

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The landlord and his agent as well as two witnesses attended the conference call hearing. The female tenant also attended. All parties and the witnesses gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witnesses on their evidence.

The landlord also provided an evidence package which was not received by the Residential Tenancy Branch within the time provided for in the Residential Tenancy Branch Rules of Procedure, and was not provided to the tenant. That evidence is therefore not considered in this Decision. All other evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The undisputed evidence of the parties is that this fixed term tenancy began on December 1, 2007 and expired on November 30, 2008 and then continued on a month-to-month basis until the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on August 26, 2010 which was effective October 31, 2010.

Rent in the amount of \$1,125.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On November 16, 2007 the landlord collected a security deposit from the tenant in the amount of \$562.50.

The landlord has not returned the security deposit to the tenant, nor has the landlord returned one months' rent to the tenant as required under Section 51 of the *Residential Tenancy Act*. No move-in or move-out condition inspection report was completed.

The landlord's agent testified that the rental unit was brand new when the tenant moved in and had never been lived in. The tenant was served with the notice to end tenancy because the owner wanted to move into the unit. The tenant then served the landlord with notice of her intention to vacate the unit on September 9, 2010.

The landlord's agent further testified that the tenant would not attend the unit on September 10, 2010 to complete a move-out condition inspection. He also stated that he phoned the tenant and asked her to return to the unit to do some additional cleaning and to attend to the carpets. The tenant did not return, but left it to her nanny to come back. He stated that the one month's rent and security deposit were not returned because it wasn't fair to return the money to the tenant when the carpets were stained with bleach from cleaning.

The agent further testified that he had requested 2 different companies to provide quotes to replace the carpets in the living room, den and master bedroom. The cost for one company was \$3,000.00 and \$3,700.00 from another company. He stated that someone had sprayed cleaner on the carpets which contained bleach and each room had significant bleach stains. He asked both the tenant and the nanny, but neither of them accepted responsibility for the stains. He also contacted a company to enquire about dying the carpet and was told that it would cost about \$200.00 per stain, which would be more than replacing the carpets.

One of the witnesses for the landlord testified that he is a salesman for a carpet company, and was called by the landlord's agent and attended the unit on or about September 17, 2010. When he arrived the suite was empty and he described witnessing 12 to 15 very bright bleach marks in each area of the living room, master bedroom and den of different sizes. He stated that they were not concentrated in one area, but appeared throughout the carpets in those rooms. He gave a quote to the landlord's agent to replace the carpets at \$3,040.00. He stated that there were too many stains to patch the carpet, and some were in the middle of the floor.

The other witness called by the landlord is also a carpet professional and testified that he witnessed quite a few severe bleach stains in the den, bedroom and living room. He

also described the stains as “pretty harsh” and stated that one could only dye small spots. When questioned about patching the carpet, he stated that matching from that dye lot could only be done if the owner still had carpet remnants, and that this carpet is not even made anymore. The price for replacing the carpets would be \$3,700.00 including taxes.

The tenant testified that when she moved into the rental unit no move-in condition inspection was completed. The landlord’s agent did inspect about 3 months before she received notice to vacate the rental unit.

The tenant further testified that she was never asked by the landlord or his agent to conduct a move-out condition inspection. The landlord’s agent asked her to attend to cleaning behind the stove, and the tenant’s nanny attended to do that, but no one ever asked her to fix the carpet. She stated that the landlord’s agent had told her that she was entitled to the equivalent of one month’s rent, and instead of paying that, the landlord would retain it and the security deposit and they’d call it even.

The tenant also disputes that there were 12 to 15 stains. She stated that some tea had spilled in the sitting room and when she cleaned it, a spot was left. The den was only used for storage, and had boxes wall to wall, and no stains were left on that carpet. She was not provided with copies of any quotes and the landlord did not attempt to arrange an inspection. When she dropped off the keys, the owner and some other people were painting.

Analysis

Sections 23 and 35 of the *Residential Tenancy Act* are clear that the landlord’s right to claim against the security deposit for damages to a rental unit are extinguished if the landlord fails to conduct move-in and move-out condition inspection reports. The *Act* places the onus on the landlord to provide the tenant with at least 2 opportunities to conduct the inspections, and does not permit the landlord to omit those reports if the unit has never been lived in. Therefore, I find that the landlord’s right to claim against the security deposit for damages is extinguished.

The *Act* also requires the landlord to pay the tenant the equivalent of one month’s rent if the landlord serves a notice to end the tenancy for the landlord’s use of the property.

The tenant has not applied for dispute resolution to recover the security deposit or the equivalent of one month’s rent, and therefore, her testimony that the landlord told her he would keep those amounts and then the parties would be even is acceptable. The tenant did not however state that she accepted that offer. The tenant has disputed that

there were 15 stains on the carpet. It may very well be that the stains showed up later after the tenant left the unit, or it may be that the painters caused the bleach stains after the tenant had vacated, however, the landlord had the obligation to conduct a move-out condition inspection report. That inspection is also useful to determine what damages or cleaning may be required to give the tenant an opportunity to correct situations in order to protect her security deposit. In this case, the landlord conducted a walk-through of the unit by himself and then asked the tenant or her nanny to return to the unit to clean under the stove. The *Act* also requires the landlord to give the tenant a copy of the inspection reports. No inspection had been arranged with the tenant, and the tenant did not receive any quotes from professionals about the condition of the carpet.

The landlord asks for an order enforcing the *Act* after not having complied with the *Act*. I find the practice followed by this landlord to be seriously flawed in that it does not comply with the *Act* or the regulations. Moreover, this method is also deficient because it does not effectively deal with situations where parties may disagree on the findings. An inspection conducted by one party is particularly problematic with an End-of-Tenancy Report completed in the tenant's absence or after-the-fact, and in this case, no report was completed.

I accept the evidence of the landlord and the tenant, and the only dispute to that evidence is that there were 12 or 15 bleach stains on the carpet. I find that the landlord has failed to establish that the tenant was responsible for all the bleach stains.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

I order that the landlord comply with the *Act* with respect to the amounts held in trust on behalf of the tenant.

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: February 3, 2011.

Residential Tenancy Branch