



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant has applied for a monetary order for return of double the security deposit under section 38 of the Act and to recover the filing fee for the Application.

The Landlord has filed for orders for monetary compensation for alleged damage to the rental unit, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearings. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The Landlord had legal counsel at both hearings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

This matter commenced on September 27, 2012, with the hearing of the Tenant's Application and evidence. The hearing was adjourned to and completed on November 15, 2012, with the presentation of the Landlord's Application and evidence.

The Landlord entered into evidence a letter from her mother and sister regarding the condition of the rental unit, which was dated September 4, 2012. The Tenant testified she did not receive a copy of this letter in the Landlord's evidence. The Landlord had no proof she served the Tenant with this letter. Therefore, I do not admit the letter dated September 4, 2012, into evidence.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to a monetary order for damages, or to retain any portion of the security deposit?

Background and Evidence

This tenancy began in December of 2006, with rent set at \$1,230.00 per month. The Tenant paid a security deposit of \$615.00 to the Landlord on December 1, 2006.

The Landlord testified that in May of 2012, the Tenant gave her two months notice she was ending the tenancy.

Tenant's Claims

The Tenant vacated the rental unit on July 1, 2012. The Tenant testified she gave the Landlord the forwarding address to send the security deposit to on June 18, 2012, in an email. The Landlord replied to that email on June 25, 2012, by email, and the evidence indicates the parties had a pattern of exchanging correspondence in this manner. The Tenant provided copies of these emails in evidence.

The Tenant testified that there was no written incoming or outgoing condition inspection reports performed. The Landlord testified there was a verbal discussion at the start of the tenancy about the condition of the rental unit. The Landlord further testified she was in another country around the end of the tenancy and had her sister and mother walk through the rental unit on June 30, 2012. They provided a letter dated September 4, 2012, which is described above.

The Tenant claims for double the security deposit, the interest on the deposit and for the recovery of her filing fee, in the amount of \$1,298.85.

In reply to the Tenant's claims, during the hearing on September 27th the Landlord acknowledged receiving the email from the Tenant. In the hearing of November 15th the Landlord denied receipt of the Tenant's forwarding address.

Landlord's Claims

The Landlord claims the Tenant damaged the hardwood floors in the rental unit and did not clean the carpets or rental unit correctly at the end of the tenancy.

The Landlord testified it was her recollection that when the Tenant moved into the rental unit the hardwood floors were in very good condition. The Landlord testified that she had put carpets over the hardwood floors to protect them.

The Landlord testified she went back to the rental unit around July 13 or 14 of 2012, after the Tenant had vacated, and found there was garbage left on the porch of the rental unit and that the hardwood floors were badly scratched. The Landlord testified she made no attempt to return the security deposit to the Tenant as she wanted to see the condition of the floor and carpets before doing so.

The Landlord testified she found that the Tenant had removed the carpets over the hardwood floors and put these in the basement. The Landlord alleges the carpets were badly stained. The Landlord alleges the hardwood floors were badly scratched from the Tenant's children roller skating on them.

The Landlord testified that she had the floors polished on the top before the Tenant moved in, and she moved out of the rental unit before the Tenant moved in.

The Landlord provided in evidence an email from someone who estimates it will cost \$4,200.00 to sand and refinish the hardwood floors. The author of the email includes the following in the note, "THIS PROJECT IS A TOTAL RESAND DUE TO DAMAGE FROM THE RENTER" [Reproduced as written.]

The Landlord alleges the rental unit was left dirty and garbage had to be hauled away, however, the Landlord has submitted no evidence in support of these allegations.

In reply to the Landlord's claims the Tenant agreed she had not cleaned behind the fridge or the stove in the rental unit and would have agreed to pay the Landlord \$50.00 for this.

The Tenant denies all the other claims of the Landlord.

The Tenant testified that the carpet supplied by the Landlord did not cover all the hardwood floors in the rental unit. She recalled that the Landlord had a different renter in the rental unit before the Tenant had possession. The Tenant alleged the carpets

smelled bad and were in poor shape, so she took them up and put down her own larger carpets.

The Tenant testified that her son had rollerbladed across the floor, but there were rubber wheels on these.

The Tenant denied that the floor was freshly polished when she moved in and testified that the hardwood floor was just raw wood in areas at the start of the tenancy. She testified the floors were not in great condition when she moved in, and that there was little or no maintenance work done to the rental unit by the Landlord during the six year tenancy.

