

DECISION

Dispute Codes:

MNSD, MNDC FF

Introduction

The hearing was convened to deal with an application by each one of the two co-tenants seeking the return of double the tenant's security deposit.. The hearing was also convened to hear a cross- application by the landlord for a monetary order to retain the security deposit for damages and loss. Both parties appeared.

Issues to be Decided

- Whether the tenant is entitled to the return of double the security deposit paid.
- Whether the landlord is entitled to compensation under section 67 of the *Act*

Background and Evidence

The tenancy began on October 28, 2010 and ended May 28, 2011. The monthly rent was \$1,550.00 and a security deposit of \$775.00 was paid.

The landlord testified that when the tenants vacated they left significant damage to the unit. The landlord listed twenty areas that were damaged by the tenant and gave detailed testimony about each claim. The landlord supplied photographic evidence with respect to each claim. The claims included the following:

A hole in the wall of the garage, writing on walls in the garage, broken door hardware in the garage, a dented downspout gutter on the exterior of the house, garbage abandoned on the property, a worn pathway in the lawn, marks on the back of the house, scuff marks on the entry door and gouges in the door frame, unclean and damaged blinds, damaged laminate flooring, a broken closet rack, a broken outlet cover, a damaged light fixture, marked-up closet interior, dirty windows, damaged bathroom countertop , a hook in the door and frame, and staples or stickers on the wall.

The landlord acknowledged that, although together the parties had done a move-in walkthrough and a move-out walkthrough , no move-in or move-out condition inspection reports were ever completed. The landlord testified that on May 28, 2011 the parties went through the unit and some deficiencies were pointed out to the tenants. According to the landlord, at that time the tenant stated a willingness to do some touch-up painting.

The landlord testified that the tenants returned the keys before leaving. The landlord testified that a detailed list of the damages was documented and the parties met again on December 31, 2011, at which time the landlord showed the tenants the basis of his decision to retain the deposit.

The landlord is claiming a total of \$1,630.00 in damages. The landlord testified that the cleaning and some of the repairs were completed by the landlord himself at a rate of \$25.00 per hour plus materials. Other claims were based on estimates for work that has not yet been done.

The tenants disputed all of the claims and testified that the landlord had not provided sufficient proof of the work nor the amounts being claimed. The tenant stated that the landlord had denied them their right to address any claimed deficiencies at the end of the tenancy. The tenant testified that the landlord violated the Act with respect to his failure to conduct proper move-in and move-out condition inspection reports.

The tenant denied causing some of the damage during the tenancy. The tenant pointed out that the landlord likely caused the hole in the drywall while removing a washer and dryer. The tenant suggested that some of the damage had pre-existed their tenancy, such as the dent in the drain pipe, the broken garage door hardware, the gouge in the blinds and some garbage left behind the shed. The tenant also attributed some of the damage, including the worn pathway in the lawn, marks on the back of the house, black streaks on the entry door, chips out of the door frame, scratched flooring and the broken closet rack, to "normal wear and tear" or deficient installation. With respect to the scratched flooring, marred bathroom counter and the hook and eye left in the interior door and frame, the tenant stated that this damage could be easily repaired for much less than the amounts being claimed by the landlord.

The tenant stated that they had been given the impression during the first walk through on May 28, that they would receive the security deposit back in full. The tenant testified that, on May 28 and on May 31 during the final walk through they told the landlord that they were willing to clean or repair any problems that were pointed out, but the landlord would not agree to give them access to the unit to do so and instead decided to merely charge them arbitrary amounts for supposed deficiencies he suddenly found in their absence. .

Analysis – Tenant's Claim for Return of Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or make an application for dispute

resolution to claim against the security deposit. The Act also states that the landlord can retain a deposit if the tenant agrees in writing or if, after the end of the tenancy, there is an order that the landlord retain the amount.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days, the landlord may not make a claim against the deposit, and must pay back double the amount of the security deposit.

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, he lost his right to make a claim the security deposit for damage to the property. Although the landlord did file an application attempting to keep the deposit, this remedy was no longer available, having been extinguished.

The landlord was therefore required under the Act to return the security deposit to the tenant within 15 days of the later of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's forwarding address on June 6, 2011 but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and he failed to return the tenant's security deposit within 15 days of having received his forwarding address, section 38 of the Act requires that the landlord pay the tenant double the amount of the deposit.

I find that the tenant's security deposit was \$775.00 and the landlord failed to comply with the Act in retaining the funds being held in trust for the tenant. I find that the tenant is therefore entitled to compensation of double the deposit, amounting to \$1,550.00.

Analysis: Landlord's Monetary Claim

As discussed above, when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished.

However, irrespective of the issue of the security deposit, section 7 of the Act still provides that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer authority to determine the amount and to order payment.

With respect to a monetary claim for damages, it is important that the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I find that section 32 of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear. Section 37(2) of the Act states that, when a tenant vacates a rental unit, the unit must be left reasonably clean and undamaged, except for reasonable wear and tear.

In determining whether or not the tenant had complied with sections 32 and 37 of the Act, I find that this can best be established with a comparison of the unit's condition when the tenancy began, with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

In this instance, neither a move-in condition inspection report nor move-out condition inspection report were in evidence. I find the landlord's failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish the end-of-tenancy condition in relation to damage allegedly caused by the tenant. I find that the tenant's allegation that some of the damage preexisted, such as the dent in the drain pipe, the broken garage door hardware the gouge in the blinds and some garbage behind the shed could not be disproven by the landlord as there is no way to know what condition the parties had initially agreed the unit was in at the start of the tenancy.

With respect to some of the condition issues that could not be considered as normal wear and tear, I find that the tenant would likely have addressed the landlord's concerns by cleaning or repairing some of the problem areas, had the tenant been given the opportunity to do so. However, I accept the tenant's testimony that the

landlord appeared to be fairly satisfied with the condition of the unit during the first move-out inspection and that the tenants genuinely believed that their security deposit would be returned. I find that, after the landlord later informed the tenants that the landlord felt that the unit was not left in a reasonably clean and undamaged condition and conducted a second walk-through, the tenants should have then been permitted access to the unit to allow them to rectify some of the deficiencies.

I find the evidence submitted to support the landlord's expenditures does not sufficiently meet element 3 of the test for damages. I find that there were no invoices in evidence and the landlord's subjective accounting of his own work lacked sufficient detail. In addition, some of the expenditures being claimed relate to repairs that have not been done at all, and the landlord only furnished estimates without verification.

Given the above, I find that the landlord's monetary claims do not sufficiently meet all elements of the test for damages and must therefore be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings I hereby dismiss the landlord's application in its entirety. I order that the landlord return double the tenant's security deposit in the amount of \$1,500.00. Pursuant to section 38 of the Act, I hereby grant the tenant a monetary order in the amount of \$1,500.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's and the tenant's applications are dismissed without leave. Neither party is entitled to be reimbursed the filing costs.

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 22, 2011.

Residential Tenancy Branch