



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; 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 hearing was adjourned without any testimony being taken during the first day at the request of the tenants who stated that the landlord had delivered a large package of evidence by posting it to the door of the rental unit on February 22, 2012, and the tenants did not have time to respond. The adjournment was granted with an order that the parties were to serve all evidence upon the other party at least 5 days before the new hearing date.

The landlord and both tenants attended the conference call hearing, and the landlord and one of the tenants provided affirmed testimony. The landlord also called one witness, who gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided. Both parties provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other, however the landlord also provided an evidence package to the Residential Tenancy Branch but not to the tenants, which was not received by the Branch within the time provided under the *Residential Tenancy Act* and the Rules of Procedure. That evidence package was ruled as being disallowed and is not considered in this Decision. All other evidence of the parties and the testimony of the parties and the witness have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on November 1, 2009 and expired on October 31, 2011. A copy of the tenancy agreement was not provided for this hearing, however the landlord testified that rent in the amount of \$900.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On October 31, 2009 the landlord collected a security deposit from the tenants in the amount of \$450.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The parties agree that the tenants have not provided a forwarding address in writing to the landlord and no move-in condition inspection report was completed at the outset of the tenancy.

The landlord testified that on September 28, 2011 the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property which contained an effective date of vacancy of November 30, 2011.

The landlord testified that on November 10, 2011 a neighbour approached the landlord's daughter at work and advised that the tenants moved out of the rental unit on October 31, 2011.

On November 11, 2011 the landlord caused a notice to inspect the rental unit to be served by posting it to the door of the rental unit. The notice stated that the inspection was to take place on November 15, 2011 at 12:00 p.m. The landlord's parents went to the rental unit to conduct the inspection for the landlord on November 15, 2011 and found a rental unit that appeared to have been abandoned and vandalized. Broken, old furniture and garbage was left behind and the gas and electricity had been cut off. The landlord's parents took photographs of the rental unit which were provided for this hearing. The landlord stated that the landlord had to pay the gas and electricity accounts and had the locks to the rental unit changed on November 19, 2012, but did not provide an amount paid for the utilities.

The landlord also testified that the rental unit was inspected by the landlord on August 27, 2011. At that time it was noticed that the tenants had replaced the toilet after it flooded and damaged the linoleum. The landlord was not notified of the flood or the resulting damage. The landlord also testified that the tenants had left the rental unit in a state of damage and lack of cleanliness that was beyond normal wear and tear. Further, crayon or felt marker scribbles on the vinyl siding of the rental unit were left by the tenants, and the color could not be matched. A document entitled Damage and Clean Up Pricing was provided prior to the hearing, which sets out the landlord's claim. The landlord claims \$5,533.73 for vinyl siding, \$130.00 to replace the interior of a damaged door, \$29.79 to replace missing pieces of soffits, \$258.00 for repairing or

replacing countertops damaged near the kitchen sink; \$559.00 to replace the dishwasher that no longer functions and was dented and damaged by the tenants, \$129.99 to replace a broken light fixture, \$120.00 to replace the damaged drapes, \$69.99 to replace the missing kitchen blinds, \$38.20 to replace a missing screen from the kitchen window, \$39.907 to replace missing finials in the kitchen, \$784.98 to replace a broken window and missing screen in the living room, \$120.00 to replace damaged drapes in the living room, \$115.88 to replace the blinds in the living room, \$259.99 to replace the front panel missing from the air conditioner, \$59.97 to replace missing finials and a bent curtain rod in the living room, \$47.98 to replace torn wallpaper in the living room, \$8.07 to replace electrical receptacles in the living room, \$120.00 to replace damaged drapes in the office, \$103.98 to replace broken blinds in the office, \$62.99 to repair holes and repaint a door in the office, \$40.97 to replace a missing interior door knob in the office, \$668.32 to replace a broken window and missing screen in the office, \$59.97 to replace the curtain rods and finials missing from the office, \$8.07 to replace broken electrical receptacles in the office, \$209.58 to replace bi-fold closet doors missing from the utility room, \$29.99 to replace a missing roll blind in the utility room, \$104.99 to replace a damaged baseboard heater, \$2.69 to replace damaged electrical receptacles in the utility room, \$388.00 to replace a missing washing machine, \$170.00 to replace a missing dryer, \$5.38 to replace broken electrical receptacles in the hallway, \$210.58 to replace the sub flooring in the bathroom from water damage, \$79.99 to repair swollen wall paneling the bathroom due to water damage, \$1,136.28 to replace the bathroom cabinets which were damaged and 2 of the drawers were screwed shut, \$159.90 to replace a missing drain stopper in the bathtub, \$132.99 to replace a missing drain stopper in the bathroom sink, \$35.99 to replace a screen for the bathroom window which was left torn by the tenants, \$51.99 to replace the bathroom door that was damaged with crayon and marker, \$44.99 to replace the bathroom door knob, \$189.99 to replace a mirrored medicine cabinet in the bathroom which was left with graffiti and the lining torn, \$137.98 to replace missing bi-fold closet doors in the master bedroom, \$51.99 to replace a door which was carved up in the master bedroom, \$44.99 to replace the door knob on the master bedroom door which had been changed by the tenant and no key left for the door knob, \$33.20 to replace a missing screen in the master bedroom window, \$35.00 to replace missing hardware on built-in cupboards in the master bedroom, \$29.99 to replace a missing roll blind in the master bedroom, \$49.99 to replace a missing shade on the light fixture in the master bedroom, \$2.69 to replace electrical receptacles in the master bedroom, \$22.00 to replace a broken window in the second bedroom, \$33.20 to replace a missing screen in the second bedroom, \$58.99 to replace missing blinds in the second bedroom, \$1,200.00 to replace extensively stained carpeting in the entire rental unit, \$1,212.00 to replace linoleum in the kitchen, bathroom, utility room and laundry area which was water damaged, the finish was stripped and deep cuts remained, \$1,900.00 for 95 hours of cleaning, repairing and

