Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNSD FF

Preliminary Issues

At the outset of the hearing the Landlord explored the possibility of requesting an adjournment so he could have some more time to compile his evidence. After a brief discussion I informed the Landlord that his request for an adjournment did not meet the requirements of the *Residential Tenancy Branch Rules of Procedure 6.4.* The Landlord made his application November 18, 2010, over four months ago and there were no extenuating circumstances which prevented him from compiling his evidence and serving it to all parties prior to today's hearing. I advised the Landlord that he was at liberty to withdraw is application and reapply at a future date, or he could proceed today on the merits of his application. The Landlord requested to proceed today on the merits of his application.

The Landlord had requested a summons for information from previous property managers and real estate agents and then stated he had received some statements that he had faxed in to the *Residential Tenancy Branch.* He was not able to serve these documents to the Tenant, which is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure.* Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. The respondent Tenant has not received copies of all of the Landlord's evidence. The Landlord confirmed the Bailiff served his original evidence to the Tenant when he served the Notice of Hearing documents. Therefore I find that the latest submission of Landlord's evidence cannot be considered in my decision. That being said, I will consider the Landlord's testimony pertaining to all evidence that was not served on the Tenant.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the pet and security deposits, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally by a process server to the Tenant on November 23, 2010, at the Tenant's place of employment.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite him being served notice of today's hearing, in accordance with the Act.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a monetary order as a result of that breach?

Background and Evidence

The Landlord testified that he resides in a different city and had hired a property management company to manage his rental property. To the best of his knowledge the property manager entered into a tenancy agreement with the Tenant for a month to month tenancy that was effective August 1, 2008. Rent was payable on the first of each month in the amount of $1,000.00. On approximately August 1, 2008 the Tenant paid the $500.00 as a security deposit and $250.00 as a pet deposit. This property manager did not provide the Landlord with any documents pertaining to this tenancy.

He stated that the property manager's license expired in May 2008. She continued to work for the Landlord until March 2009 when she resigned due to poor health. He began to work directly with the Tenant from March 2009 and continued until January 2010. When the Tenant began to default on paying his rent the Landlord hired a new property manager in January 2010.

The Landlord advised he sent the Tenant a letter in January 2010 advising the Tenant the condition of the rental property at the onset of his tenancy. The Tenant provided his second property manager notice to end his tenancy sometime around the end of March 2010 and he vacated the property by approximately April 30, 2010. The Landlord believes there was a move-out inspection completed, however he cannot say for certain as he did not receive a copy of it.

The Landlord has owned this house since 1993 and renovated it in February and March 2007. The renovations included new laminate flooring, new carpet in the 3 bedrooms and hallway, freshly painted walls, and freshly painted basement concrete floor. There were window shears left in the bathroom, master bedroom and two smaller bedrooms, vertical blinds in the living room and on the patio door. The Landlord could not provide the exact age of the window coverings.

The property was listed with one real estate agent from March 2007 to February 2008 and then a second agent from March 1, 2008 to May 6, 2008. The property remained vacant for one year when it was listed. The Landlord could not clarify if the property remained vacant between May 7, 2008 and August 2008 when the Tenant occupied the unit. He did however provide testimony pertaining to his late evidence which included an e-mail from the second real estate agent who confirms the unit had new laminate flooring, fresh paint, and was clean throughout. He also testified to a letter he had received from a property manager who worked for the second property management company he had hired. This evidence spoke to the condition of the rental unit at the end of the tenancy agreement and included statements that the carpet appeared to have been melted and had several cigarette burns all over it; the fridge and freezer had been turned off and food was left inside which left a horrible smell; and there were holes left in some of the walls.

The Landlord did not advertise the unit for rent when he first heard the Tenant had ended his tenancy as he knew there was damage that needed to be repaired. He owns the house immediately next door to this rental unit. His tenants from next door contacted him to advise their friend was interested in renting the house and they were available to be hired to clean and repair the rental unit prior to it being rented. The Landlord could not provide a date when these next door tenants contacted him. The Landlord confirmed he did not advertise the unit for rent.

He has claimed compensation for damages as follows:

1) Loss of rent of $1,500.00 for May and half of June 2010 because the unit could not be rented until it was cleaned and repaired.
2) $2,464.00 to repaint the entire unit. His evidence included a copy of an estimate dated August 30, 2010, to have the entire unit repainted which makes note of small scratches, a hole in one of the walls, and that the ceilings and walls need painting. This work has not been completed.
3) $285.00 for cleaning the unit on May 14, 17, and 19, 2010 as supported by the invoice and in the detailed list of work provided in evidence. This work was performed by the Landlord’s tenants from next door.

4) $174.30 for carpet cleaning that was completed May 25, 2010, as supported by the invoice provided in the Landlord's evidence. The carpet in the three bedrooms, living room and hallway were cleaned.
5) $3,668.46 to replace all of the carpet. The Landlord advised this carpet was new in 2007, prior to him listing the house for sale and now it is ruined. He has not had this carpet replaced and this amount is based on an estimate.
6) $150.00 to replace the damaged tub surround. The Landlord could not provide an age of the tub surround but thinks he may have replaced it. The tub surround is made of vinyl and has not yet been replaced. This amount is based on a quote from his next door tenant.
7) $500.00 to purchase window coverings. When the Tenant vacated the property there were no window coverings in the unit except for the patio door blinds which were damaged. At the onset of the tenancy there were shears in the bedrooms and bathroom, and vertical blinds in the living room and on the patio door. These have not been replaced and this claim is based on a quote from his tenant next door.

