Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed their application on March 8, 2013 seeking a Monetary Order for damage to the unit site or property; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed their application on December 31, 2012, seeking a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for their application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be awarded a Monetary Order?
2. Should the Tenant be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: 40 photos of the rental unit taken September 1, 2012; a CD audio recording of a conversation between the Landlord and Tenant on August 31, 2012; e-mail communications between the parties; an Order of Possession for the rental unit dated July 26, 2012; Supreme Court summary sheet; receipts and quotes for repairs; and their written submission.

The Tenant submitted documentary evidence which included, among other things, copies of: the November 30, 2012 Dispute Decision and his tenancy agreement with addendum that was entered into with the previous owner.

At the outset of the hearing the Landlord confirmed receipt of the Tenant's application and evidence. The Tenant stated that he did not receive the Landlord's application and evidence until March 20, 2013, which he did not sign for. He stated that it was received too late for him to submit evidence in response and he either did not want to proceed today or wanted to have the Landlord's application dismissed for sending the package express post instead of registered mail.

The Landlord affirmed that he sent the evidence with his application and notice of hearing in the same envelope to the forwarding address provided by the Tenant which is also the address the Tenant listed on his application for dispute resolution. The package was sent via express post and required a signature. The Landlord provided the tracking information in his testimony (LT778462375CA) and stated that he had checked the Canada Post website and printed out the tracking information which indicated the package was mailed March 11, 2013 and signed received on March 12, 2013.

The Tenant attempted to argue that the package should not be considered served in time for this hearing because he did not sign for the package someone else did. I confirmed with the Tenant that the address the package was sent to was in fact the forwarding address he provided to the Landlord and also listed on his own application for dispute resolution. I explained that I was making a finding that the package was sent in accordance with section 89 of the *Act* and section 3 of the *Residential Tenancy Branch Rules of Procedure.* Accordingly, I would not be adjourning or delaying this proceeding and the Tenant would have an opportunity to present their evidence orally.

The following facts were not in dispute and were confirmed with both parties during this proceeding:

- The Tenant has occupied this property since approximately 1999 with his Witness G.M. who was an occupant. The Tenant's Agent, G.P. was also an occupant from approximately 2006 until the end of the tenancy.
- The Tenant signed a new tenancy agreement with the previous owner which began on February 1, 2010. Rent was payable on the first of each month in the amount of $1,525.00 and $319.78 was the security deposit as of February 1, 2010.
- The previous owners did not complete a move in condition inspection report form.
- The current owner purchased the property and transferred title on approximately September 30, 2011.
- Both parties confirmed the new owner (the Landlord) purchased the property after only one quick walk through.
- The Tenant and occupants were evicted after the Landlord was granted an Order of Possession.
- The Tenant and occupants vacated the property as of midnight on August 31, 2012.
- The Landlord had attempted to conduct a move out inspection on two occasions with the second inspection scheduled for 1:00 p.m. on August 31, 2012.
- The 1:00 p.m. August 31, 2012 inspection did not occur as the Tenant refused to finish moving until midnight that day.
- At 10:00 a.m. the Tenant sent the Landlord an e-mail, which the Landlord received later that afternoon, stating the Landlord could conduct the inspection after they vacated at midnight on August 31, 2012.
- The Landlord conducted the inspection on September 1, 2012, in the absence of the Tenant.
- The Tenant left his forwarding address on a piece of paper inside the rental unit which the Landlord found on September 1, 2012. The same address was provided in an e-mail received from the Tenant on September 4, 2012.
- The Tenant's rent was paid in full up to the end of August 2012.
- The Landlord has not returned the security deposit and does not possess the Tenant's permission or an Order authorizing her to keep it.

The Landlord submitted that the Tenant did not allow them to complete the move out inspection on August 31, 2012. A verbal altercation which took place at approximately 1:00 p.m. on that date, as recorded in the audio recording. The inspection was postponed until September 1, 2012; however, the Tenant did not attend.

The rental unit consisted of the main floor and addict of a house that was built more than 100 years ago with a separate self contained suite in the basement. The Landlord is seeking to recover cleaning and repair costs as the Tenant left the unit damaged and very dirty. As shown in their photographs: the tub and sink were broken; carpets were badly stained, not vacuumed or cleaned; the stove and fridge were so dirty they had to be replaced; the walls and windows were not cleaned; there were numerous holes, nails and screws left in every wall so several walls had to be replaced; there was a lot garbage left inside and around the unit; and there was lots of cleaning required everywhere.

The Landlord is also seeking to recover costs to replace the locks because there were three occupants and only one set of keys were returned. They stated they assumed there were more keys due to the number of occupants but they could not say for certain. The Landlord confirmed they had a total renovation of the house and their portion was $55,000.00 but they feel the Tenant should have to pay for all items that would not be considered normal wear and tear. Neither the Landlord nor her Agent knew the age of any item inside the rental unit. They stated they could only go by what the Tenant had told them regarding when carpet was replaced. They were both of the opinion the $8,791.57 claimed for cleaning, garbage removal and repairs, is the cost to repair the damage caused by the Tenant and occupants that would be considered above normal wear and tear.

