Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MND

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site, or property, and to keep all or part of the pet and or security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords proven that the Tenants breached the *Residential Tenancy Act (the Act)*, regulation, or tenancy agreement?
2. If so, have the Landlords proven they suffered a loss as a result of that breach and are therefore entitled to monetary compensation pursuant to section 67 of the Act?

Background and Evidence

The Tenants affirmed they did not provide the Landlords with copies of their photographic evidence; however they did provide the Landlords with copies of all of their other documentary evidence.

The Tenants advised they have occupied this rental house since April 2003 and that they vacated the unit September 30, 2011 after being issued a 2 Month Notice to End Tenancy for Landlord's use of the property. Their rent was payable on the first of each month and by the end of their tenancy they were paying $1,223.00 per month. They

had paid $575.00 as the security deposit and $575.00 as the pet deposit on or before April 1, 2003. The previous owner did not complete a move in condition inspection report form and the current owner did not offer an opportunity to conduct the move out inspection and did not complete a condition inspection report form.

The Landlords affirmed they viewed and offered to purchase the house sometime towards the end of June or beginning of July 2011 and that title transferred into their name on July 18, 2011.

The Landlords confirmed they issued the Tenants a 2 Month Notice to End Tenancy for Landlord's use on July 27, 2011. They did not give notice of a move out inspection, did not issue a final notice of inspection, and did not complete a condition inspection report form at the end of the tenancy.

The Landlords referred to a document dated October 5, 2011 where both Tenants signed and agreed to the Landlord's withholding "some of the pet and security deposits" to pay for garbage removal, door replacement, and to clean the carpets.

The Landlords argued that the Tenants left a large amount of garbage to be thrown out, furniture left in the garage, boxes under the crawl space and garbage left along the side of the house. The carpets were soaking wet when the Tenants moved out and it was not until later that they determined the bedroom carpets were soaked with animal urine and had to be removed. One bedroom has had laminate flooring installed to replace the carpet and the other bedroom remains as just the sub floor.

The Landlords stated they have applied to keep only the $1,190.90 even though they still have more repairs to complete and more garbage to remove and had to treat the home because of a flea infestation. Their claim for damages is as follows:

- $535.77 – The cost of laminate flooring and underlay which was purchased October 7, 2011
- $380.00 – for the Landlord's brother to clean the carpets and remove the carpets and underlay. This person is not a professional carpet cleaner, the Landlord's paid to rent a carpet cleaner, and the carpet was not thrown into the garbage bin that was placed in the Landlord's driveway
- $431.54 for costs to have the garbage dumpster, a total of two invoices. The Landlords argued the Tenants left a large amount of items in the garage, included a bar, as the Tenants had this as a man cave, in additional to other garbage and abandoned possessions left in and on the property. The

Landlords did not provide evidence to support what was actually thrown into the dumpster or when.

- $560.00 to replace two doors and purchase hinges that were missing, change out light fixtures that had been changed by the Tenants.

The Tenants advised they provided their forwarding address to the Landlords on October 27, 2011 and point out that the Landlords did not make their application until November 21, 2011.

The Tenants confirmed they signed the October 5, 2011 agreement for the Landlords to retain some of their security and pet deposit to purchase two doors, clean the carpets, and remove garbage and debris they had left behind. However, the Tenants do not agree with the amounts being claimed.

The Tenant advised that the amount of debris they left behind would only fill about ½ of the garbage bin with the bar, stools, bench, signs, and dart boards that were left in the garage. The material that was left in the crawl space would fit inside the trunk of a car. He confirms they left garbage beside the house, in the amount of four or five bags, because it was not garbage day yet. So they do not feel they have to pay for the dumpsters that were billed to the Landlords' company.

The Tenants argued there was nothing wrong with the carpets. They did leave them wet because they were steam cleaning them on their last day and found out they had to be out of the house by 1:00 p.m. and not by the end of the day as they originally thought. They state these carpets only needed to be cleaned again and not removed. They questioned the Landlord's evidence which is just a type written invoice and there is no proof they actually paid for the carpets to be removed or paid to have them cleaned again.

