Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence at the hearing, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damage to the rental unit, to retain all or part of the security deposit paid by the Tenant, and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the Tenant occupied another rental unit in the same residential complex prior to this tenancy beginning, that this tenancy began on October 01, 2009 and that it ended on December 31, 2010. The parties agree that they had a tenancy agreement that required the Tenant to pay monthly rent of $650.00 and that the Tenant paid a security deposit of $325.00.

The Landlord stated that the Tenant provided him with a forwarding address, although he cannot recall how it was provided to him. The Tenant stated that she provided her forwarding address over the telephone on December 31, 2010. She stated that she does not believe that she provided the Landlord with her forwarding address in writing.

The Landlord and the Tenant agree that a condition inspection report was not completed when the Tenant moved into this rental unit.

The Landlord stated that his building manager initially scheduled an inspection of the rental unit for December 31, 2010 at 6 pm, but he changed that time to 4 pm. He stated that the Tenant was unable to complete her cleaning by 4 pm on December 31, 2010 so

the building manager offered a second opportunity for January 01, 2011 at 5 pm. He stated that the Tenant initially declined the opportunity to meet on January 01, 2011 but subsequently agreed to meet on that date. He stated that by the time the Tenant agreed to meet on January 01, 2011 the building manager was unavailable so he offered to meet her on January 03, 2011.

The Tenant stated that she was not finished cleaning the rental unit by the time she had agreed to meet the building manager on December 31, 2010, that she met with the building manager's wife at 10:45 p.m. on December 31, 2010 but she would not complete the condition inspection report with her, that she contacted the building manager on January 01, 2011 and told him that she would be available to meet on January 01, 1011 or January 02, 2011, at which time he told her he was unavailable until January 03, 2011. She stated that she advised the building manager that she was unable to complete the condition inspection report on January 03, 2011 as she was leaving town on that date.

The Landlord stated that the building manager completed a condition inspection report at the end of the tenancy in the absence of the Tenant, a copy of which was served on the tenant as evidence prior to this hearing and a copy of which was submitted to the Residential Tenancy Branch. The report, which was completed using the inspection report that was initiated when at the start of the previous tenancy in the same residential complex, was apparently singed by the building manager when he completed the inspection report on January 02, 2011. The date February 02, 2011 was written beside the building manager's signature, with a note to indicate that it should have been dated January 02, 2011.

The Landlord is seeking compensation, in the amount of $1,225.00 for the cost of repainting the rental unit. The Landlord and the Tenant agreed that the Tenant repainted the rental unit during this tenancy, with the knowledge and consent of the Landlord.

The Landlord contends that the Tenant applied a substance known as "Orange Glo" to the walls at the end of the tenancy. He stated that rental unit could not be re-rented with the oily substance on the wall and, as a result, the walls needed to be repainted. He stated that the walls needed to be treated with TSP prior to painting. He is seeking compensation for the time spent preparing and painting the walls and for the materials used to prepare and paint the walls.

The Landlord submitted two letters from the building manager, in which he declared that he did not notice that the walls were "oily" until his wife told him they had been cleaned with "Orange Glo"; that he subsequently noticed that the living and hallway walls were "heavily oiled"; that he noticed the walls seemed to have a scent; and that he does not believe that "Orange Glo" is designed for use on painted surfaces.

The Landlord submitted a letter from the building manager's daughter, in which she declared that she spoke with "the young women" as they were in the process of moving,

at which time they told her they had used “Orange Glo” on the walls. The Landlord does not know who told the daughter the product had been used, but believes it was a person who had been occupying the rental unit with the Tenant or a person who was helping the Tenant move out of the rental unit.

The Tenant contends that she has never used a product known as “Orange Glo”. She stated that she did clean the walls and several other areas in the rental unit with a natural cleaning product that is designed for cleaning a variety of surfaces. She stated that this product has an orange scent. She denied telling anyone “Orange Glo” had been used on the walls and she said that if the statement had been made it was a false statement.

