

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord sent and the tenants received a copy of the landlord's dispute resolution hearing package by registered mail after the landlord sent it on October 13, 2010. I am satisfied that the landlord served this package to the tenants in accordance with the *Act*.

The parties also served one another with their written evidence before the hearing. The tenants' written evidence included material relating to the landlord's actions in hiring an agent who discarded some of the tenants' used Adirondack furniture. The tenants presented a \$1,273.56 written quote for the replacement of this furniture which they asked to be considered as part of this hearing. As the landlord objected to having this counter-claim considered at this hearing and the tenants had not submitted their own application for dispute resolution regarding this matter, I told the parties that I was unwilling to consider the tenants' claim regarding this furniture as part of this hearing. The tenants are at liberty to submit their own application regarding this matter.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This month-to-month tenancy commenced on or about August 1, 2007. Monthly rent was set at \$2,300.00 throughout this tenancy which ended when the tenants vacated the rental unit by September 30, 2010. The landlord continues to hold the tenants' \$1,150.00 security deposit, paid approximately August 1, 2007.

The parties agreed that a joint move-in inspection was conducted when the tenants occupied the rental unit, but the landlord did not prepare a move-in condition inspection report. The parties also agreed that they participated in a joint move-out condition inspection on October 7, 2010. By that time, both parties confirmed that workers had commenced preparing the premises for the next rental. The landlord did not prepare a move-in condition inspection report.

The landlord applied for a monetary award of \$1,300.00 arising out of this tenancy. The landlord provided written and oral evidence that the tenants did not conduct a professional cleaning of the carpets in the rental unit when they vacated the premises. Although the landlord admitted that there was no provision in this Residential Tenancy Agreement whereby the tenants had to have the carpets professionally cleaned, he maintained that the tenants did not do an adequate job of cleaning the carpets themselves with a rented carpet cleaner. He submitted a receipt for \$417.76 to support his request for a monetary award of \$300.00 for this item. He also provided oral, written and photographic evidence regarding his claim for a monetary award of \$1,000.00 to repair damage that the tenants caused to the front door of the rental unit. The parties agreed that the tenants drilled a number of holes in the front door to create a latching system to increase the security and safety of the rental unit for their children.

The male tenant who appeared at the hearing (the tenant) maintained that the carpet was not clean when they moved into the unit. He also said that the landlord's dogs scratched both sides of the front door when the landlord lived in the rental unit before this tenancy commenced. He submitted undisputed written evidence to confirm the tenants' position regarding both the carpets and the front door from the landlord's former General Manager who lived in the adjacent property and was familiar with the condition of the rental unit at the beginning of their tenancy. The tenant testified that they cleaned the carpets when they left, although he agreed that they did not obtain a professional carpet cleaner.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord did not prepare a joint move-in or move-out condition inspection report pursuant to the *Act*. The parties confirmed that the move-out condition inspection occurred after workers started painting and repairing the rental unit. The landlord admitted that the Residential Tenancy Agreement, which he failed to enter into written evidence, did not require professional carpet cleaning at the end of this tenancy. For these reasons, I dismiss the landlord's application for a monetary award for professional carpet cleaning.

Since the parties agree that the tenants damaged the front door, I accept that the landlord is entitled to a monetary award. However, the absence of a move-in condition inspection report also affects the landlord's application for a monetary award for the damage caused by the tenants to the front door of the rental unit. A move-in condition inspection report would have clarified the extent of the damage caused by the dogs that before this tenancy began.

Both parties agree that there were scratch marks on both sides of the front door when the tenants moved into the rental unit. Both parties agree that the tenants damaged the front door and the wood frame around the door when they installed the latch. The tenant did not dispute the photographic evidence submitted by the landlord showing the extent of this damage. The tenant did not dispute the landlord's sworn testimony that the Douglas Fir natural wood door cost \$5,000.00 to install when the landlord renovated the house in 1999. The landlord testified that the workers who have examined this door have told him that the scratches caused by the dogs can be easily sanded and refurbished, but the tenant's damage to the door cannot be repaired without major work.

In deciding the amount of the landlord's monetary award for the tenants' damage to the door, I take into account that there would be depreciation resulting from normal wear and tear since the door was installed in 1999. In addition, I recognize that the parties agree that the front door was further damaged by the dog scratches to both sides of the door that occurred prior to the commencement of this tenancy. Under these circumstances, I find that the landlord is entitled to a monetary award of \$700.00 for the damage to the front door of this rental unit caused by the tenants. Since the landlord has been partially successful in his application, I allow him to recover \$25.00 from his filing fee from the tenants.

I allow the landlord to retain \$725.00 from the tenants' security deposit plus interest that he has retained since the beginning of this tenancy. The present worth of the tenants' security deposit plus interest is \$1,174.59 (i.e., $\$1,150.00 + \$24.59 = \$1,174.59$).

Conclusion

I allow the landlord to retain \$700.00 for damage arising out of this tenancy and \$25.00 for the recovery of part of his filing fee from the tenants' security deposit. I order the landlord to return the remaining \$449.59 from the retained security deposit to the tenants forthwith.

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.