Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

A hearing was originally scheduled for March 1, 2011 to deal with tenants' application for return of double the security deposit. Both parties appeared at that hearing and the landlords requested the matter be joined with their application set for hearing on March 16, 2011. The landlords had made an application seeking authorization to retain the tenants' security deposit and recover unpaid rent or utilities and cost of damages from the tenants. I determined that both applications were sufficiently related and I adjourned the tenants' application and joined it with the landlords' application. Both applications were dealt with during the hearing of March 16, 2011.

Both parties appeared or were represented at the hearing of March 16, 2011 and both parties confirmed service of documents upon them. Both parties were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Are the tenants entitled to return of double their security deposit?
2. Are the landlords entitled to compensation for unpaid rent or utilities?
3. Are the landlords entitled to compensation for damage to the rental unit?
4. Are the landlords entitled to retain the tenants' security deposit?

Background and Evidence

The one-year fixed term tenancy commenced September 1, 2009 and ended August 31, 2010. The four co-tenants were required to pay monthly rent of $2,100.00 and a $1,050.00 security deposit. A condition inspection report was prepared at the beginning of the tenancy. At the end of the tenancy an inspection was performed by the landlord and two tenants but no inspection report was prepared by the landlord at that time. The tenants did not provide a written authorization for deductions from the security deposit.

It was agreed by the parties that one of the co-tenants provided a forwarding address to the landlords on September 26, 2010 via email. It was also agreed that the landlords mailed a refund of $115.00 to that co-tenant on October 19, 2010.

Another co-tenant testified that he provided a forwarding address to the landlords via regular mail sent on October 6, 2010. The landlords denied receiving such correspondence. The tenants are of the position they are entitled to return of double the security deposit for the landlords' failure to comply with the Act with respect to handling of the security deposit. The tenants filed their application on October 27, 2010 and the landlords filed their application on February 21, 2011.

The landlords submitted that another move out inspection was offered to one of the co-tenants via an email sent October 1, 2010 but the tenant did not respond to the offer by the deadline of October 3, 2010. The landlords proceeded to complete a move-out inspection report dated October 1, 2010 without the tenants present. In determining the tenants were entitled to a refund of $115.00 of their security deposit the landlords deducted $275.00 for carpet cleaning; $444.00 for utilities owed by the tenants, and $226.00 for damage to the front door.

The tenants acknowledged that they discussions about carpet cleaning with the landlord at the time of the move-out inspection and allege that there was an agreement for the tenants to pay $100.00 for carpet cleaning. The landlords denied there was an agreement for the tenants to pay $100.00 in satisfaction of carpet cleaning costs. The landlords were of the position the tenants were obligated to clean the carpets since there was smoking in the unit and one of the tenants rode his bike in the rental unit. The tenants denied there was smoking in the unit and denied riding the bike.

The parties were in dispute as to the tenants' requirement to pay utilities. The tenants were of the position that sewer and garbage were included in rent and the tenants were responsible for water. Further, the tenants submitted that the utilities deducted from the security deposit were higher than expected and likely increased because the landlords' daughter moved into the basement suite. The landlords took the position that the utilities were high at the end of the tenancy because the persons permitted to occupy the rental unit by the tenants did large amounts of laundry. The landlords were of the position the tenants were obligated to pay all utilities under a verbal agreement and as evidenced by the advertisement on Craigslist. Both parties agreed that the tenants had paid a portion of sewer and garbage in the past.

With respect to damage to the front door both parties agreed that the front door was damaged when the tenants were moving in. However, the tenants were of the position

the landlord's deduction was excessive given the door was only scratched. The landlords were of the position that the property had fine woodwork that would require restoration.

In addition to the deductions taken from the security deposit, the landlords are also seeking compensation for additional items by way of their application. Below I have summarized the landlord's additional claims and the tenants' responses.

Item	Amount	Landlords' reason	Tenants' response
Key cut	25.00	Key not returned	Did not dispute
Landlords attendance for carpet cleaning	200.00	Landlord's cost to travel to rental unit for carpet cleaning. Carpet cleaning should have been done prior to end of tenancy as per letter to tenants in July 2010.	Found out during move-out inspection carpet cleaning required.
Curtain replacement	100.00	Curtains in kitchen damaged. Purchased for $110.00 at beginning of tenancy.	There was no intentional damage although there may have been accidental damage by other occupants.
Materials for door repair	150.00	Tenants damaged front door. This amount is in addition to the $226.00 deducted from security deposit for labour.	Tenants did scratch door but claim landlords told them not to worry about it as it was an old door.
Replace bathroom flooring	1,100.00	Burn holes caused during tenancy. Age of floor unknown but house built in 1970's.	Nobody smoked in house during tenancy but former owners smoked. Burn marks noticed a month after tenancy ended. Roof had been repaired and sticky tar was tracked into house.
Landlords' travel costs for dispute	700.00	Travelling to Kelowna and Vancouver for	No response solicited from tenants.

resolution		dispute resolution.	
Total of additional claims	2,430.00		
Total deducted from security deposit	945.00	See paragraphs above	See paragraphs above
TOTAL CLAIM	$ 3,375.00		

Analysis

I have reviewed and considered all of the evidence before me and I make the following findings with respect to each of the applications before me.