Analysis

Section 35(1) of the *Act* stipulates that the landlord and the tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Section 35(2) of the *Act* stipulates that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Section 17(1) of the *Residential Tenancy Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. I find that the Landlord complied with section 17(1) when the building manager made arrangements to complete the condition inspection report on December 31, 2010 at 4 pm.

Section 17(2)(a) of the *Residential Tenancy Regulation* stipulates that if the tenant is not available at a time offered under subsection (1), the tenant may propose an alternative time to the landlord, who must consider this time prior to acting pursuant to section 17(2)(b). I find that the Tenant did comply with section 17(2)(a) when she offered to meet with the building manager on January 01, 2011 or January 02, 2011, although the building manager was unable to meet on those dates at the times the Tenant was available.

Section 17(2)(b) of the *Residential Tenancy Regulation* stipulates that the landlord must propose a second opportunity, different from the opportunity described in section 17(1), to the tenant by providing the tenant with a notice in the approved form. The approved form is form RTB-22, “Notice of Final Opportunity to Schedule a Condition Inspection”. There is no evidence that the Landlord provided the Tenant with a second opportunity, in writing, to participate in a condition inspection at the end of the tenancy. I therefore find that the Landlord failed to comply with section 35(2) of the *Act*.

Section 35(5)(a) of the *Act* stipulates that a landlord may make the inspection and complete and sign the report without the tenant if the landlord has complied with section 35(2) and the tenant does not participate on either occasion. As the Landlord did not

comply with section 35(2) of the *Act,* I find that he did not have the right to complete the inspection in the absence of the Tenant.

Even if the condition inspection report that was completed by the building manager at the end of the tenancy complied with section 35(2) of the *Act*, it would not support the Landlord's claim for compensation as it does not indicate that the walls in the rental unit were damaged at the end of the tenancy.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proving that the Tenant damaged the walls by applying an inappropriate substance to the walls rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to show that the walls in the rental unit required painting as a result of an oily substance on the walls. In reaching this conclusion, I was strongly influenced by the building manager's statement that he did not notice anything wrong with the walls until he was told that "Orange Glo" had been applied to the walls, which causes me to question whether he would have noticed a problem with the walls if he had not received this report.

In reaching the conclusion that the landlord submitted insufficient evidence to show that there was an oily substance on the walls, I was also influenced by the Tenant's statement that she did not apply "Orange Glo", although she readily acknowledge using a natural cleaning product that smells of oranges. I found her evidence consistent and forthright and could find no reason to disregard her testimony.

In making this determination, I placed little weight on the letter from the building manager's daughter, who provided a written declaration that somebody told her that "Orange Glo" had been used on the wall. I find that this hearsay evidence is of limited evidentiary value, as the daughter was not present at the hearing to explain the nuances of the conversation she had with this unknown person and there is no means of determining the credibility of the statement made to the daughter. I find that it is entirely possible that this statement could have been made by an individual who made the statement for the purposes of upsetting the building manager's daughter without knowing whether the product had truly been applied to the walls or who had mistaken the natural cleaning product used was "Orange Glo".

For all of the aforementioned reasons, I dismiss the Landlord's application for compensation for repainting the walls in the rental unit. As the Landlord has not established that he is entitled to compensation for damages to the rental unit, I find that he is not entitled to retain any portion of the Tenant's security deposit.

Conclusion

I find that the Landlord's application has been without merit and I dismiss his application to recover the fee for filing this Application for Dispute Resolution.

I find that the Landlord remains obligated to comply with section 38 of the *Act*, which requires him to stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In these circumstances the evidence shows that the Tenant did not provide the Landlord with her forwarding address in writing. For the clarification of both parties, the Landlord is not obligated to return the security deposit until the Tenant provides a forwarding address in writing.

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 30, 2011.

Residential Tenancy Branch