Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing for dispute resolution under the Residential Tenancy Act (the "Act") dealt with the landlord's application, seeking a monetary order for damage to the rental unit and for recovery of the filing fee.

The landlord and tenant appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to make submissions to me.

I have reviewed all oral and written 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

Has the landlord established an entitlement to a monetary order for alleged damages to the rental unit and to recover the filing fee, pursuant to sections 67 and 72 of the Act?

Background and Evidence

This month to month tenancy started on May 1, 2008, ended on November 30, 2011, monthly rent at the end of the tenancy was $1175.00 and the tenants paid a security deposit of $575.00 on or about May 30, 2008, and a pet damage deposit of $400.00, on or about October 1, 2008.

The landlord's monetary claim is as follows:

Mould control spray	$12.31
Electrical service	$1167.07
New stove/oven unit	$688.79
Estimate for painting	$1960.00
Filing fee	$50.00
Total	**$4438.17**

The landlord's relevant evidence included a condition inspection report for both the move-in and move-out condition of the rental unit relating to the security deposit, copies

of photographs of depicting alleged mould problems, taken October 11, 2008, one copy of a photograph depicting alleged mould in the master bedroom, taken November 30, 2011, an invoice for electrical services, a receipt for mould control spray, dated October 15, 2010, an invoice for service for mould determination and clean, dated October 29, 2010, a copy of a receipt for a stove, undated copies of photos of stove rings and the inside of the oven, a copy of the estimate for painting and a letter from the landlord to the tenants, dated October 31, 2010.

The landlord did not submit a copy of the separate condition inspection report, the inspection for which occurred at the time the tenants acquired a pet. The tenant confirmed that there was a separate condition inspection report regarding the pet damage deposit and that he signed it.

The landlord confirmed that he retained the tenants' security deposit and pet damage deposit, due to the tenants' written agreement on the two condition inspection reports.

I note that despite having retained the tenants' security deposit and pet damage deposit, the landlord did not account for those deductions in his monetary claim.

Mould control spray-

In support of this claim, the landlord submitted that as to the spray mould control, this was purchased to be used as a back-up in the event mould returned.

Service for mould determination and clean-

The landlord stated that as a result of the tenants informing him that there was a leaking toilet, the landlord and a service technician attended the rental unit. The technician determined that the toilet was not leaking, but discovered mould in the bathroom, hallway and master bedroom and closet.

According to the landlord, the technician cleaned the mould.

Electrical service-

The landlord submitted that as a result of the mould, he hired an electrician to install baseboard heaters for the master bedroom and a bathroom fan/humidistat to keep the air dryer in the bathroom.

The landlord stated that he had never received mould complaints from prior tenants.

New stove/oven unit-

The landlord submitted that it was necessary to replace the oven/stove after this tenancy, due to the condition of the unit.

When questioned, the landlord could not state how old the stove/oven was and that he had no clue of the age, but did state that it was “older.” When questioned further, the landlord stated the name of the stove, which was a brand name which was no longer in business.

When questioned further, the landlord confirmed that he did not take pictures of the stove/oven at the start of the tenancy, but contended that it was in good working order.

When questioned further, the landlord stated that the stove/oven did work after the tenancy, but that its condition was not hygienic and that the new tenants would not want to use it.

Estimate for painting-

The landlord stated that this potential expense was necessary to paint over the mould areas. The landlord confirmed that he has not incurred this expense as yet and that new tenants have moved into the rental unit, as is.

In response the tenant stated as follows:

Mould control spray-

The tenant submitted that he never asked for the spray, only that the landlord gave him the bottle in the event it was needed.

Service for mould determination and clean-

The tenant denied calling the landlord about a leaky toilet; instead the tenant stated that he called the landlord as there was mould in the rental unit. According to the tenant, the attending technician scraped a small bit of paint and that the tenants cleaned the mould afterwards. The tenant submitted that this addressed the mould problem, to his knowledge, as there was no mould treatment by the landlord and the tenants had no further problem.

Electrical service-

The tenant stated that the installation of heating and a bathroom fan was the landlord’s decision and was not at his request.

New stove/oven-

The tenant stated that the oven/stove worked at the beginning of the tenancy and at the end of the tenancy and did not understand the need to replace the stove/oven unit.

When questioned, the tenant estimated that the stove was at least 35 years of age, as this type of stove was what his grandmother had at one time. The tenant stated the brand name of the oven.

I questioned the tenant about the circumstances surrounding his signature on the condition inspection reports, agreeing to allow the landlord to retain both deposits.

The tenant responded that he understood that by signing the agreement, this would resolve the issues at the end of the tenancy, specifically, as stated on the agreement, cleaning of the rental unit, replacement of stove pans and rings, washer needing attention; mould remediation and that he would not hear anything further from the landlord.

