



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenant – MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were due to be heard together. The tenant seeks to recover double his security deposit and his filing fee. The landlord seeks a Monetary Order to recover unpaid rent for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and an Order to keep the tenants security deposit and to recover their filing fee.

The landlord served the tenant by registered mail on June 14, 2011 with a copy of the Application and Notice of Hearing. The tenant states he did not serve the landlord with a copy of the application and a Notice of the Hearing. Consequently I find the tenant has been served pursuant to s. 89 of the *Act*. However, as the tenant has failed to serve the landlord his application is dismissed.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on December 05, 2008. This started as a fixed term tenancy for six month and then reverted to a month to month tenancy. Rent for this unit was \$1,960.00 per month and was due on the 1st day of each month in advance. The tenant paid a security deposit of \$950.00 on December 02, 2008. No move in or move out condition inspection was completed with the landlord and tenant. The tenant moved from the rental unit on May 31, 2011 and gave the landlord his forwarding address on May 31, 2011.

The landlord testifies that the tenant did not clean the rental unit to a satisfactory standard at the end of the tenancy. The tenant was given a cleaning list and has provided a receipt from a professional cleaner for \$150.00; however the landlord disputes that the tenant did actually clean the unit or if he did have it cleaned it was to a poor standard. The landlord states when the tenant moved out he pointed out to him that the unit was left in a poor condition. He states this was mentioned in front of the new tenants moving in. The landlord seeks to recover the sum of \$200.00 to refund to the new tenants for the cleaning work they had to do in the unit.

The tenant testifies he cleaned the unit himself and then paid \$150.00 to a professional cleaner. He states he asked the landlord what areas he should clean and his cleaner did everything on the landlords cleaning list. He states he went through the unit with the landlord and no comments were made about its cleanliness.

The landlord testifies the tenant damaged a door in the unit and replaced this door. However it was a different wood and was unpainted. The landlord testifies he had to have this door repainted at a cost of \$50.00 and seeks to recover this from the tenant.

The tenant does not dispute that he replaced the door but states he thought it was the same colour as the previous door. He states the landlord wanted him to paint it but he did not do so as the whole unit needed painting.

The landlord testifies the tenant caused a large dent in the laminate flooring. He states this flooring was brand new at the start of the tenancy and he has provided a receipt from the company, who laid the flooring in October, 2008. The landlord testifies he had to pay \$350.00 as a minimum call out charge to have the floor repaired and seeks to only recover \$200.00 from the tenant for this work.

The tenant disputes the landlords' claim he testifies this dent was already in the floor when he moved into the unit and he is not responsible to pay for this repair.

The landlord testifies the unit had to be repainted at the end of the tenancy because the tenant had been smoking in the unit. The unit had last been repainted in 2006. The landlord testifies that the incoming tenants complained about the smell of smoke in the unit and a painter was hired to repaint the unit at a cost of \$806.40. (Receipt for painting provided). The landlord testifies that his property manager had also told him previously that there was a smell of Marijuana coming from the tenants unit.

The landlord testifies that he had prepared a move in condition inspection at the start of the tenancy but states he failed to give the tenant at least two opportunities to attend this inspection. The tenants' brother also refused to sign the inspection report.

The tenant testifies the oven in the unit would smoke and this would be the cause of any smoke smell in the unit. He states the landlord is responsible for painting the unit at regular intervals. The tenant also testifies that there was a hole in the oven fan mesh which prevented smoke from the oven being drawn away.

The landlord calls his witness who was the incoming tenant moving into this unit. The witness testifies that they went to the unit on June 01, 2011 and had a painter come to give

them an estimate due to the scratches and dents on the walls. The witness testifies the painter told them there was nicotine stains on the walls and ceiling and the unit would require re-painting. The witness testifies that even the curtains smelt of smoke. The witness testifies she also observed scratches on the flooring and a dent in the living room floor. The witness testifies that the old tenant had said he had used a professional cleaner but they still had to do additional cleaning on the window sills and behind the stove due to a build up of grease. The witness states the landlord has not given them a rent rebate for this work. The witness also states the closet doors did not function correctly and one door required painting.