painting the rental unit at \$20.00 per hour, \$184.32 for paint and supplies, \$300.00 for carpet cleaning, for a total of \$19, 447.73 including \$1,828.22 in taxes.

The landlord also provided a copy of a carpet cleaning receipt in the amount of \$300.00 but no other receipts or invoices for the items claimed.

The landlord also testified that an information officer from the Residential Tenancy Branch had advised that the landlord could assume that the rental unit had been abandoned if there was no evidence that the tenants were still residing in the rental unit and no clothing or food remained in the rental unit.

The landlord's witness testified that the witness was told that the tenants had moved out of the rental unit on October 31, 2011. The witness was in the rental unit on November 19, 2011 and found the carpets a mess, the top of the microwave had been ripped off, moulding food was found in the fridge, 3 windows were broken, screens were missing from all windows, blinds in the living room were broken, holes were left in all other drapes, electrical sockets broken and no bedding or clothing was left in the rental unit.

The tenant testified that the tenants moved out of the rental unit on November 5, 2011 but went back and forth between units after that date. The utilities were transferred as of November 15, 2011, and the rental unit was not abandoned.

The tenant further testified that the dishwasher did not work and the tenants used their own portable dishwasher. The tenant stated that the washer was in the rental unit the last time the tenants were in the rental unit, and the dryer was broken. The landlord had told the tenants not to use the air conditioner because it was broken when the tenants moved in.

The tenants had planned to return to the rental unit during the last weekend in November, 2011 to complete cleaning and moving, and phoned the landlord on November 22, 2011. On November 24 or 25, 2011 the tenants went to the rental unit and found that the locks had been changed. The tenants did not have a chance to clean the carpets. The tenant also testified that there is no disagreement that the door in the master bedroom was damaged, nor does the tenant deny broken windows or damaged drapes, but the tenant does not agree with the amounts claimed by the landlord.

The tenant also testified that a final inspection date was arranged for November 30, 2011 but the tenants called the landlord 2 or 3 times the week prior but the landlord did not return the tenants' calls. The tenants did not attend the rental unit on November 30, 2011.

Analysis

Firstly, it is clear in the evidence that the landlord did not cause a move-in condition inspection report to be completed in the presence of the tenants at the outset of the tenancy. The *Residential Tenancy Act* states that where a landlord fails to cause the report to be completed, the landlord's right to claim against the security deposit for damages is extinguished. Therefore, I must dismiss the landlord's application to keep the security deposit.

Further, 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 other 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.

In the circumstances, I find that the landlord attended the rental unit prior to the date the landlord had legal possession of the rental unit. The effective date of the notice to end tenancy was November 30, 2011 and the landlord changed the locks of the rental unit on November 19, 2011. The landlord testified that an Information Officer at the Residential Tenancy Branch advised that the landlord could assume that the rental unit had been abandoned, but I have no evidence before me of how that conversation took place; I don't know what the landlord asked the Information Officer or what the landlord told the Information Officer.

One of the key elements in completing a move-out condition inspection report is to provide the tenants with an opportunity to correct damage or cleaning required in order to leave a rental unit in a state that is reasonably clean and undamaged except for normal wear and tear and to protect the tenant's security deposit or pet damage deposit. Also, the regulations go into detail about how the landlord is expected to ensure that the move-in and move-out condition inspection reports are completed.

I further find that the landlord has failed to provide any evidence of the amounts claimed and has therefore failed to satisfy element 3 of the test for damages. The only evidence of the amounts claimed is a receipt in the amount of \$300.00 for carpet cleaning, however the landlord is also claiming replacement of the carpeting in the entire rental unit.

The tenant has not denied that carpets required cleaning, and does not deny the damaged door of the master bedroom, nor broken windows and damaged drapes, but the tenant does not agree with the amounts claimed by the landlord. In the absence of any proof of the amounts, I cannot be satisfied that the landlord is entitled to a monetary order for any specific amount from the tenants.

I did not hear any evidence from the parties on whether or not the landlord provided the tenants with the equivalent of one month's rent as required under the *Act* after serving the tenants with the 2 Month Notice to End Tenancy for Landlord's Use of Property, however, the *Act* also states that where such a notice to end tenancy is issued, the tenant may give the landlord 10 Days notice to vacate the rental unit earlier than the date contained in the notice, but the landlord's obligation to provide the tenants with the equivalent of one month's rent is not extinguished by the tenant's earlier departure. In the absence of such written notice from the tenants, the landlord must assume that the tenants have possession of the rental unit until the effective date of the notice to end tenancy issued by the landlord.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply. I order the landlord to return the security deposit to the tenants.

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: March 29, 2012.

Residential Tenancy Branch