Tenants' application

The Act imposes certain requirements upon landlords and tenants at the end of tenancy. The parties are to participate in a move-out inspection together, the landlord is to prepare a move-out inspection report and both parties are to sign the inspection report. The landlord is then to provide the tenant with a copy of the report within 15 days of completing the inspection or receiving the tenant's forwarding address.

At the end of this tenancy there was an inspection performed by one of the landlords and a couple of the co-tenants. The landlord was required to prepare the move-out inspection report at that time and present it to the tenants for their signature. I do not find the tenants were obligated to return to the rental unit a month later and participate in a second inspection so that the landlord could fulfill the landlord's obligation to prepare the inspection report that should have been done during the first inspection.

Where a landlord fails to complete the move-out inspection report the landlord extinguishes the right to claim against the security deposit for damage. Amounts sought by the landlord for other amounts owed, such as rent or utilities, may be deducted with the tenant's written consent. In this case, I find the landlords had extinguished their right to make deductions for damages from the security deposit because of the failure to prepare the move-out inspection report in accordance with the Act. I also find the landlords did have a tenant's written consent for deductions for any other amounts owed to the landlord. Therefore, the landlords were required to either return all of the security deposit to the tenants or file an Application for Dispute Resolution seeking compensation from the tenants.

Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution within 15 days from the later of the day the

tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Should a landlord fail to comply with the requirements of section 38(1) the landlord must pay the tenant double the security deposit under section 38(6).

I am satisfied that one of the tenants provided a forwarding address to the landlord via email sent September 26, 2010; however, I do not find sufficient evidence to conclude that another tenant sent a forwarding address to the landlord via regular mail on October 6, 2010. The landlord received the forwarding address via email as evidence by a response from the landlord including the statement “Thank you for your forwarding address and we will process all the paperwork as quickly as possible.” The landlord then proceeded to forward a cheque on October 19, 2010 in the amount $115.00 to the address provided by the tenant. Therefore, I find that the tenant’s forwarding address was sufficiently served upon the landlord on September 26, 2010 pursuant to the authority afforded me under section 71(2) of the Act.

In light of the above, the landlords had until October 11, 2010 to return the security deposit to the tenants or make an application for dispute resolution. Since the landlords did not the necessary action by that date I find the landlords did not comply with section 38(1) of the Act and the landlords must now repay the tenants double the security deposit pursuant to section 38(6) of the Act. The tenants are also awarded recovery of the filing fee paid for their application.

Taking into account the $115.00 partial payment made October 19, 2010, I provide the tenants with an award of $2,035.00 [($1,050.00 x 2) + 50.00 – 115.00].

Landlords’ application

Carpet cleaning

Generally, tenants are held responsible for carpet cleaning for tenancies longer than one year. Since the tenancy was for one year, I find I need to be satisfied the carpets were either soiled, or the occupants smoked in the unit, or had pets. The parties were in dispute as to whether the carpets required cleaning at the end of the tenancy and whether anybody smoked in the unit during the tenancy.

The landlords have provided two estimates for carpet cleaning in their evidence package. One estimate is for $292.54 and the other is for $247.31. Both estimates are dated mid-November 2010. It is unclear to me why the landlords did not have the carpets cleaned shortly after the tenancy ended if in fact the carpets required cleaning and then submit the actual invoice for this proceeding. Rather, it is evident that these

estimates were obtained after the tenants had filed an Application for Dispute Resolution against the landlords. Given the date of this hearing and the lack of an actual carpet cleaning invoice I find it difficult to accept that the carpets were in need of cleaning.

In order to succeed in a monetary claim, the applicant must show that the other party violated the Act, regulations or tenancy agreement; that the violation caused the applicant to incur a loss; and, verification of the loss.

I find that I am not satisfied the landlords actually incurred a loss related to carpet cleaning. Therefore, I deny their claim for carpet cleaning costs.

Front door

Upon review of the photographs and upon hearing from the parties, I am satisfied the tenants scratched and gouged the finish on the front door when they were moving in. I am not satisfied that the landlords told the tenants to not worry about the damage as the landlords had the tenants acknowledge the damage in writing. The landlords had obtained an estimate for door repair in July 2010 indicating a cost of $196.00 + HST for labour. The estimate indicates the colour and product were to be determined and did not include a cost for materials. The landlords approximate the cost of varnish and protector to be $140.00 which I find reasonable.