The tenant declines to cross examine this witness.

The landlord testifies the tenant violated the Strata rules and Strata fines have been imposed on the landlord. The landlord testifies a previous hearing was held to deal with one of these fines and he was granted leave to reapply as he had not been given sufficient supporting evidence from the Strata Council. The landlord testifies the Strata Council followed due process in levying these fines due to the tenants and his guests behaviours which resulted in the elevator malfunctioning and a fine for not following the correct move out procedures. He states the Strata had posted signs on the elevator doors informing tenants not to jump or bounce around in the elevators. He states despite this notice the tenant and his girlfriend have been caught on camera in the elevator engaging in horseplay. One picture shows the tenant standing on the railings in the elevator. The landlord testifies that these actions caused the elevator to breakdown and entrapped the occupants. An out of hours service call was made to effect repairs. The landlord was fined the sum of \$1,492.04 for this infraction by the Strata.

The landlord has provided a worksheet from the elevator repair company which states this breakdown was caused by the passengers jumping in the car.

The landlord testifies the tenant or his guests have caused other less serious malfunctions of the elevator due to their actions while riding in the elevator cars. Another photograph taken of the inside of the car shows a roommate of the tenant leaning forward in the car.

This led to a stoppage and the passenger pulled the doors open. A fine of \$50.00 was levied on the landlord.

The landlord testifies another fine was levied against him of \$200.00 when the elevator broke down again and agrees he has not provided any evidence to show the tenants were in the elevator at that time.

The landlord testifies the tenants' roommates moved out and did not follow the move out procedures. They failed to book an elevator with the Strata Council and used all three elevators. The landlord states he has been fined another \$50.00 from the Strata Council because of this. The landlord testifies he has paid all these fines to the Strata Council and seeks to recover them from the tenants.

The tenant testifies he was not responsible for the elevator breakdowns. He states the elevators broke down all the time, once one dropped 14 floors. He states on one occasion a family member was riding in the elevator who was a diabetic when he got stuck in the elevator. He states this family member is in the picture provided by the landlord showing him stretching his back. He states there is no evidence to show he was jumping in the elevator. He states his brother had to open the elevator doors to rescue him as he needed to have his medication. The tenant testifies the elevators are very sensitive to movement as noted on the Strata notice that states even the slightest bounce will stop the elevator from moving.

The tenant states the landlord has not provided any additional evidence to support his claim dispute being given opportunity to do so at the last hearing. He states the landlord is simply relying on the same evidence.

The tenant does not dispute his roommates moved out without booking the elevator with the Strata Council. He states he did forget to inform them that they must do this. He states he spoke to the building manager and she told him not to worry about it but to not do it again. He states he then has a fine applied against him.

The landlord testifies that the tenant was given three key fobs at the start of the tenancy but one of these was not returned at the end of the tenancy. The landlord states the tenant lost this fob and he seeks to recover the sum of \$50.00 to replace it.

The tenant does not dispute this section of the landlords claim. He states he dropped the key fob down the elevator shaft and it could not be retrieved.

The landlord seeks an Order to keep the tenants security deposit and to recover his filing fee paid for this proceeding.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for cleaning the unit; Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this matter the tenant argues that he did clean the rental unit and paid for a professional cleaner also. The landlord states the tenant gave him a receipt showing he had paid \$150.00 for this cleaning however the landlord argues that this cleaning was not sufficient to ensure the rental unit was returned in a reasonably clean and sanitary condition. The landlord has also stated the incoming tenants were unhappy about the level of cleanliness

and had to clean the unit themselves. The landlord witness has also testified that they had to clean the windowsills and behind the stove when she moved into the unit.

Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenant failed to meet the "reasonable" standard of cleanliness required. I also find the landlord has not shown that he has suffered a financial loss in this matter as the new tenants have not been given a rent rebate or compensation for having to clean the unit when they moved in. Consequently, the landlords claim to recover \$200.00 for this work is dismissed.

With regard to the landlords claim for \$50.00 to paint a door; In this matter the tenant agrees he did replace the door and has testified he thought it was the same colour. However, the landlord has shown that this door had to be repainted. I therefore find the landlord has established his claim to recover the sum of **\$50.00** from the tenant to undertake this work.