The Tenants agreed to pay for doors but certainly not at the cost the Landlords were claiming. They provided evidence which supports the exact same doors could be purchased in town for $99.99 each and questioned why the Landlords had to purchase doors out of town at a much higher price.

The Tenants refute all other items being claimed. They advised the exterior light fixtures were changed a few years before their tenancy ended and the two bathroom doors had been removed around that same time.

Analysis

I have carefully considered the aforementioned, and the documentary evidence that included among other things, copies of invoices, written communication between the parties, a copy of the Tenants' written statement, advertisements for interior doors, and a copy of the Tenants' written forwarding address.

The Tenants confirmed that they did not provide the Landlords with copies of their photographs provided in evidence, which is in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure.* Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Landlords have not received copies of the Tenants' photos I find that they cannot be considered in my decision. I did however consider the Tenants' testimony pertaining to those photos.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party agrees to pay for items being claimed "or" the applicant has proven the respondent violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37.*

The Tenants confirmed they agreed to pay for the cost of debris removal, carpet cleaning, and the replacement cost of two interior doors. However, they dispute the value of the loss being claimed.

Part 3 Section 21 of the *Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, neither party provided a preponderance of evidence to prove the condition of the rental unit as of September 30, 2011, the end of the tenancy. Nor was there evidence, such as photographs, that would prove the amount of debris that was left behind by the Tenants, or that the carpets were stained with animal urine. Therefore, I find there to be insufficient evidence to prove the value of the loss suffered by the Landlords.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been insufficient evidence of a significant loss, but they are an affirmation that there has been an infraction of a legal right.

As per the aforementioned, I hereby find the Landlords are entitled to nominal damages of $65.00 for carpet cleaning, $110.00 for debris removal, and $145.00 for a depreciated (13/20th remaining in the 20 year life) amount to replace two interior doors, for a total award in the amount of **$320.00.**

The evidence supports the Landlords viewed this property sometime around the end of June 2011 and owned it by July 18, 2011. Therefore, it is reasonable to conclude that the Landlords would have seen the condition of the carpet, the bathrooms without doors, and the light fixtures that had been installed etc.; and they would have made their offer to purchase at a price based on that inspection. There is no evidence before me to prove the condition was anything other than the way it was at the time the Landlords purchased the property. Therefore I find there to be insufficient evidence to prove the remainder of the Landlords' claim and it is hereby dismissed.

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 Landlords in this case did not carry out a move-out inspection or complete condition inspection reports, they lost their right to claim the security deposit for damage to the property. I further find that I cannot accept the October 5, 2011 documents as the Tenants' written permission for the Landlords to retain a portion of the security and pet deposits as there are no dollar amounts being agreed to in this document.

The Landlords were therefore required to return the security and pet deposits to the Tenants within 15 days of the later of the two of the tenancy ending or having received the tenant's forwarding address in writing.

The evidence supports this tenancy ended September 30, 2011, after the Landlords served the Tenants a 2 Month Notice. The Tenants' forwarding address was provided to the Landlords October 27, 2011 and the Landlords filed their application for dispute resolution on November 21, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords' rights to claim the security and pet deposits were extinguished and were therefore required to return the Tenants' security and pet deposits in full no later than November 11, 2011.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits plus interest as follows:

Debris removal, carpet cleaning, Doors	$ 320.00
SUBTOTAL	**$ 320.00**
LESS: Double Security Deposit $575.00 x 2	- 1,150.00
Pet Deposit $575.00 x 2	-1,150.00
Interested owed on total deposits of $1,150.00	-40.73
Offset amount due to the TENANTS	**$2,020.73**

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **$2,020.73**. This Order is legally binding and must be served upon the Landlords.

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 28, 2012.

Residential Tenancy Branch