Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:51 a.m. in order to enable them to connect with this hearing. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. They testified that they handed the tenants a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on December 18, 2010. They testified that they sent the tenants copies of their dispute resolution hearing package by registered mail to the last address they possessed for the tenants on August 9, 2011. They provided Canada Post Tracking Numbers and a copy of the returned envelope for these unclaimed mailings. I am satisfied that the landlords served these documents in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' pet damage and security deposits in partial satisfaction of the monetary award requested? Are the landlords entitled to recover their filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, invoices and receipts, and the testimony of the landlords, not all details of the landlords' claim are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

This tenancy for a detached rental home commenced as a fixed term tenancy on April 15, 2009 that was scheduled to end on March 31, 2010. After the expiration of the first term of this tenancy, the tenancy continued as a month-to-month tenancy. Although the monthly rent established in the residential tenancy agreement entered into written evidence by the landlords was set at $2,300.00, the landlords said that they reduced the monthly rent to $2,100.00. The tenants were responsible for heat and hydro.

The landlords testified that the tenants paid a $1,050.00 pet damage deposit and a $1,050.00 security deposit on or about April 15, 2009. The landlords said that the tenants applied for dispute resolution to obtain a monetary award to obtain double their pet damage and security deposits. They said that a Dispute Resolution Officer (DRO) heard the tenants' application for dispute resolution and issued a decision and Order in July 2011. In the DRO's July 27, 2011 decision on Residential Tenancy Branch File # 123456, the DRO issued a monetary Order in the tenants' favour in the amount of $4,250.00. This amount included a return of double the tenants' pet damage and security deposits and a return of their filing fee for that application.

In the current application, the landlords applied for a monetary Order of $7,818.34. This amount included expenses they incurred to repair and restore the rental home to its previous state. They testified that there was a fire in the home during this tenancy and that the tenants did not properly repair the home following that fire. They also testified that the tenants operated a boating business and stored some of their boats on the property which ruined the landscaping in the yard for this home. They provided detailed invoices and receipts for expenses they incurred to clean, repair and restore this new home to its previous condition. They said that the home was completed in November 2008, shortly before this tenancy began.

The landlords said that no joint move-in condition inspection was conducted because the home was new. They testified that they did not arrange for a joint move-out condition inspection when the tenants were scheduled to vacate the rental unit by March 1, 2011. When the landlords were not satisfied with the condition of the premises when they accessed the home on March 1, 2011, they called the tenants to arrange a joint move-out inspection. They said that the male tenant attended with some of his friends on or about March 3 or 5, 2011. When it became apparent to the landlords that the male tenant was not interested in discussing the condition of the home in a respectful manner, the landlords discontinued their efforts to attempt to have the tenants clean and repair the rental home. The landlords testified that they did not complete a condition inspection report nor did they send any report to the tenants. They said that the tenants left without leaving their keys, requiring the landlords to rekey the locks and replace the garage door openers.

At the hearing, the landlords testified that they understood from information provided to them at the previous hearing that the evidence they supplied for the July 27, 2011 hearing, particularly their CD evidence, could be relied on during the consideration of their present application. They testified that they had not submitted another copy of this CD with their present application. They also failed to make any mention in their written evidence that they were intending to rely on evidence they supplied to oppose the tenants' previous application for dispute resolution.

A fundamental underpinning in providing a fair hearing in accordance with the rules of natural justice is the concept that the respondents must know the case against them and have an opportunity to respond to that case. In this situation, the respondents, the tenants, were given no indication by the landlords that they intended to rely on CD evidence that the landlords provided at the earlier hearing. Without knowing that the landlords intended to rely on evidence supplied at the previous hearing, the tenants provided no written evidence for this hearing.

As I explained at the hearing, the landlords' application is a new application for a monetary Order for damage arising out of this tenancy. I am only in a position to consider evidence that has been supplied by the parties in the context of the current application. Relying on evidence supplied at a previous hearing would not provide the respondents with a proper opportunity to address that evidence. In addition, I noted that anyone providing evidence contained on a CD also needed to provide their own equipment to the RTB whereby the evidence can be viewed or heard. For these reasons, I advised the landlords that I would not be considering the evidence supplied by either of the parties to the previous application by the tenants (i.e., RTB File 123456).

