



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 repose to the landlord's application 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 tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has 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 the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on September 01, 2010 although the tenants were allowed to move into the unit a few days earlier. The tenancy started as a fixed term tenancy and reverted to a month to month tenancy at the end of the fixed

term. Rent for this unit was \$1,225.00 and was due on the first day of each month in advance. The tenants paid a security deposit of \$600.00 on August 27, 2010.

The landlord testifies that the tenants were given two opportunities to attend a move in inspection at the start of the tenancy. The landlord claims the tenants did not attend this inspection. The landlord has provided a copy of a move in inspection report in their documentary evidence which is unsigned by the tenants. The landlords testify that the tenants painted their unit in strong colours such as red and green. The landlord testifies that they had not given the tenants permission to paint the unit. The landlord MM testifies that shortly after the tenants moved into the unit the other landlord BA went to the tenants unit and saw the new painting of the walls. The landlord testifies that the tenants were made aware at that time that they must return the walls to the original colour at the end of the tenancy. The landlord testifies that the tenants failed to do this and the landlord had to have the walls repainted at a cost of \$550.00 plus tax. The landlord testifies there was also some damage to the walls where the tenants had attempted to fill holes but had used mismatched paint to cover the repairs. These repairs had to be done by the landlords' painter at a cost of \$72.00 plus tax. The landlord has submitted an invoice for all this work to a total sum of \$758.54.

The landlord testifies that the tenants had caused damage to some of the vanes in the vertical blinds. These had to be repaired at a cost of \$41.44 and the landlord seeks to recover this sum from the tenants.

The landlord testifies that the unit was re-rented for March 03, 2012 however as the repairs and painting had to be completed before the new tenant could move in the new tenant could not actually move into the unit until March 03, 2012. The landlord seeks to recover three days of rent from the tenants for the loss of income suffered as a result of the painting and repair work.

The tenants dispute the landlords' claims. The tenants testify that they were not given an opportunity to attend an inspection of the unit at the start of their tenancy and were

not provided with a copy of the inspection report or a copy of the move out inspection report which they did attend. The tenants testify that they notified both the landlord and the management of the building that the move in inspection had not been completed and have provided copies of e-mails showing at least three requests were made. The tenants testify that they did carry out an inspection of the unit themselves and documented this to show the deficiencies in the unit at the start of the tenancy. The tenants state that this report (provided in evidence) shows a poor paint job in the unit and missing blind vanes along with other damage.

The tenants testify that they did ask permission from the landlord to paint the walls again due to the poor paint job and it was MM that gave them permission. The tenants state at no time did either landlord inform the tenants verbally or in writing that they would have to return the walls to a neutral colour at the end of their tenancy.

The tenants testify that they did patch the holes in the walls and bought matching paint to retouch the walls. The tenants state they also left matching paint in the unit for the landlord and new tenants.

The tenants testify that there were some blind sections missing from the balcony doors when they moved into the unit. The tenants testify that a couple of the vanes did fall off the bedroom blinds when the tenants opened their window and the wind blew these vanes off. The tenants' state the blinds were very cheap and plastic and could not be repaired or replaced after they blew off.

The tenants dispute the landlords' claim that the new tenant could not move into the unit until March 03, 2012 and dispute the landlords claim for a loss of income for these three days. The tenants testify that the landlord has provided a copy of the new tenants move in condition inspection report which shows a possession date of February 28, 2012. The tenants submit that this shows the new tenant moved into the unit on that date.

The tenants also query the landlords move out condition inspection report. The tenants submit that this report is false as the landlord used a different report during the inspection which the tenant made notation on. The report provided in the landlords' evidence does not have those notations. The tenants' state the landlords did not provided them with a copy of that report until they received the landlords' evidence package.

The tenants cross exam the landlord and ask why the original move out inspection form used is different to the one used in the inspection. The landlord replies that it is the same form and the tenant did not make any notations on the form during the inspection.

Both parties presented other evidence that was not relevant to the landlords' application or my decision. I looked at the evidence that was relevant and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if a tenant has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a signed move in condition inspection report, or evidence to support the landlords claim that the tenants were given two opportunities for a move in inspection

other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The landlord argues that the tenants were given two opportunities for a move in inspection but failed to attend and the tenants argue that no opportunity was given by the landlord and they did their own inspection of the unit. When one Parties evidence is contradicted by the other then the burden of proof falls to the party making the claim. In this case the landlord would be required to provide corroborating evidence to meet the burden of proof that they gave the tenants two opportunities for a move in inspection. In the absence of any corroborating evidence I find the landlord has not met the burden of proof in this matter.

When the landlord fails to complete a move in inspection with the tenants at the start of a tenancy and fails to provide the tenants with an inspection report within 15 days of the end of the tenancy the landlord has extinguished their right to file an application to make a claim to keep the security deposit pursuant to s. 38(5) of the Act.

It is therefore my decision that the landlord has extinguished their right to file a claim against the security deposit and according to s. 38 (6)(b) of the Act the tenants are therefore entitled to recover double their security deposit to the sum of **\$1,200.00** from the landlords.

With regard to the landlords claim for painting of the rental unit; the tenants argue the landlords did give them verbal permission to paint the walls and did not inform the tenants that they had to return the walls to their original colour at the end of the tenancy. The landlords argue that this was not the case and they did not give the tenants permission and told the tenants after they had painted the walls that they must return the walls to their original colour after the tenancy ended. The landlord has the burden of proof in this matter to show beyond a reasonable doubt that the tenants were not given permission and were told they had to return the walls to their original colour. In the absence of any corroborating evidence to support the landlords claim I am unable to

make a decision in the landlords favour in this matter and this section of the landlords claim is dismissed.

With regard to the landlords claim to repair damage to the walls in the rental unit, The tenants argue that they did repair the damage at the end of the tenancy and purchased matching paint to cover the repair work. The landlord argues that the tenants did repair the damage but touched the repairs up with mismatched paint. The landlord has provided some photographic evidence showing the walls of the unit but I am unable to determine from these pictures any damage caused by the tenants which was not repaired. Consequently, I find the landlord has not met the burden of proof in this matter and this section of the landlords claim is also dismissed.

With regard to the landlords claim for replacement of some of the vanes in the vertical blinds. I have considered the landlords claim in this matter against the documentary evidence provided by the tenants. The tenants have provided documentary evidence in the form of a move in report they conducted at the start of their tenancy which shows some of the blinds were already damaged. The tenants agree that some blinds did get damaged in the bedroom during their tenancy but state this was not negligence on their part but was caused by the wind when they opened the windows because the blinds were of a cheap material.

I have reviewed the evidence and testimony before me and find the bedroom blinds were not damaged by the actions or neglect of the tenants and I deem this damage to be wear and tear on the blinds in this area. The other blinds the landlords claim were damaged are shown as having missing vanes on the tenants report and consequently the landlord cannot hold the tenants responsible for this damage. This section of the landlords claim is also dismissed.

With regard to the landlords claim for three days unpaid rent for March, 2012. As the landlord has provided insufficient evidence to support their claim that the tenants are responsible for the cost incurred in painting and repairs to the unit I cannot uphold the

landlords claim for a loss of rent for three days as they claim the new tenant could not move into the unit. Consequently, this section of the landlords claim is also dismissed.

As the landlord has been unsuccessful with their claim I find the landlords must bear the cost of filing their own application.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

The tenants will receive a Monetary Order for double their security deposit to the sum of **\$1,200.00** pursuant to s. 38(6)(b) of the *Act*. The order must be served on the Landlords and is enforceable through the Provincial Court 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: May 07, 2012.

Residential Tenancy Branch