Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNDC, MNSD, FF, O
Tenants: MNSD, FF

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlords and by the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for double recovery of the security deposit and pet damage deposit and to recover the filing fee from the landlords for the cost of this application.

One of the tenants and two of the landlords attended the conference call hearing and provided affirmed testimony. The parties also provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other, and were given the opportunity to cross examine each other on the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the parties agreed that all rental arrears have been satisfied and the landlords withdraw the claim for unpaid rent or utilities?

Issue(s) to be Decided

The issues remaining to be decided are:

- Are the landlords entitled to a monetary order for damage to the unit, site or property?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
- Are the landlords entitled to an order permitting the landlord to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

- Are the tenants entitled to return of all or part of the pet damage deposit or security deposit, or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this fixed term tenancy began on March 1, 2010, expired on December 31, 2010 and then reverted to a month-to-month tenancy which ultimately ended on September 30, 2011. Rent in the amount of $1,350.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. The landlords testified that all rental payments have been made, and the landlord withdraws the application for a monetary order for unpaid rent or utilities. On February 17, 2010 the landlords collected a security deposit from the tenants in the amount of $675.00, as well as a pet damage deposit in the amount of $150.00 which was paid on March 1, 2010. No move-in or move-out condition inspection reports were completed and the landlords still hold both deposits in trust.

The tenant testified that on August 22, 2011 the tenants gave the landlords notice to end the tenancy in writing by placing a letter in the landlord's mail box. The landlords live very close to the rental unit. A copy of the letter was provided in advance of this hearing and it states that the tenants would be moving out of the rental unit as of September 15, 2011. Included with the letter was a cheque for half of the month's rent for September, 2011, and the letter gives the landlords permission to use the security deposit and pet damage deposit to compensate the landlords for any loss incurred due to the short notice. The landlords had already received post-dated cheques for rent, which included a post-dated cheque for the entire month of September, and the tenants asked the landlords in the letter to destroy all post-dated cheques. The letter also includes a forwarding address for the tenants.

The tenant further testified that one of the landlords called the tenant and the tenant advised that the post-dated cheque for September's rent would be returned N.S.F., but the landlords deposited that cheque in any event, and it was returned for insufficient funds. The tenants did not realize at the time that the tenants would be obligated to pay the whole month's rent, so the tenants gave the landlords 2 more cheques in the amount of $337.50 by placing them in the landlord's mailbox on September 22, 2011 once they had learned of their obligation to pay for the entire month. The cheques were dated September 27 and October 4, 2011. The tenants had some financial difficulties, and knowing the cheque dated October 4 would also be returned, the tenant called the landlord and left a message for the landlords to call the tenant, but the landlords did not return the call. To avoid another cheque being returned for insufficient funds, the tenant

put a stop-payment on the October 4 cheque. The landlords were given another cheque to replace it, but the landlords didn't cash it. On December 23, 2011 the tenants received a letter from the landlords and believed that the landlords didn't get the last cheque, so the tenant sent a money order to replace it.

The tenant also pointed out that the tenancy agreement has no clause permitting the landlords to charge a fee for returned cheques or late rent payments. A cheque given to the landlord in March, 2011 was also returned for insufficient funds but the tenants paid the landlord $40.00 for N.S.F. fees at that time.

The tenant also testified that the landlords refused to provide anything to the tenants regarding a claim for damages. The tenants received no explanation until December 22 or 23, 2011 with the landlord's evidence package. Further, the hardwood floor was old and already scratched, and the tenant stated that it's impossible to determine what scratches were already there or what may have been caused during this tenancy. The evidence of the landlord includes estimates which were provided after the landlords received the notice of hearing for the tenant's application. The tenant also testified that the landlords threatened to sue for damages, but refused to provide any information about damages. Further, the receipts provided have no address of where the services were rendered, and could very well have been for purchases for the landlord's own living accommodations and not for the rental unit.

The tenants provided photographs of the rental unit which the tenant testified were taken after the tenants had moved their belongings. The photographs show a clean rental unit.

The tenants claim double the amount of the pet damage deposit and security deposit, as well as recovery of the $50.00 filing fee for the cost of this application, for a total claim of $1,700.00.

Both of the landlords who attended the hearing provided affirmed testimony. The first landlord testified that it was an error on the part of the landlord to fail to complete a move-in condition inspection report. The parties did walk through the renal unit prior to the tenants moving in and the only damage to the floor was a stain in the master bedroom.