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I first note that I am in no position to consider the landlords' application to retain all or a portion of the tenants' pet damage and security deposits from the tenants. The tenants' deposits were considered in the July 27, 2011 hearing and addressed in the decision

issued by the DRO on that date. I have no jurisdiction to revisit the DRO's final and binding decision with respect to his Order requiring the landlords to return double these deposits to the tenants. I therefore have no jurisdiction to render a decision regarding the landlords' application to retain all or a portion of the tenants' pet damage and security deposits.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Although the landlords provided undisputed testimony that the rental home was newly constructed when this tenancy began, they conducted no joint move-in condition inspection, nor did they issued a move-in condition report.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

> ***36*** *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> > *(a) does not comply with section 35 (2) [2 opportunities for inspection],*
> >
> > *(b) having complied with section 35 (2), does not participate on either occasion, or*
> >
> > *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Similar provisions in the *Act* extinguish the rights of landlords to claim against deposits when procedures involving joint move-in condition inspections are not met.

Without any photographs of the condition of the rental home at the commencement of this tenancy or a joint move-in condition inspection report, it is difficult to determine with certainty whether the rental home was in fact completed when the tenancy began. A newly constructed home may or may not be totally completed when tenants occupy the

premises. Landscaping, exterior finish and many details of construction may not be completed at the time of occupancy.

The landlords testified that they did not make written arrangements to conduct a joint move-out condition inspection. Although they testified that they did meet with the male tenant to conduct an inspection on March 3 or March 5, 2011, they testified that they did not produce a report nor send a copy of a report to the tenants as required under the *Act*.

Since the landlords did not follow the requirements of the *Act* regarding the joint move-in and move-out condition inspections and inspection reports, I find that the landlords eligibility to claim against the pet damage and security deposits for damage arising out of the tenancy would have been limited, even if the landlords' application for a return of these deposits were properly before me.

Section 37(2) of the *Act* also requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The landlords entered undisputed, although somewhat limited evidence regarding the condition of the rental unit when this tenancy ended. Based on this limited oral, written and photographic evidence, I find on a balance of probabilities that the tenants did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean, and undamaged." I find it more likely than not that some cleaning and repairs were required by the landlords after the tenants vacated the rental home.

In considering the landlords' evidence, I recognize that the landlords do appear to have incurred costs to clean and repair the rental premises. I also find that the cleaning and repairs extended beyond what would be considered normal wear and tear for a rental home constructed in 2008.

I allow the landlords' claims for the following items as I find that their oral, written and limited photographic evidence, and their receipts and invoices, confirm their entitlement to reimbursement for some damage arising out of this tenancy.

Item	Amount
Cleaning	$363.44
Rental of Floor Polisher	56.67
Cleaning Supplies	31.18
Replacement of Garage Door Remotes	100.80
Recovery of One-Half of Repainting Costs ($2,128.00 x 25% = $532.00)	532.00
Landscaping	300.00
Recovery of One-Half of Filing Fee	50.00
Total Monetary Order	**$1,434.09**

I limit the landlords' entitlement to a monetary Order for repainting to one-quarter of the costs claimed. I do so because I am not satisfied by their evidence that the tenants are responsible for the damage alleged by the landlords. I reduce the landlords' entitlement to a monetary Order for landscaping from their claim of $2,389.75 to $300.00. Although the photographs submitted by the landlords and their oral and written evidence do attest to some damage caused by the tenants, the lack of specific photographs and the July 29, 2011 date of the landlords' invoice leads me to conclude that the landlords are only entitled to a partial reimbursement of their landscaping costs.

I also allow the landlords' application for recovery of one-half of their $100.00 filing fee from the tenants as the landlords have been partially successful in their application for dispute resolution.

I dismiss the landlords' applications for replacement of flowers and shrubs as the landlords have provided little evidence to demonstrate that the costs claimed resulted from the tenants' actions or replaced existing features of this rental property. I dismiss the landlords' claim for rekeying the locks of this rental home as these are costs that landlords assume at the end of a tenancy.

In reaching these determinations, I am sympathetic to the landlords' assertions that they were unaware that they needed to resubmit evidence that they apparently presented in the context of opposing the tenants' previous application for dispute resolution. However, as outlined in this decision, I find that it would be unfair if I were to consider evidence that was not submitted as part of the landlords' application for dispute resolution. If I were to do so, this would deny the respondents' right to a fair hearing of the landlords' application for a monetary Order against them. While it is unfortunate that the landlords incorrectly understood that their previous evidence submissions for the tenants' application would be admissible in this hearing, I can only consider the

evidence properly submitted by the parties for consideration of the landlords' application for dispute resolution.

Conclusion

I issue a monetary Order in the landlords' favour in the amount of $1,434.09, an amount which includes the landlords' recovery of damage arising out of this tenancy and one-half of their filing fee for this application. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I decline to hear the landlords' application to retain all or a portion of the tenants' pet damage and security deposits as I have no jurisdiction to consider this matter.

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: November 10, 2011

Residential Tenancy Branch