



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for a Monetary Order for damage to the unit and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for the return of the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of the upper level of a single detached home. Pursuant to a written agreement, the month to month tenancy started on November 1st, 2006. The rent was \$1100.00 per month and the tenants paid a security deposit of \$550.00 which, according to the Residential Tenancy Branch interest calculator, accrued \$17.11 in interest by the date the tenancy ended on February 1st, 2012. Condition inspection reports were not completed at the start or the end of the tenancy.

The landlord's agent summarized the claim by testifying that the tenants damaged the walls; that there were missing blinds and missing smoke detectors; that the tenants stained the carpet with paint; that the tenants painted the bedrooms with bright, odd colours; and that the tenants' repair was inadequate.

The landlord submitted a claim as follows:

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| - Wall repair and re-repair: | \$ 250.00 |
| - Curtain tracks & missing blinds in front room: | \$ 150.00 |
| - Missing blinds in dining room: | \$ 75.00 |
| - Bedroom 1 wall repair and paint: | \$ 150.00 |
| - Bedroom 2 wall repair and paint: | \$ 150.00 |
| - Bedroom 2 carpet cleaning: | \$ 75.00 |
| - 2 smoke detectors: | \$ 100.00 |
| - Back porch rail missing: | \$ 100.00 |
| - Bathroom hand towel rail: | \$ 50.00 |
| - Second bedroom door cleaning: | \$ 25.00 |
| - Sub-total: | \$1125.00 |
| - Less dryer repair by tenant: | \$ -36.47 |
| - Balance owed to landlord: | \$1088.00 |

In his documentary evidence, the landlord's agent provided 48 photographs in support of the claim for damages, which he said were taken either February 2nd or 3rd, 2012, showing in part; walls and nail holes patched with filler throughout the unit; the rooms painted by the tenants; scratches on the floor; paint stains; and debris in other areas of the property.

The landlord provided a copy of an inspection report from the previous tenant dated November 16, 2006, showing that the entire unit was unfit for move-in, that carpet cleaning and garbage removal were required, and the existence of dents and scratches on the laminate flooring.

The tenant testified that she had the home professionally cleaned on January 30th, 2012; she stated that neighbours witnessed other individuals at that time entering the home and suspects that the photographs were taken at that time, and not after the unit was cleaned. This statement was not argued by the landlord or her agent, and no further clarification concerning the time of the photographs was provided.

In his documentary evidence, the tenant provided 4 photographs showing the condition of the home at the end of the tenancy; 6 photographs of the outside grounds during the tenancy; and an audio CD dated January 31, 2012 during which the parties completed a move-out inspection. In that audio tape recording, the landlord states being satisfied with the condition of the house, and that she will return the security deposit within 24 hours. The tenant also submitted that several issues, such as missing blinds, were pre-existent to the start of the tenancy; that the landlord agreed to the painting of the walls any colour except black; that the smoke detectors were already missing; and that the landlord failed to address any problems with the house during the tenancy.

The landlord's agent stated that he did not receive the tenants' evidence package. The tenant testified that he hand delivered one package to the landlord's post office box on March 27, 2012, and sent another copy by registered mail on April 17, 2012 and provided a Canada Post tracking number. I accept that the tenants delivered the

evidence to the landlord in accordance with the Act and find the evidence admissible in these proceedings.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord's agent to prove his claim against the tenant.

Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports on the landlord. The landlord's claim was not supported by these reports, and the Act states that the landlord's right to claim against a security deposit is extinguished without them. The date when the landlord took photographs of the unit was not confirmed and therefore the photographic evidence is unconvincing; and a former move-out report indicating that damage was pre-existent. I find the landlord's documentary evidence of little value as it does not allow me to determine whether the unit was in any better condition when the tenants moved in than when they moved out, or to ascribe a monetary value for damages beyond reasonable wear and tear caused by these tenants. Further, I find that the landlord's agent's evidence and testimony contradict the landlord's statement in the audio recording that she was satisfied with the condition of the rental unit, and that she would return the security deposit within 24 hours.

The tenant's testimony was supported by documentary evidence and receipts showing that the home was maintained throughout the tenancy, and professionally cleaned at the end of the tenancy. The landlord provided insufficient evidence to prove, on a

balance of probabilities, that the tenants breached the Act and therefore the application must fail.

Concerning the security deposit; Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. At the hearing, the tenant testified that a forwarding address was not provided in writing, but that the landlord has knowledge of the tenant's forwarding address. I find that the tenant is entitled to the return of the security deposit as claimed.

Conclusion

The landlord's application is dismissed.

The tenant established a claim of \$567.11. Since the tenant was successful, I award the tenant recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the tenant a Monetary Order totalling \$617.11. This Order may be registered 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: April 24, 2012.

Residential Tenancy Branch