



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, (MND), MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for a loss of rental income, to recover the filing fee for this proceeding and to keep the balance of the Tenants' security deposit in partial payment of those amounts. At the beginning of the hearing, the Landlord, V.U., said he was under the mistaken belief that he could keep a portion of the Tenants' security deposit for repairs to the rental unit without their written consent. Consequently, the Landlord amended his application (with the Tenants' consent) to include a claim for compensation for repairs.

At the beginning of the hearing, the Tenant said he served the Landlords with his evidence package by priority post on August 29, 2011 however the Landlords had not received it as of the hearing date. RTB Rule of Procedure requires a Respondent to serve any evidence on an Applicant no later than 5 days prior to the hearing. Consequently, the Tenants' evidence package was excluded however they were permitted to refer to those documents in their oral evidence.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
2. Are the Landlords entitled to compensation for repair expenses and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on July 1, 2009 as a one year fixed term tenancy and continued thereafter on a month-to-month basis. The tenancy ended on March 30, 2011 when the Tenants moved out. Rent was \$1,100.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$550.00 at the beginning of the tenancy.

The Landlord said that in approximately the 3rd week of March 2011, the Tenants gave him verbal notice that they would be moving out at the end of that month. The Tenants say they gave verbal notice in mid-March, 2011. The Landlord, V.U., said he immediately advertised the rental unit and was able to find a new tenant for April 15,

2011. Consequently, the Landlords sought to be compensated for a loss of rental income for April 1 – 14, 2011.

The Parties completed a condition inspection report at the beginning of the tenancy which showed (in part) that the carpet in a spare bedroom was stained. The Parties participated in a move out inspection on or about March 26, 2011. The Landlords completed a move out condition inspection report but it was not signed by the Tenants. The Tenants said they refused to sign this report because they disagreed with the Landlords' comments. The Parties agree that at the end of the tenancy, the carpet in the spare bedroom had a tear or pull and that the window in the same room was damaged.

The Tenants claim that they returned from a holiday on December 11, 2010 and met with the Landlord, V.U., to pay their rent. The Tenants say that at this time they told the V.U. they were expecting their first child and wanted him to replace the carpet in the spare room because it was old, worn and smelled. The Tenants also claimed that at this time V.U. advised them that the thermal window in the same room was damaged apparently by a rock. The Tenants said the window had not been damaged prior to their vacation and V.U. agreed to replace the window as well as the carpet but never did.

The Landlord, V.U., denied ever advising the Tenants that he would replace the carpet and window in the spare bedroom. V.U. also claimed that he believed it was in January of 2011 that he advised the Tenants the window was broken. V.U. said he believed a truck delivering wood to the Tenants may have gotten stuck and shot dirt and rocks at the side of the house thereby damaging the window.

Analysis

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give a Landlord one full, calendar month's notice in writing that they are ending the tenancy. If a Tenant fails to give adequate notice, they may have to compensate a Landlord for any loss of rental income he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

The earliest the Tenants' notice (which was required to be given in writing) could have taken effect (whether given in mid or late-March 2011) would have been April 30, 2011. I find that the Landlords took reasonable steps to re-rent the rental unit for part of April 2011 given the short notice of the Tenants. Consequently, I find that the Landlords are entitled to be compensated for a loss of rental income for April 1 – 14, 2011 in the pro-rated amount of \$513.33.

Section 32 of the Act says that a Tenant is responsible for damages caused by their act or neglect (or the act or neglect of a person they permit on the property) but are not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines “reasonable wear and tear” as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion.” Consequently, the Landlords have the burden of proof and must show (on a balance of probabilities) that the Tenants were responsible for damaging a carpet and window and that those damages were the result of an act or neglect of the Tenants rather than from reasonable wear and tear. This means that if the Landlord’s evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlords admit that a carpet in a spare bedroom was stained and had odours at the beginning of the tenancy but argued that it was only 2 years old at that time and otherwise in good condition. The Tenants argued that the carpet was also old and worn at the beginning of the tenancy and that as a result, the Landlord, V.U., agreed to replace it during the tenancy. The Landlords provided photographs of the carpet in question in which it appears worn and soiled. Based on the evidence of the Tenants and the photographic evidence of the Landlords, I find it unlikely that the carpet was only 2 years old at the beginning of the tenancy and conclude that it had would have had little value and that any tear caused by the Tenants would not have changed that fact. In other words, I find that the carpet was in poor shape at the beginning of the tenancy due to its age or condition and could not be salvaged. Consequently, I find that the Landlord cannot now seek to recover the cost of new carpeting from the Tenants simply because they further damaged a carpet that already had no value. As a result, this part of the Landlords’ claim is dismissed without leave to reapply.

The Landlords also claim that the Tenants are responsible for replacing a damaged thermal window in the spare bedroom. The Landlords admitted that they could not be sure how this damage was caused but suspect that it was caused by a person who delivered wood to the Tenants. The Tenants claimed they had no knowledge of how the window was damaged and argued that the Landlord, V.U., pointed out this damage in December 2010 whereas they got a wood delivery in January of 2011. Given the contradictory evidence of the parties on this issue and in the absence of any additional evidence from the Landlords to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants were responsible for damaging the window and therefore this part of the Landlords’ claim is also dismissed without leave to reapply.

The Landlord, V.U., admitted at the beginning of the tenancy that he withheld the Tenants’ security deposit without their consent to pay for damages. Section 38 of the Act states that unless a Landlord has a Tenant’s written consent to keep a security deposit, he must apply for dispute resolution to keep it to pay for such damages. As the Landlords have been unsuccessful on their claim to recover compensation for damages to the rental unit, I find that they are only entitled to recover one-half of the filing fee for this proceeding or \$25.00. The Landlords also sought to recover their registered mail expenses, however this is a cost that is not authorized under the Act and

therefore I find that the Landlords are not entitled to recover that expense. Consequently, I find that the Landlords have made out a total monetary award of \$538.33.

I order the Landlords pursuant to s. 38(4) of the Act to keep \$538.33 of the Tenants' security deposit in full satisfaction of the monetary award. I Order the Landlords to return the balance of the Tenants' security deposit in the amount of \$11.67 to them forthwith.

Conclusion

The Landlords' application is granted in part. 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: August 31, 2011.

Residential Tenancy Branch