With regard to the landlords claim to recover the sum of \$806.40 to repaint the unit; the landlord argues the tenants smoked in the unit which resulted in the unit having to be repainted. However, the landlord has testified that the unit was last repainted in 2006. The Residential Tenancy Policy Guidelines #1 notes that a landlord is responsible for painting the interior of the rental unit at reasonable intervals. I further find the landlord has provided insufficient evidence to meet the burden of proof that the tenant did smoke in the unit. Consequently this section of the landlords claim is also dismissed.

With regard to the landlords claim for damage to the flooring; in this matter the landlord has the burden of proof and must show (on a balance of probabilities) that the tenant caused damage to the flooring in the rental unit. 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 landlord has provided the invoice

showing this flooring was new at the start of the tenancy and despite not having conducted the move in and out report it is my decision that this damage to the flooring was caused by the actions or neglect of the tenant or his guests and as such the landlord is entitled to recover the sum of **\$200.00** for the repair work.

With regards to the landlords claim to recover Strata fines for the elevator break downs; The landlord was given leave to reapply at a previous hearing as he had insufficient evidence at that time to support his claim. However, the landlord has provided no new evidence to substantiate his claim at this hearing that the tenant is responsible for the elevator breakdowns. The Notice posted on the elevator by the Strata Council does state that even the slightest bounce will stop the elevators from moving. The landlord argues that these breakdowns occurred because of the actions of the tenants or his guests but the time stamped on the photographs show the tenant and his girlfriend engaging in horseplay after the elevator has stopped. The landlord has provided a work sheet from the elevator repair company that states the elevator breakdown was caused by passengers jumping in the car. However, there is nothing to support the landlords claim to show these tenants were jumping in the car prior to the elevator breaking down. The landlord has also provided insufficient evidence to show any of the tenants guests were jumping in the cars. Consequently, I cannot conclude from the landlords evidence that the tenant or his guests actions or neglect caused these malfunctions with the elevators and the landlords claim to recover these Strata fines is dismissed.

With regard to the landlords claim to recover the Strata fine applied due to the tenants roommates not following the correct move out procedures. In this matter the tenant agrees he did not inform his roommates that they must book an elevator seven days before vacating. Consequently, I uphold the landlords claim to recover this Strata fine from the tenant to the sum of **\$50.00**.

With regard to the landlords claim of **\$50.00** to replace a key fob; the tenant does not dispute that he lost a key fob and consequently the landlord is entitled to recover the replacement costs from the tenant.

With regard to the landlords claim to keep the security deposit; Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlords right to claim against the security deposit has been extinguished he is not entitled to file a claim to keep the security deposit and if the deposit has not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord his forwarding address in writing the landlord must pay double the security deposit to the tenant plus any accrued interest on the original amount.

Consequently, it is my decision the landlord received the tenants forwarding address on May 31, 2011 and therefore should have returned the deposit by June 15, 2011. As he failed to do so the tenant is entitled to recover double his deposit of **\$1,900.00** plus accrued interest on the original amount to the sum of **\$1.17**.

I find however, that sections 38(4)(b), 67 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep part of the tenants' security deposit to compensate him for the successful portions of his claim.

As the landlord has been partially successful with his claim I find he is entitled to recover half the filing fee to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*. The landlords monetary award is calculated as follows:

Painting the door	\$50.00
Strata fine for moving	\$50.00
Key Fob	\$50.00

Filing fee	\$25.00
Subtotal due to the landlord	\$375.00
Double the security deposit plus accrued interest	\$1,901.17
Balance of security deposit after landlords claim deducted.	\$1,526.17
Amount to be returned to the tenant	\$1,526.17

Conclusion

The tenants' application is dismissed but the issue of the security deposit has been dealt with under the landlords claim.

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to recover **\$375.00** from the tenant and this sum has been deducted from the security deposit. The remainder of the security deposit of \$1,526.17 must be returned to the tenant within five days of receiving this decision.

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: September 16, 2011.

Residential Tenancy Branch