Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes — For the tenant: MNSD
For the landlord: MNSD, MND, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenant applied for a monetary order to recover all or part of her security and pet damage deposit.

The landlord applied for a monetary order for damage to the rental unit, an order to retain all or part of the security deposit, and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act (the "Act")*?

Is the landlord entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

This tenancy started on August 2, 2010, and ended on March 31, 2011. The monthly rent was $1,350.00 and the tenant paid a security and pet damage deposit of $675.00 each on August 1, 2010.

The parties dispute whether the tenancy was month to month or fixed term, with the tenant stating it was month to month and the landlord stating it was a one year fixed term. No tenancy agreement was entered into evidence.

Tenant's Application

The tenant testified that she gave written notice to the landlord in mid January 2011, that she would end the tenancy and vacate the rental unit on March 31, 2011. The parties met at the rental unit for a final inspection on April 1, 2011, at which time she gave the landlord her forwarding address.

The tenant did not submit proof that of the notice of her forwarding address.

The tenant submitted that the landlord has not returned her security or pet damage deposit; as well, the landlord cashed her April rent cheque for $1,350.00 and has not returned it to her.

The tenant's monetary claim is $2,700.00, $675.00 each for the security and pet damage deposit and $1,350.00 for reimbursement of the April rent cheque.

In response and upon my query, the landlord admitted receiving the tenant's written notice to vacate the rental unit in mid January, effective for March 31, 2011. The landlord denied receiving the tenant's forwarding address on April 1, 2011, and stated he did not know of the tenant's forwarding address until receiving her Application and Notice of Hearing, on or about April 21 or 22.

The landlord confirmed that he had not returned the tenant's security or pet damage deposit, or reimbursed the April rent of $1,350.00.

Landlord's Application

The landlord's monetary claim is $7,000.00 for damage to the hardwood floors and carpet in the rental unit.

The landlord stated that the parties did an initial "walk through" of the rental unit on April 2, 2011, but due to darkness, he believed the rental unit looked in good shape. It was not until the next day, in the daylight, that he noticed the damage to the floors, according to the landlord. The alleged damage was to the hardwood floors and urine in the carpets.

The landlord argued that he believes he should not have to return the security or pet damage deposit, or the April rent due to the tenant's dog damaging the floors. The landlord stated that he has since sold the rental unit, but incurred a loss of $7,000.00 from the sale price due to the damaged floors. I note that the only evidence indicating a possible loss in the sale of the home was a letter from the landlord's realtor, stating that the floor conditions led to "financial concessions" by the landlord.

The landlord further argued that the April 2 walk through was just a meeting and that he had not arranged for a formal inspection on that date.

The landlord submitted that the tenant's parents and the parents' dog lived in the rental unit, contrary to the terms in the rental agreement. The landlord submitted that the extra dog contributed to the damaged floor.

The landlord stated he knew the tenant's parents and their dog lived at the rental unit, as he visited the premises twice, in October and in December 2010, and the parents opened the door. At those visits, he viewed the other dog.

Upon query, the landlord stated he never talked to the tenant about his concern over additional occupants or another dog, and never scheduled inspections of the rental unit.

The landlord said the damage to the floor was 100% due to the dogs.

The landlord stated the tenant, after the April 2, 2011 walk through, would not answer his phone calls and has not responded to his requests to the Notices of Final Opportunity to Schedule a Condition Inspection Report. I note that the landlord submitted the Notices, but the two Notices I viewed were for an inspection on the same date, May 4, 2011. I further note the proposed inspection by the landlord was 34 days after the end of the tenancy on March 31, 2011.

The landlord acknowledged there was no move-in or move-out condition inspection report.

In response the tenant denied that her 15 pound dog damaged the floor. The tenant further denied that her parents or their dog lived in the rental unit, but instead were visiting for the Thanksgiving and Christmas weekends when the landlord arrived at the rental unit.

The tenant submitted that she had heard from neighbours that the former tenants in the rental unit were "party boys" and that the rental unit was in far from perfect condition when she moved in, as alleged by the landlord. The tenant submitted that she has mentioned to the landlord during the tenancy about problems with the floors.

The tenant submitted that the walk through was on April 1, and the landlord arrived with his girlfriend, who inspected the rental unit and said everything was good.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,

thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the Landlord to prove damage or loss.

Tenant's Application

Although the tenant submitted that her forwarding address was given to the landlord on the walk through or inspection on April 1 or 2, the tenant supplied insufficient evidence to support this testimony. The landlord agreed that he received the tenant's address with the tenant's application, on April 21 or 22. In the absence of sufficient evidence by the tenant, I accept the landlord's testimony.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord ***must*** repay the security and pet damage deposit, to the tenant with interest ***or*** make application for dispute resolution claiming against the security deposit. [Emphasis added]

The failure to comply with this section entitles the tenant to receive double their security and pet damage deposit.

The landlord did apply for dispute resolution to keep all or part of the security deposit within the allowed 15 days. Therefore the landlord does not have to pay back double the security and pet damage deposit.

As the tenancy ended on March 31, 2011, in accordance with the Act, the landlord had no right to receive rent for April 2011, although he retained the funds for the April rent.

Landlord's Application

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection, on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. I find the parties performed a move out inspection either on April 1 or 2, but the landlord failed to provide a condition inspection report.

In the absence of a move in or move out condition inspection report, I find the landlord has not sufficiently proven the condition of the rental unit before the tenancy began or after it ended and is thereby unable to meet steps 1 and 2 of his burden of proof. Therefore I **dismiss** the landlord's application, **without leave to reapply**.

As I have dismissed the landlord's application, I find he is not entitled to the filing fee.

As I have dismissed the landlord's application, I find the tenant has established a **monetary claim** in the amount of **$2,750.00**, comprised of $675.00 for a return of the security deposit, $675.00 for the return of the pet damage deposit, $1,350.00 for a return of the April 2011 rent, and $50.00 for the filing fee, which I have awarded to the tenant.

Pursuant to section 67 of the Act, I grant the tenant a **monetary order** in the amount of **$2,750.00**.

I am enclosing a Monetary Order for **$2,750.00**.with the tenant's Decision. This Order is a **legally binding, final Order**, and it may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this Monetary Order.

Conclusion

The tenant is granted a monetary order of $2,750.00.

The landlord's application is dismissed, without leave to reapply.

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 11, 2011.

Residential Tenancy Branch