In addition to these amounts the Landlord had noted in his original details of dispute that he was also seeking compensation for bailiff service fees of $120.00, $20.00 for courier fees, and to recover the cost of the $100.00 filing fee. He did not provide receipts for these items claimed however he did want to emphasise that he resides in a different city so has had to endure these costs for service of documents.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

After reviewing the Landlord's application for dispute resolution and the details of dispute he provided with his application I have confirmed the Landlord has sought compensation for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The Landlord had indicated these requests in the notes written in the details of the dispute; therefore the Tenant was made aware of the Landlord's request in the initial application and would not be prejudiced by an amendment to the application.

Based on the aforementioned I hereby amend the Landlord's application to include the request to seek monetary compensation for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to # 23 of *Residential Tenancy Policy Guidelines*

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

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. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by his evidence.

The evidence supports the Tenant ended the tenancy in accordance with the *Act*; however the unit was left in an unclean state in contravention of Section 37 of the *Act*. Three days were required for cleaning and one day for carpet cleaning before it could be occupied. That being said there is no evidence before me that supports why this work could not have been completed during the first four days of May to enable the unit to be occupied sooner. I do not accept the argument that the unit could not be advertised for rent as soon as notice was provided to end the current tenancy as the landlord could have explained to prospective tenants the unit would be cleaned and repaired prior to their occupancy. Based on the aforementioned I find the Landlord provided insufficient evidence to support he fully mitigated his loss of rent. He has therefore not met the burden of proof for damage or loss, for 1 1 /2 months of lost rent. That being said I find the Landlord has met the burden for loss of rent for four days and award him loss of rent in the amount of **$131.52** (4 days x $32.88 per day).

Section 32(3) of the *Act* states 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.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The unit was last painted four years ago, spring of 2007. The useful life of interior paint is four years, as per the *Residential Tenancy Policy Guidelines*. Therefore this unit is due for repainting even if there was no damage. The Landlord's claim was based on an estimate and this work has not been performed, therefore the Landlord has not suffered the loss. That being said there is evidence the Tenant caused damage to the walls which would be considered over and above normal wear and tear. Therefore in accordance with Section 67 of the *Act*, I hereby award the Landlord a nominal amount of **$250.00** for repair and painting of damages to the walls.

The evidence supports the Tenant has breached section 37 of the *Act* unit because he left the unit in a stated that required extensive cleaning. This caused the Landlord to suffer a loss of $285.00. Therefore, based on the aforementioned I hereby approve the Landlord's claim of **$285.00** for cleaning.

The carpets required cleaning at the end of the tenancy which caused the Landlord to suffer a loss of $174.30. The Tenant was required to ensure the carpets were professionally cleaned at the end of his tenancy and has therefore breached section 37 of the *Act.* As per the aforementioned I find the Landlord has met the test for damage or loss and I hereby approve his claim of **$174.30** for carpet cleaning.

The carpets have sustained damage during the tenancy and are only four years old. The Landlord has not replaced these carpets and therefore has not suffered the loss of $3,668.46 as claimed. That being said the Tenant has still breached section 32 of the Act as the carpets were damaged during the tenancy. In the absence of a move-in and move out inspection reports or photos to confirm the extent of the damage to the carpets, I hereby find there is insufficient evidence to meet the burden of proof of the actual loss and I hereby dismiss the Landlord's claim of $3,668.46, without leave to reapply.

The evidence does not provide the age of the vinyl tub surround or the extent of the damage caused to it. While I accept there is some damage there, the item has not been replaced and the rental unit now has new tenants occupying it, using the tub and

shower. The Landlord has not had this item repaired and has therefore not suffered the loss being claimed. In the absence of a move-in and move-out inspection report, and an actual cost to replace the tub surround, I find there to be insufficient evidence to meet the burden of proof and I hereby dismiss the Landlord's claim of $150.00, without leave to reapply.

The evidence does not provide an actual age of the window coverings that were allegedly in the rental unit at the onset of the tenancy. The window coverings have not been replaced and a new tenant currently occupies the rental unit. In the absence of a move-in and move-out inspection report I find there to be insufficient evidence to meet the burden of proof. Therefore I hereby dismiss the Landlord's claim of $500.00, without leave to reapply.

The Landlord has sought reimbursement for costs incurred to serve and ship documents in the amount of $140.00 ($120.00 + 20.00). These costs were incurred for couriers and the bailiff's fee for service because the Landlord resides out of town. I find that the Landlord has chosen to incur these costs which cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and not because a Landlord chooses to reside in a different city than the location of his rental property. Therefore, I find that the Landlord may not claim delivery and service fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act.* Therefore I dismiss the claim for $140.00, without leave to reapply.

The Landlord has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **$50.00**

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

Loss of rent for 4 days required to clean the unit	$131.52
Repair and paint damaged walls	250.00
Cleaning of the rental unit	285.00
Carpet cleaning	174.30
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	**$890.82**
Less Security Deposit of $500.00 plus Pet Deposit of $250.00 plus interest of $4.70 from August 1, 2008 to March 23, 2011	-754.70
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$136.12**

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **$136.12**. The order must be served on the respondent Tenant 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: March 23, 2011.

Residential Tenancy Branch