



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenants. The tenants applied for double recovery of their security deposit and further monetary compensation. The landlord applied for monetary compensation and an order to retain the security deposit in partial compensation of the monetary claim.

The hearing convened on two dates, October 25, 2011 and November 17, 2011. On both dates, the two tenants, the landlord, two agents for the landlord all participated in the teleconference hearing.

I have reviewed all 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

Are the tenants entitled to double recovery of their security deposit?
Are the tenants entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on April 1, 2010, with monthly rent of \$1250 payable in advance on the first day of each month. On March 12, 2010, the tenants paid the landlord a security deposit of \$625.

The tenancy agreement, signed by the landlord and the tenants, indicates that there is an attached two-page addendum. In their evidence, the landlord submitted two pages that they stated form the addendum; the first page is titled "Condition Inspection Report" and the second page, signed by the landlord and the tenant AT, is titled "Utilities Agreement." The first page describes the carpets as "near new."

The tenant AT moved out of the rental unit in early 2011. The other tenant, MM, moved out in April 2011. On April 10, 2011 MM gave the landlord a letter stating that he had moved most of his possessions out of the rental unit on April 3, 2011 and that he would remove his remaining possessions by April 15, 2011.

Tenants' Application

a. Double recovery of security deposit

The tenants have claimed double recovery of their security deposit on the basis that the landlord did not do a move-in inspection or complete a condition inspection report. The tenants first stated that they remembered seeing the two pages of the addendum, including the page titled "Condition Inspection Report" when they signed the lease, but the landlord never gave them a copy. Later in the hearing, the tenants stated that the document titled "Condition Inspection Report" was completely made up, and they had never seen it before.

The landlords' response was that the landlord and tenants did a move-in inspection, and the first page of the addendum is, as titled, the condition inspection report. The landlord gave the tenants a copy of the tenancy agreement and both pages of the addendum at the outset of the tenancy. The tenant MM requested a second copy of the condition inspection report and the landlord gave it to him in February 2011.

b. Monetary compensation

The tenants claimed further monetary compensation of \$3750 on the basis of stress and harassment by the landlord during the hearing and the dispute resolution process. The landlord is very irresponsible and disorganized, and the hearing was unnecessary. The landlord sent the tenants repeated emails, and the tenants wasted time and money attempting to resolve matters with the landlord. The tenants did not provide a specific breakdown of this portion of their claim.

The landlord's response was that the tenants did not provide and evidence to support this portion of their claim. Furthermore, the landlord was not harassing the tenants; rather, the landlord was trying in every which way to meet with the tenants to show them utilities bills, but the tenant was not there. The landlord was just asking for payment, and never abused the tenants. The landlord believes that this entire dispute was about replacing the carpets.

Landlord's Application

a. Unpaid rent

The landlord claimed \$1250 for unpaid rent for April 2011, on the basis that the tenant MM gave late notice and did not move everything out until April 15, 2011. In the hearing, the landlord acknowledged that they had received \$175 from the tenant toward April rent, and the landlord amended their claim to reduce the claim for unpaid rent to \$1075. The landlord attempted to re-rent the unit as quickly as possible, but every person who came in was unable to rent for any earlier than May 1, 2011. In the first or second week of April, the landlord and new tenants signed the tenancy agreement for the new tenancy to begin on May 1, 2011. The landlord's documentary evidence includes a letter from the new tenant, in which she states that she first viewed the rental unit in mid-April 2011.

The tenants' response was that the landlord started showing the unit for re-rental early in March 2011, so the tenants thought that the landlord had accepted the tenants' verbal notice. In the second week of March, the landlord found new renters for May 1, 2011 and signed the new tenancy agreement. The landlord did not take all reasonable steps to attempt to re-rent the unit for any part of April 2011.

b. Carpet replacement

The landlord claimed \$1267.66 for carpet replacement. The carpets were only two years old. During the tenancy, the tenants acknowledged that they spilled some bleach on the carpet and stained it. The tenants also had a dog, and at the end of the tenancy there was a strong odour of dog urine in the carpets. The odour could not be removed through cleaning, and the odour had soaked through into the underlay. The landlord therefore had to replace the carpet.

The tenants' response was that they admitted to the bleach stain, but they questioned the odour from the dog urine. There was a dog in the previous tenancy, which may be why there was an odour of urine in the underlay.

Analysis

Upon consideration of the evidence, I find as follows.

Tenants' Application

a. Double recovery of security deposit

The tenant AT contradicted herself in regard to the condition inspection report: she first stated that she recalled seeing that page when she signed the tenancy agreement, and then she later stated that there was no such document and the landlord completely fabricated it. I therefore find that the tenant lacked credibility on this point, and I prefer the landlord's testimony that they did provide the tenants a copy of this page at the outset of the tenancy. However, the page of the addendum entitled "Condition Inspection Report" lacks several components of a condition inspection report as required under section 20 of the Residential Tenancy Regulation. I therefore find that the landlord did not comply with the requirement to properly complete a condition inspection report.

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. In this case, the landlord applied to keep the pet and security deposits in partial compensation of monetary claims for damage to the property as well as for unpaid rent for April 2011. As the landlord's claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit. The tenant is therefore not entitled to double recovery of the deposit, and I dismiss that portion of the tenants' application.

b. Monetary compensation

The tenants did not provide a detailed breakdown or any supporting evidence in regard to their claim for further monetary compensation. I therefore dismiss this portion of the tenants' application.

Landlord's Application

a. Unpaid rent

The tenants did not provide written notice of their intention to vacate the rental unit. The only written notice from the tenants was provided on April 10, 2011, and it indicated that the tenant MM would not have all of his possessions out of the rental unit until April 15, 2011. I accept the evidence of the landlord that the new tenants viewed the unit in April and signed the tenancy agreement in mid-April. I accept the evidence of the landlord that they took all reasonable steps to re-rent the unit as soon as possible. The landlord is therefore entitled to the amount claimed of \$1075 for unpaid rent for April 2011.

b. Carpet replacement

I accept the evidence of the landlord as credible that the carpet was damaged by both the bleach stain and the dog urine, and that it required replacement. However, the landlord did not take into account depreciation of the carpet. The Residential Tenancy Policy Guidelines indicate that the average life of carpet is 10 years. The carpet in the rental unit was two years old, and therefore it would have depreciated 20 percent in value. I therefore reduce the landlord's claim by 20 percent, for a total of \$1014.13.

Filing Fees

As the tenants' application was not successful, they are not entitled to recovery of their filing fee for the cost of their application. As the landlord's application was mostly successful, they are entitled to recovery of their \$50 filing fee.

Conclusion

The tenants' application is dismissed.

The landlord is entitled to \$2139.13. I order that the landlord retain the security deposit of \$625 in partial compensation of the amount, and grant the landlord an order under section 67 for the balance of \$1514.13. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 29, 2011.

Residential Tenancy Branch