I am satisfied the tenants damaged the door and the Act requires that the tenants repair damage they caused. Since the tenants did not repair the door I am satisfied the landlord are entitled to award equal to their costs to repair it or the devaluation of the property. I award the landlords the estimated cost of $359.52 for materials and labour.

Utilities

Upon review of part 8 of the tenancy agreement, I note that garbage collection and sewage disposal are included in the rent. The advertisement for the property is not evidence as to what the tenants are required to pay under the tenancy agreement. If the landlords wanted to alter the terms of the tenancy agreement they were required to make changes in accordance with the requirements of the Act. In the absence of changes that comply with the Act, I uphold the tenancy agreement as it is written and do not find the tenants responsible for sewer and garbage collection.

Water is not included in rent according to the tenancy agreement I hold the tenants responsible for the portion of the municipal bill that relates to water. I was presented with a bill for the period of June 16, 2010 through October 15, 2010. The water charges are $20.15 + $309.76 for this period. I have pro-rated this amount and apportioned 4/5

to the tenants based upon the undisputed testimony that there were five occupants in the residential property. I calculate the tenants owe $165.77 for water [($20.15 + 309.76) x 76/121 days x 4/5] and I award that amount to the landlords.

Heating Oil

The tenancy agreement provides that the tenants are required to pay for heat. The rental unit is heated by a furnace that runs on heating oil. Accordingly, I accept that the tenants would be liable for the cost associated with to consuming the oil that was in the tank at the beginning of their tenancy.

I find the difficulty in this case lies in determining how much oil was in the tank at the beginning of the tenancy. The landlord has the burden to establish the amount claimed and the landlord's evidence of the amount of oil in the tank at the beginning of the tenancy amounted to a verbal stated that "I just know it was ½ full".

I note that the level of the oil in the tank was not documented by the landlords at the beginning of the tenancy on the move-in inspection report, the tenancy agreement, or the document they prepared with respect to rules about the tenancy. Nor did the landlords provide any other documentation for this proceeding to establish the tank was ½ full at the beginning of the tenancy. While I accept that there may have been some oil in the tank at the beginning of the tenancy I find I have do not have verifiable evidence that it contained approximately $1,000.00 of oil.

In light of the above, I find the landlords have not provided sufficient evidence for me to conclude the tenants owe the landlords $1,000.00 for oil used during the tenancy. Therefore, this portion of the landlords' claim is dismissed.

Key cut

The tenants did not dispute that a key was not returned for one of the doors and I find the landlords' claim for $25.00 to be reasonable for this loss. Therefore, I award the landlords $25.00.

Curtain replacement

The landlords provided photographs of vertical blinds that were cut. The tenants' response to this claim indicates to me that the damage occurred during their tenancy and I hold them responsible for compensating the landlords for the devaluation of this property. I accept the landlords purchased these blinds one year prior for $110.00 and I find the landlords' claim for $100.00 to be reasonable. Therefore, I award the landlords $100.00 for the damaged blinds.

Bathroom flooring

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 replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37. Vinyl flooring has a limited useful live of 10 years. Based upon the photographs and the testimony I heard during the hearing, I find it more likely than not that the flooring in this bathroom was at or beyond 10 years of age and the depreciated value to be close to nil. Therefore, I do not find sufficient evidence of the value of loss for this item and I dismiss this portion of the landlord's claim.

Travel for dispute resolution

The Act provides for recovery of the filing fee paid for a dispute resolution application but the costs associated to preparing, presenting or responding to an application are not recoverable under the Act. Therefore, this portion of the landlords' claim is without basis under the Act and is dismissed.

As the landlords have been partially successful in their claims I award the landlords a portion of the filing fee to reflect their relative success with this application. The landlords are awarded $10.00 for the filing fee they paid for their application.

Monetary Order

Pursuant to section 72 of the Act, I offset the awards granted to each of the parties and provide a net Monetary Order as follows:

Item	Amount claimed	Amount awarded
Carpet cleaning	275.00	Nil
Door repair	226.00 + 150.00	359.52
Utilities	444.00	165.77
Heating Oil	$ 1,000.00	Nil
Key cut	25.00	25.00
Landlords' attendance for carpet cleaning	200.00	Nil

Curtain replacement	100.00	100.00
Replace bathroom flooring	1,100.00	Nil
Landlords cost of traveling	700.00	Nil
Filing fee	50.00	10.00
AWARD TO LANDLORDS		**$ 660.29**
AWARD TO TENANTS	**As above**	**$ 2,035.00**
DIFFERENCE OWED TO TENANTS		**$ 1,374.71**

The landlords are ordered to pay the tenants $1,374.71 forthwith. The tenants are provided Monetary Orders to serve upon the landlords and enforce in Provincial Court (Small Claims) as necessary.

Conclusion

The tenants were successful in their application and the landlords were partially successful in their application. The tenants have been provided Monetary Orders in the net amount of $1,374.71 to serve upon the landlords.

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: April 15, 2011.

Residential Tenancy Branch