The Tenant testified she offered to put the carpets back over the floors when she was vacating, however, the person moving in did not want the carpets put down.

The Tenant agrees she went through the rental unit with the mother of the Landlord at the end of the tenancy, although she testified that the Landlord's sister was not there at that time. She testified that she informed the Landlord's mother that she had steam cleaned the carpets. During the course of this walk through it was pointed out to the Tenant that there were some items left in the cupboards, but otherwise no other problems were mentioned.

The Tenant testified that she made an arrangement with the Landlord's handyman to remove the garbage she left behind. In reply to this, the Landlord testified she knew nothing about the arrangement allegedly made between the Tenant and the handyman.

Analysis

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

Tenant's Claims

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Act has specific requirements for the content of these reports and these are to be done in writing with both parties present. A walk through with a verbal discussion, such as the Landlord did here, does not meet the requirements of the Act.

Therefore, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,298.85**, comprised of double the security deposit (2 x \$615.00), the interest of \$18.85 on the original amount paid and the \$50.00 fee for filing this Application, *subject to any set off of the Landlord's claim below.*

Landlord' Claims

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an Applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

In this instance, I find the Landlord has insufficient evidence to prove the condition of the hardwood floors at the start of the tenancy. By failing to perform an incoming condition inspection report there is no record of the parties agreeing to the condition of the floors at the outset of the tenancy.

Where one party provides a verbal version of events in one way, and the other party states an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I do not accept the evidence of the person who did the estimate for the cost of refinishing the floors that the damage was due to the “renter”. When the Landlord was questioned about this statement in the estimate, she testified that this person had not seen the floors before the start of the tenancy. The Landlord also testified she did not know why the person made this statement in the estimate.

I found that the Landlord’s recollections were in issue in this matter, due to the inconsistent evidence she provided. For example, she agreed in the first hearing she received the Tenant’s forwarding address via email, however, in the second hearing she denied receiving the forwarding address. The documentary evidence is clear that the Landlord responded to the email with the Tenant’s forwarding address.

For the above reasons, I dismiss the Landlord’s claim for repair of the hardwood floors.

As to the claim for carpet cleaning, section 37(2)(a) of the *Act* required the Tenant to return the rental unit to the Landlord reasonably clean. As “reasonably clean” is a broad definition of what is required, the Branch has provided Policy Guidelines to clarify the responsibilities of both landlords and tenants under the *Act*.

These Policy Guidelines are not only based on the Director’s interpretation of the *Act*, but also on standard practices and procedures which have been developed and adopted over the years in the normal course of the residential tenancy business.

Policy Guideline #1, sets out the following:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. **The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.**

[Emphasis added.]

Based on the Act and Policy Guideline 1, I find that the Tenant should have had the carpets professionally cleaned at the end of the tenancy as she had a pet dog in the rental unit. The Tenant has not provided any invoice indicating she professionally cleaned the carpets at the end of the tenancy. The Landlord has submitted in evidence a receipt for carpet cleaning in the amount of **\$159.60**, and I allow this amount.

Furthermore, based on the testimony of the Tenant that she failed to clean behind the stove and fridge, I allow the Landlord **\$50.00** for cleaning.

Therefore, I find the Landlord has established a total monetary claim in the amount of **\$229.60**, comprised of carpet cleaning, cleaning behind the appliances and \$20.00 toward the filing fee for the Application *subject to any set off of the Tenant's claim above*. I have reduced the amount awarded to the Landlord for the filing fee for the Application due to her limited success in this matter.

As each of the parties established a monetary claim here, I find it is appropriate to set off the awards against each other.

The Tenant is awarded **\$1,298.85**, and the Landlord is awarded **\$229.60**; therefore, I grant and issue the Tenant a monetary order for the difference in the amount of

\$1,069.25. This order must be served on the Landlord as soon as possible and may be enforced in the Provincial Court.

Conclusion

The Landlord breached the Act by failing to perform condition inspections in accordance with the Act and regulations, and by not returning or filing against the security deposit within the required time limits.

The Tenant breached the Act by failing to clean the carpets and behind two appliances.

After the set off of the monetary awards, the Landlord is ordered to pay the Tenant the balance due of **\$1,069.25**. The Tenant may enforce this order in the Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 28, 2012.

Residential Tenancy Branch