The tenants told the landlords in the August 22, 2011 letter that the landlords could keep the deposits for September's rent, and the landlords told the tenants they would agree if the unit looked okay on inspection. The parties had agreed to an inspection on

September 8, 2011 and the tenant told the landlords that if the tenants were not at home, it would be okay for the landlords to enter and complete the inspection. The landlords went to the rental unit and knocked but upon receiving no answer the landlords entered and surprised the tenants' daughter who was in the rental unit at the time. The daughter allowed the landlords to enter, and the landlords found the house dirty and smelled bad of cat urine. They noticed damage to the hardwood in the living room, hallway and master bedroom. Also, the vinyl decking on the balcony had 2 burn marks on it, which was only a few weeks old at the outset of this tenancy. Felt pen marks and stickers were on the walls, and the house was generally not clean. The landlord called the tenant that evening and advised that the half month of rent was not acceptable and told the tenant of the damages witnessed.

The landlord also testified to trying to re-rent the rental unit, but perspective tenants could not get past the smell in the house. At the end of September, the tenants did some cleaning and tried to repair the floor with a repair kit, but that discoloured the floor. The landlords also provided photographs in advance of the hearing to substantiate that testimony. The photographs show several scratches on the hardwood floor, 2 burn marks on the balcony vinyl, unclean or blocked drains in 2 sinks, unclean food catchers under the elements on the range, and an unclean drawer under the range. The landlord also testified that cupboards required cleaning, and the photographs provided by the tenants show a clean unit, but are taken from a distance and don't show the closer condition of the rental unit as it was left by the tenants.

The rental unit was re-rented on November 15, 2011. The landlords were unable to re-rent prior to that date due to the condition the rental unit was left in by the tenants. The landlords also claim $50.00 for cheques returned by the financial institution for insufficient funds.

The landlords claim $3,507.08 in damages, $523.53 for the cost of re-painting the rental unit and $50.00 for N.S.F. charges. The receipts and estimates provided by the landlords to prove the damage claim of $3,507.08 includes:

- $2,352.00 estimate for sanding and refinishing the hardwood floor in the living room, hallway and one bedroom;
- $275.00 plus HST estimate for repair to the vinyl deck, for a total of $308.00;
- $305.88 invoice for clearing drains;
- $205.74 for disposal of the basement carpet due to pet urine;
- $4.47 receipt for hardware, although no evidence has been provided to explain what the amount is for;

- $24.91 receipt for cleaners and hardware, but again no evidence has been provided to explain what the hardware is;
- $87.30 receipt for materials for replacing taps and a skink, although there is no evidence that replacement was required;
- $25.00 receipt for a diffuser, although it is not clear in the evidence what that item was for;
- $12.94 receipt for a duplex plastic plate, although there is no evidence of what that item was purchased for;
- $15.67 receipt for a 1 lb green blaster, but no evidence of that item or what it was purchased for;
- $14.88 for a can of Plumber;
- $130.66 receipt for items I cannot identify;
- $13.42 receipt for carpet shampoo; and
- $39.19 for “floor restorer.”

Analysis

Firstly, with respect to the tenants’ application for return of the security deposit, the *Residential Tenancy Act* states that if a landlord fails to cause a move-in and a move-out condition inspection report to be completed, the landlord’s right to claim against the deposits for damages is extinguished. The parties agree that no move-in or move-out condition inspection reports were completed. Therefore, I must find in this case that the landlords’ right to claim against those deposits is extinguished and the landlords’ application to keep all or part of those deposits is hereby dismissed.

Further, the *Act* states that if a landlord fails to return all of the deposits to the tenants or apply for dispute resolution claiming against those deposits within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing, the landlord is obligated to pay to the tenant double the amount of those deposits. In this case, I find that the tenancy ended on September 30, 2011 and the tenants provided a forwarding address in writing on August 22, 2011. The landlords’ application for dispute resolution which claims against the security deposit and pet damage deposit was filed on January 12, 2012, which is beyond the 15 days required under the *Act.* Also, having found that the landlord’s right to claim against the deposits is extinguished, the filing of the landlords’ application would not assist to advance the landlords’ claim to keep the deposits even if the landlords had filed for dispute resolution within 15 days of the date the tenancy ended. The *Act* specifically states that if a landlord fails to return the deposits within 15 days, the landlords may not make a claim against the security deposit or any pet damage deposit. Therefore, I find that the tenants are entitled to double recovery of those deposits, for a total of $1,650.00.

Although the landlords' right to apply against the deposits for damages is extinguished, the landlords' right to make a claim for damages is not extinguished. The landlords have provided testimony and evidence with respect to damages. In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Further, any award for damages must not place the landlords in a better financial position than the landlords would be in had the damage or loss not existed.

Besides providing evidence of the condition of the rental unit at the end of a tenancy in comparison to the condition at the outset of the tenancy, one of the main objectives of completing a move-out condition inspection report is to provide the tenants with an opportunity to correct any cleaning or damage repair to protect the security deposit. The tenant testified that the landlords refused to provide any information to the tenants about damages until they received the landlords' evidence package. Also, the tenant testified that there were scratches existing on the hardwood floor prior to the commencement of the tenancy, and it was not possible to determine which of the scratches were from the previous tenancy or what may have been caused during this tenancy. The onus in proving such damages lies with the landlords, and without the benefit of the move-in and move-out condition inspection reports, and considering the testimony of the tenant, I find that the landlords have failed to establish elements 2 and 4 of the test for damages with respect to scratches in the hardwood floor.

