further agreed that the tenants paid a \$1,000.00 security deposit. Neither party could recall the exact date on which the deposit was made and agreed that for the purpose of calculating accrued interest, September 15, 2008 should be used as the payment date. The parties agreed that the landlord did not prepare a written inspection report either at the beginning or the end of the tenancy.

The landlord made her application for dispute resolution on September 8, 2010. The landlord claims that costs in excess of \$4,000.00 were incurred as a result of damage allegedly caused by the tenants and due to their failure to adequately clean the rental unit. The landlord limited her claim to the amount of the security deposit.

The landlord's agent testified that the landlord came bi-weekly during the summer of 2010 to care for the yard as the tenants failed to do so and claims \$420.00 in compensation which represents 14 hours of work at a rate of \$30.00 per hour. The tenants testified that their son lived in the rental unit during this period of time and maintained the back yard, which was part of the tenancy agreement, but did not maintain the front yard as this area was semi-forested and there was an agreement between the parties that only the back yard should be maintained. The tenants testified that they did not maintain the front yard the entire time they lived in the rental unit and were not expected to.

The landlord's agent claimed that the tenants failed to adequately clean the rental unit and further failed to clean carpets. The landlord seeks to recover \$80.00 for cleaning which represents 4 hours of cleaning at a rate of \$20.00 per hour and a further \$88.48 for professional carpet cleaning. The landlord entered into evidence photographs showing soiled walls and mould on a windowsill. The landlord's agent claimed that a bathroom in the unit had not been cleaned and a window in the attic had been left open which allowed rain to soak the walls and carpet. The tenants testified that they left the rental unit in spotless condition and that they rented a steam cleaner for the carpets. The tenants claim that any stains on the carpets were there at the outset of the tenancy.

The landlord's agent testified that there were numerous scratches on the hardwood floor at the end of the tenancy which would require the refinishing of the entire floor at a cost of approximately \$4,500.00. The tenants testified that they cared for the floors by not wearing shoes in the unit and putting felt under the legs of their furniture. The tenants argued that any damage to the hardwood floor was present at the time the tenancy began.

The parties agreed that the tenants repainted most of the rental unit, including what the landlord referred to as crown mouldings and what the tenants called door trim. The landlord's agent testified that it would cost over \$500.00 to repaint the unit. The tenants testified that at the beginning of the tenancy they asked the landlord if they could repaint and she told them they could do what they wished. After the painting was completed,

the landlord told them that she wished they had not painted the mouldings, which they painted a cream colour to match the walls.

The landlord claimed that a significant chunk of wood was missing from the end of the fireplace mantle and the agent testified that it would be costly to replace the mantle although a specific dollar figure was not provided. The tenants claimed that the mantle was damaged at the time they moved into the rental unit and argued that the photographs provided by the landlord show that there is varnish inside the cracked area, showing that it had been varnished after the crack appeared.

Analysis

First addressing the tenants' claim, section 38 of the Act requires the landlord to apply for dispute resolution with a claim against the deposit within 15 days of the end of the tenancy or be subject to a penalty of double the deposit. The landlord complied with this part of the legislation and I find that she cannot be penalized. I therefore dismiss the tenants' claim for double the deposit.

The landlord bears the burden of proving her claim. The landlord had an obligation under the Act to complete a written condition inspection report both at the beginning and at the end of the tenancy. This requirement protects both parties in that it provides a picture of the condition of the rental unit at those crucial times and it also serves as evidence in the event of a dispute. The absence of such a document or photographs showing the unit at the start of the tenancy makes it difficult to determine what condition the unit was in.

The tenants claim that the floors and mantle were damaged at the time the tenancy began and in the absence of evidence to the contrary. I find that the landlord has not proven those claims and accordingly the claims are dismissed.

I dismiss the claim for the cost of painting as I find that the landlord gave the tenants permission to paint and there is no evidence showing that she directed them not to paint

the mouldings or that she instructed them prior to the time they painted that they would have to return the walls and/or mouldings to their original colour.

I accept the tenants' testimony that they did not maintain the front yard throughout the tenancy and that it was only when the landlord listed the unit for sale that she began to demand that the front yard be maintained. I find insufficient evidence to prove that the term in the tenancy agreement requiring the tenants to do yard work was intended to obligate them to maintain the front yard. I find that even if the landlord had intended that clause to so obligate the tenants, she waived her right to rely on the clause by not enforcing it throughout most of the 2 year tenancy. The claim for the cost of maintaining the front yard is dismissed.

The landlord provided photographs of the rental unit which show soiled walls and mould on a window frame. I accept that cleaning was required at the time these photographs were taken, but there is no indication on the photographs as to the date on which they were taken and they were not submitted to the Residential Tenancy Branch until December 20. The landlord bears the burden of proving that cleaning was required at the end of the tenancy, not several months afterward. I am not satisfied on the balance of probabilities that the photographs accurately reflect the condition of the rental unit on August 31, 2010 and accordingly I dismiss the claim for the cost of cleaning.

I dismiss the claim for the cost of cleaning carpets as that cleaning did not take place until November 26 and I find it to be reasonably possible that the soiling which had to be removed occurred in the almost 3 months between the end of the tenancy and the carpet cleaning.

As the landlord has been wholly unsuccessful in her claim, she must bear the cost of her filing fee.

Conclusion

The landlord's claim is dismissed in its entirety.

The tenants' claim for double the security deposit is dismissed. I order the landlord to forthwith return to the tenants the \$1,000.00 security deposit and the \$4.43 in interest which has accrued to the date of this judgment. I grant the tenants a monetary order under section 67 for \$1,004.43. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: January 10, 2011

Residential Tenancy Branch