The tenant expressed surprise that the landlord filed the application seeking compensation for upgrades to the rental unit.

I note that on the condition inspection report dealing with the security deposit, at the end of the listing of items above, there was a notation which stated that either all the items or the mould remediation was to go to the arbitrator, the distinction of which I could not determine from a review of the report.

I also note that on the condition inspection report the word “stove” was circled; the tenant denied that it was circled in his presence and was not on his copy of the report.

As to the condition inspection report dealing with the pet damage deposit, the tenant stated he agreed the landlord could retain this amount as his cat did scratch the wallpaper.

At the conclusion of the tenant’s testimony, I questioned the landlord about the retention of the security deposit and pet damage deposit, with no credit being given to the tenants for any alleged damage. The landlord provided no explanation.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to

repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Mould control spray-

The landlord stated that he bought the spray in the event mould returned. I have no evidence before me that the mould returned or that it was necessary to use the spray. The purchase of the spray was a discretionary expense for the landlord, and that the expense was not due to a breach of the Act by the tenants.

As I can find no loss due to the actions of the tenants, I find the landlord has failed to meet the second step in his burden of proof and I therefore **dismiss** his claim for $12.31, without leave to reapply.

Service for mould determination and clean-

The parties disagreed on the reason the landlord attended the rental unit and who performed the work in cleaning the mould; however, I find the landlord submitted insufficient evidence that the tenants were responsible for the presence of mould in the first place. The copies of photos presented by the landlord showed some spots of mould for which the tenants were concerned. The landlord did not submit any photos after any work which may have been performed and I have no evidence before me that the tenants complained of mould again during the tenancy.

I additionally do not find that the tenants were responsible for mould remediation in the rental unit, absent proof that the tenants were negligent. The landlord agreed he could not produce any proof on negligence on the part of the tenants and I therefore **dismiss** his claim for $560.00, without leave to reapply.

Electrical service-

A claim for damages is designed to place a party in the same position as before an alleged breach, not a betterment of their position.

The landlord has presented evidence of discretionary upgrades, such as a bathroom fan and baseboard heating, performed on the rental unit; however, I find the submissions showed that the landlord desired to renovate and upgrade the rental unit at the expense of the tenants.

I do not find that the tenants are liable under the Residential Tenancy Act for the landlord’s upgrades.

I therefore find the landlord submitted insufficient evidence to prove a breach of the Act by the tenants. Due to the landlord's failure to meet the second step of his burden of proof, I **dismiss** his claim for $1167.07, without leave to reapply.

New stove/oven unit-

I find that the landlord failed to prove that the stove/oven unit required replacing. The evidence shows that the stove/oven was in working order at the beginning of the tenancy and was in working order at the end of the tenancy.

The tenant agreed that the stove pans and rings could be replaced at his expense; however rather than go this route the landlord chose to replace the entire unit.

I also find that the landlord failed to prove his statement that the new tenants wouldn't want to use the stove/oven.

I find that the landlord's replacing of the stove/oven unit to be a further upgrade to the rental unit, for which he asks that the tenants be responsible. I again find that the tenants are not responsible for upgrades to the rental unit.

I therefore find that the landlord submitted insufficient evidence of a breach of the Act or negligence by the tenants, and I **dismiss** his claim for $688.79, without leave to reapply.

Even had I not dismissed the landlord's claim due to insufficient evidence, I would still make the decision to dismiss this claim due to the age of the unit. Residential Tenancy Policy Guideline 40 provides that the useful life of a stove is 15 years. I find that on a balance of probabilities that the stove was at least fifteen years old and was fully depreciated.

Estimate for painting-

After nearly four months following the end of the tenancy, the landlord has not incurred an expense for this amount claimed. The work has not been performed or scheduled to be performed, according to the landlord.

I therefore find that the landlord submitted insufficient evidence to meet steps 2 and 3 of his burden of proof and I **dismiss** his claim for $1960.00, without leave to reapply.

As I have dismissed all elements of the landlord's monetary claim, I **dismiss** the landlord's application, **without leave to reapply**.

As I have found no merit to the landlord's application and have dismissed it, I do not find he is entitled to recovery of the filing fee.

As to the subject of the tenants' security deposit and pet damage deposit, the landlord has retained both deposits pursuant to the written authority of the tenants, as allowed under Section 38 of the Act. The retention of the deposits or any part thereof is for the purpose of paying a liability or obligation of the tenant.

Although I have determined that the landlord submitted insufficient evidence to prove damage by the tenants to the rental unit, I have not addressed the issue of the disposition of the security deposit and pet damage deposit as that matter was not before me by either party.

Conclusion

The landlord's application is dismissed, without leave to reapply.

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 26, 2012.

Residential Tenancy Branch