The tenant pointed out that with the exception of the Mr. Rooter receipt, the receipts for repairs provided by the landlords for this hearing contain no address for the work completed, and perhaps the work done was at the landlords' own residence, not the rental unit. I have reviewed the material provided by the parties, and I agree with the tenant that the receipts do not contain an address for the services provided, however, the landlords testified that the work was for the dispute address.

The landlords also testified that the rental unit was purchased by the landlords about 3 years prior to this tenancy and does not know the date that the rental unit was last painted. This tenancy began on March 1, 2010, and therefore, I calculate that the last time the rental unit was painted was approximately March, 2007. This tenancy ended on September 30, 2011. I also refer to Residential Tenancy Branch Policy Guideline 37

which provides a guide for the “Useful Life” of a thing commonly found in a rental unit, which includes painting the inside and outside of a rental unit, and states that the useful life of paint on the inside of a rental unit is 4 years, meaning that after 4 years, the landlords would likely be expected to repaint a rental unit in any event. I find that the life of the paint in the rental unit is beyond its life expectancy of 4 years, and therefore, the tenants cannot be held to repainting the rental unit. Further, if I were to award painting costs to the landlords, that award would put the landlords in a better financial position than they would be had the damage not occurred. Again, I have no evidence before me to establish damages caused by the tenants with respect to the walls.

The tenant did not dispute the landlord’s testimony that the vinyl on the decking was burned during the tenancy, and I find that the landlord has established a claim in the amount of $308.00.

With respect to the sink drains, I have reviewed the invoice from Mr. Rooter which states that the work performed was clearing the drain in the basement bathroom sink with a power auger and removed hair from the drain. The invoice is dated October 19, 2011. There is no evidence before me that the sink drains were cleaned prior to the start of this tenancy, and perhaps some of the hair and debris that blocked the sink was from a prior tenancy. In this regard, I find that the landlords have failed to establish element 2 in the test for damages.

With respect to the removal of carpet, the tenant did not dispute that the carpet needed to be removed, however, I have no evidence before me to establish the age of the carpet. The useful life of carpet is 10 years, and if the carpet that was torn out was in excess of 10 years, any award for removal of it as against the tenants would place the landlords in a better financial position than if no damage had existed during this tenancy. The landlords provided a copy of a receipt for carpet cleaner in the amount of $13.42, which I find the landlords are entitled to recover. A tenant is required to clean the carpet at the end of a tenancy if the tenant smoked in the rental unit, had pets in the rental unit that are not kept in a cage, or if the tenant resides in the rental unit for in excess of a year. In this case, I find that the tenants resided in the rental unit for in excess of one year and had a pet that was not kept in a cage, and therefore, the landlord’s claim for carpet cleaning is justified.

I have reviewed the photographs from the landlords that they testified were taken after the tenants had vacated the rental unit, and I accept that the tenants did not leave the rental unit reasonably clean, however in the evidence before me, I cannot determine which of the receipts provided by the landlords establish a claim.

With respect to the landlords' application for cheques returned by the financial institution for insufficient funds in the tenants' account, the regulations state that if a tenancy agreement specifies late fees or N.S.F. fees, the amount may not exceed $25.00 per cheque in addition to the fees charged to the landlords by the financial institution, however only if that tenancy agreement specifies such charges. In this case, the landlords provided evidence of having been charged $5.00 by the financial institution as a service fee, however there is no such clause in the tenancy agreement. Further, the landlords have already received $40.00 from the tenants for a previous N.S.F. cheque which they were not entitled to under the *Act* or the regulations, and I find that the landlords are not entitled to any further financial award for returned cheques.

The *Act* also permits me to set off any amounts that may be awarded to the parties, and I find it is prudent to do so in this case. Therefore, having found that the landlords owe the tenants $1,650.00 and the tenants owe the landlords $321.42 for the vinyl decking on the balcony and carpet cleaner, I hereby award to the tenants the difference of $1,328.58. Since both parties have been partially successful with the claims before me, I decline to order that either party recover the filing fee from the other.

Conclusion

For the reasons set out above, the landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed as withdrawn, without leave to reapply.

The landlords' application to keep all or part of the pet damage deposit or security deposit is hereby dismissed without leave to reapply.

The landlords' application for a monetary order for damages is hereby awarded at $321.42.

The tenants' application for recovery of double the amount of the pet damage deposit and security deposit is hereby awarded at $1,650.00.

I further order that the monetary awards for the parties be set off from one another, and I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* for the difference of $1,328.58. The tenants will have a monetary order in that amount.

This order is final and binding on the parties and may be enforced.

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: February 6, 2012.

Residential Tenancy Branch