

DECISION

Dispute Codes MNSD, FF, MND, MNDC

Introduction

This hearing dealt with applications from both the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security and pet damage deposits in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants applied for authorization to obtain a return of twice their security and pet damage deposits pursuant to section 38. Both parties applied to recover their respective filing fees for their applications from the other parties 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. Both parties agreed that they received the other parties' dispute resolution hearing packages in mid-December 2010. I am satisfied that both parties served these packages and their evidence to one another in accordance with the *Act*.

At the commencement of the hearing, I noted that the tenants' referred to three issues in the narrative outlining their application for a monetary award of \$4,400.00. However, the only sections of the Dispute Resolution Form they completed were for the return of all or part of their security and pet damage deposits and for the recovery of their filing fees. Since they did not properly include their requests for a monetary award for other losses that they maintain they suffered during the course of their tenancy in their application for dispute resolution, I have not considered their claim for compensation for loss of quiet enjoyment of the rental unit and for loss of hydro power during one stage of their tenancy. They are at liberty to reapply for these items.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy? Which of the parties are entitled to retain or obtain the tenants' security and pet damage deposits? Are either of the parties entitled to recover their filing fees for their applications?

Background and Evidence

This tenancy commenced as a fixed term tenancy on December 1, 2008 and was subsequently converted to a periodic tenancy. Monthly rent was set at \$1,700.00, payable on the first of each month. The landlord continues to hold the tenants' \$850.00 security deposit and \$500.00 pet damage deposit, both paid on November 26, 2008.

The landlords submitted a copy of the joint move-in condition inspection report of November 26, 2008 and the joint move-out condition inspection report of October 31, 2010. The tenants did not disagree with the content of these reports, but noted that the landlords did not provide them with a copy of the move-out report until the landlord applied for dispute resolution.

The tenants gave possession of the rental unit to the landlords after the October 31, 2010 condition inspection was completed. In that inspection report, both parties confirmed that the carpets were stained and needed professional cleaning. Although the tenants said that the staining was minimal, the move-out condition inspection report identified staining in the entry, the living room, the dining room, the master bedroom, and the second bedroom. The landlords provided photographs of the condition of the carpets before they obtained professional carpet cleaning and after the cleaning was completed. They maintained that the staining was so severe that they will need to replace 396 square feet of carpet, 15 steps on a stairwell and a small landing. The female landlord testified that she called a retail carpet company and was quoted an estimate of \$1,900.00 for the installed cost of replacing this carpet. Both parties agreed that the carpet was new when the tenants commenced this tenancy.

The landlords submitted a \$299.37 invoice from the professional carpet cleaning company that cleaned these carpets shortly after the tenants vacated the rental unit. The tenants testified that the landlords had told them that they would obtain a number of quotes and submit these to the tenants before the work would be done. They said that this did not happen. However, the male tenant said that the \$299.37 carpet cleaning cost was in the middle of the range that he identified when he called for a number of quotes for carpet cleaning. The male tenant did not dispute the accuracy of the \$299.37 cost that the landlord incurred for carpet cleaning.

Analysis

Landlords' Application for a Monetary Award for Damage to the Rental Unit

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

Based on the evidence presented, I am satisfied that the landlords have demonstrated that they are entitled to a monetary award for the \$299.37 carpet cleaning costs that they incurred. I allow a monetary award to the landlord's to that effect.

Since the landlords have not replaced the carpets and have not produced a written estimate for the replacement cost of the carpets, I do not allow their claim for \$1,900.00 to replace the carpets in question. However, based on the photographic evidence, the move-in and move-out inspection reports and the oral testimony of the parties, I do accept that the tenants are responsible for damage to the landlords' carpets that exceeds what could be considered to be reasonable wear and tear. The male tenant admitted that the red stains on the carpets were caused by cinnamon hearts that his daughter dropped in inconspicuous areas. The male tenant did not dispute the landlords' claim that professional carpet cleaning was unable to remove these carpet stains. The tenants testified that the stains were minimal and did not extend to much of the overall area of carpeting that the landlords were seeking to replace. The female landlord disputed this assertion and claimed that the stains were in many areas and were noted in most of the rooms of rental unit on the move-out condition inspection report. The landlords also testified that the carpet cleaning company also commented on the serious nature of the stains. Based on the balance of probabilities, I am satisfied that the damage to the landlords' carpets was caused by the tenants and that this damage did extend to a number of different areas of the landlords' carpeting. While carpets in a rental unit are generally replaced every 10 years, the damage exceeds normal wear and tear and the carpets were only two years old by the end of this tenancy. I allow the landlord a monetary award of \$500.00 for this damage.

Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6) of the *Act*). If the tenant does not supply a forwarding address in

writing within a year, the landlord may retain the deposit. With respect to the return of the security deposit the triggering event is the provision by the tenant of the forwarding address.

In this case, I find that there is conflicting evidence from the parties regarding when the landlords were provided written notice of the tenants' forwarding address. The tenants entered into written evidence a copy of an unsigned November 2, 2010 letter that the male tenant maintained he sent by regular mail to the landlords at their correct mailing address. This letter requested the return of their security and pet damage deposits to the tenants' current address. The landlords testified that they never received this letter and were unaware of the tenant's new mailing address until November 30, 2010. They applied for dispute resolution seeking authorization to retain the tenants' security deposit on December 8, 2010, within 15 days of their receiving the tenants' new forwarding address.

Section 88(c) of the *Act* allows the tenants to send their forwarding address in writing to the landlords by regular mail. Based on the evidence presented by the parties, I am not convinced to the extent necessary that the tenants sent or the landlords received written notice of the tenants' new forwarding address prior to November 30, 2010. For that reason, I do not find that the landlords are responsible for returning double the amount of the tenants' security or pet damage deposits pursuant to section 38(6) of the *Act*.

Pursuant to section 38 of the *Act*, I find that the tenants are entitled to the return of that portion of their security and pet damage deposits plus interest that remains after the monetary awards outlined above are deducted.

Since both parties were partially successful in their applications, I make no order regarding recovery of their filing fees.

Conclusion

I issue a monetary Order in the tenants' favour in the following terms which allows them to obtain that portion of their security and pet damage deposits that remains after deductions for carpet cleaning and damage to the carpets is deducted.