Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This hearing was convened in response to cross-applications for dispute resolution by both parties

The landlord filed on July 31, 2012 pursuant to the Act for Orders as follows;

1. A monetary Order for damages ($600.00) – Section 67
2. An Order to retain the security deposit in partial satisfaction of the monetary claim - Section 38
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed on October16, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for the return of security deposit ($350.00) - Section 38
2. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given a full opportunity to provide relevant prior submissions of evidence, present relevant *testimony* and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Both parties acknowledged receiving the evidence of the other.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on March 10, 2008. At the outset of the tenancy the landlord collected a security deposit in the amount of $1100.00 and currently retains it. It is undisputed by the parties that there were start and end of tenancy inspections in accordance with the Act and Regulations and that at the end of the tenancy the parties

agreed that the landlord could keep $160.00 of the security deposit, if required, by the landlord – and in concert with the tenancy agreement requiring the tenant to professionally clean the carpets at the end of the tenancy. The parties also agree that the tenant provide their forwarding address, in writing, on July 16, 2012 on the condition inspection report.

The tenant seeks the return of their security deposit and compensation under Section 38(6) of the Act. They claim they had agreement for the landlord to keep $160.00 and return the rest. The parties agree that the landlord later notified the tenant that the landlord sought to keep more for what they determined was a deficiency in the gardening, and the tenant subsequently received supporting documents and a copy of the July 2012 condition inspection report, in the later part of September 2012.

The landlord claims that *after* the parties concluded and signed the condition inspection report in July 2012 (report is deemed accepted by the landlord upon signature of tenant) the landlord determined the tenant had failed to maintain the garden area according to the tenancy agreement. The landlord claims that their gardening contractor provided an estimate to "do the job", and the landlord provided their invoice in the amount of $550.00. The tenant claims that the contractor did more work than for what they perceive the tenant would have been responsible during the tenancy, and claim that the tenant, at most, would split the cost; but this offer was not accepted by the landlord. The tenant also claims at no time during the 4 year tenancy did the landlord advise the tenant that their maintenance of the garden area was in breach of the tenancy agreement – requiring a warning - in accordance with the tenancy agreement. The landlord seeks to recover their cost for gardening in the amount of $550.00.

Analysis

On preponderance of all the evidence submitted, I find as follows:

Tenant's claim

Section 36(2) of the Act states as follows;

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that Section 18 of the Regulations, in part, prescribes as follows;

Condition inspection report

18 (1) The landlord must give the tenant a copy of the signed condition inspection report

(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

(2) The landlord must use a service method described in section 88 of the Act *[service of documents]*

I find the landlord conducted a mutual end of tenancy inspection – and upon accepting the tenant's signature on the condition inspection report concluded their findings as identified by the particulars in the condition inspection report. I find it was available to the landlord to provide the tenant with a copy of the condition inspection report signed on July 16, 2012, within the required 15 days. I find the landlord did not, therefore their right to retain the security deposit and file a claim against it was extinguished and they became obligated to return any portion of the deposit to which the parties did not agree. I find the tenant provided their forwarding address for this purpose on July 16, 2012. Therefore even though the landlords filed a claim against the security deposit, they did not have the right to do so, and they should have returned the deposit within 15 days of the date they received a forwarding address in writing, and since they failed to do so they are now required to pay *double* the security deposit to the tenant, as per Section 38(6) of the Act.

The tenant paid a deposit of $1100.00 and therefore the landlord must pay $2200.00 to the tenant, as well as interest in the amount of $13.39, in the sum of $2213.39. From this sum I deduct the amount of $160.00 to which the parties agreed, and find the landlord owes the tenant $2053.39 and recovery of their filing fee of $50.00 in the sum entitlement of **$2083.39.**

Landlord's claim

Under the *Act*, the party claiming damage bears the burden of proof. **Section 7** of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The applicant must satisfy each component of the following test established by **Section 7** of the Act:

1. Proof the damage or the loss exists,

2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage or a loss, and that it stemmed directly from a violation or breach of the agreement or a contravention of the *Act* on the part of the other party, the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to show how they mitigated the purported damages and minimized the loss.

On preponderance of the evidence and on balance of probabilities I find the landlord may have discovered, what they determined was, a deficiency in the rental unit after the condition inspection was concluded and the tenant vacated; but, the landlord has not met the test for damages. I find that the landlord's tenancy agreement imposed an obligation on the tenant to keep the garden area in "good order and condition", but did not well-define or adequately state what would constitute a breach of this term in the agreement. In more simple terms, the landlord's agreement is ambiguous and vague as to what would be determined as damage – and as the agreement is an instrument of the landlord; any ambiguity must fall in the favour of the tenant. I find the landlord did not successfully prove that any damage or loss existed at the end of the tenancy, nor that any damage claimed would have been the result, *solely, of the actions or neglect of the tenant* in violation of the *Act* or agreement. Therefore, I must **dismiss** the landlord's claim for damages. As a result of all the above, **I dismiss** the landlord's claim in its entirety**,** without leave to reapply.

Conclusion

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

The tenant's claim is allowed in the sum of **$2083.39**, without leave to reapply.

I grant the tenant an Order under Section 67 of the Act for the sum of **$2083.39**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: October 31, 2012

Residential Tenancy Branch