In addition to the above, the Landlord is seeking $4,575.00 for three months of lost rent for the period of time it took to clean, repair and renovate the unit.

The Tenant and occupants do not accept responsibility for any of the Landlord’s claim. They note that the Landlord purchased the property after one very short walk through. They argued that the Landlord could not have seen the condition of the property because of the amount of possessions they had inside and the very quick walk through she completed.

The Tenant and occupants stated they rented the unit back in 1999 in an “as is” state and that everything inside that unit was old from the beginning. The rental unit was used as a boarding house prior to their tenancy and nothing was repaired before they took possession. The carpet was over 20 years old, the bath tub and sink were all porcelain and were very old as shown in the Landlord’s photographs. From the beginning of their tenancy the unit was in disrepair and had no upkeep and continued to deteriorate over their 13 year tenancy. The previous landlord did however replace the kitchen and hallway floor at some time but no one would agree to provide paint.

Upon review of the Landlord's photographs the Tenant and both occupants confirmed that the rental unit did look that way when then left on August 31, 2012. They confirmed they did not clean the fridge or stove and argued that was because the Landlord told them she was replacing them.

In response to the items being claimed the Tenant and occupants argued that the Landlord was simply trying to recover costs of their renovation. They noted that there were no cleaning bills provided and all the invoices related to major renovations. They argued that the house had plaster walls and one of the invoices is for installing drywall on all the walls. They questioned if some of the invoices were real or fake as they appear to be homemade and noted they were mostly for garbage removal which was probably to do with construction waste from the renovation.

The Tenant and occupant submitted that they should not have to pay for lost rent for a time when the Landlord was renovating. They noted they saw the unit advertised for rent and for sale. The listings stated the unit had been completely renovated with new appliances, new drywall walls, and new flooring. They stated that the photos in the advertisements showed how the bathroom was completely redone removing the tub and sink and was replaced with a shower, washer and dryer and new sink.

In closing, the Landlord confirmed she purchased this property through a real estate agent and it was listed on MLS. She confirmed that the damaged drywall was replaced in several rooms because the wall repair estimates were too high.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Tenant's application

I accept the undisputed evidence that the Landlord attempted to conduct the move out inspection on two separate dates. I further accept that given the circumstances with the

Supreme Court Orders the Tenant was not going to vacate the property until August 31, 2012 and the Landlord scheduled the inspection for 1:00 p.m. on August 31, 2012 in accordance with the Regulation. Notwithstanding the acrimonious relationship between the Tenant and Landlord, the Tenant confirmed he delayed the inspection until after midnight on August 31, 2012, and then chose not to attend the rental unit the next day for the inspection.

Section 36(1) of the Act stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and (b) the tenant has not participated on either occasion.

Based on the above, I find the Tenant extinguished his right to the security deposit by not attending the move out inspection. Accordingly, I dismiss his application for the return of double his security deposit.

As the Tenant has not been successful with his application, I find he must bear the burden of the cost to file his application.

Landlord's application

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 21 of the *Residential Tenancy Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary [emphasis added].

When a landlord purchases a rental property that is occupied by a tenant the tenancy goes with the land and continues under the same terms as were negotiated with the previous owner. The purchase or sale price of the property is negotiated based on the condition of the property at the time of the sale, as is the case in most real estate transactions. Accordingly, in the absence of a move in condition inspection report form from the previous owner, the new owner has the burden to prove the condition of the property at the time they purchased the property.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an

item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

Where one party provides a version of events in one way, and the other party provides 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.

In this case, the Landlord has the burden to prove the age of all fixtures inside the rental unit and to prove that damages occurred during the course of the tenancy. In the absence of evidence to prove the condition of the unit at the time the Landlord purchased the property, the only evidence before me was disputed verbal testimony. Accordingly, I find there to be insufficient evidence to prove the Tenant damaged the rental unit property, above normal wear and tear. Therefore, I dismiss the claim for damages and repairs, without leave to reapply.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The Tenant and both occupants confirmed that the photos provided by the Landlord accurately displayed the condition of the unit as of September 1, 2012. Based on the aforementioned I find the Tenant has breached section 37(2) of the Act by leaving the rental unit with some garbage and not cleaned, at the end of the tenancy.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Notwithstanding the Tenant's argument that the waste removal invoices were for renovation materials, I find the Landlord has met the burden of proof that some of the debris or garbage belonged to the Tenant and occupants and that cleaning was required. Accordingly, I award the Landlord **$300.00** for cleaning and waste removal. The balance of the Landlord's claim for damages, repairs, and key replacement is dismissed, without leave to reapply.

Given the extent of the renovations, in the presence of disputed verbal testimony, and the absence of proof the Landlord attempted to re-rent the unit in a timely fashion, I find there to be insufficient evidence to prove entitlement to three months loss of rent. Accordingly, this claim is dismissed, without leave to reapply.

The Landlord has had limited success with their application; therefore I award recovery partial recovery of the filing fee in the amount of **$20.00.**

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Cleaning & waste removal	$300.00
Filing Fee	20.00
SUBTOTAL	$320.00
LESS: Security Deposit $319.78 + Interest 0.00	319.78
Offset amount	**$ 0.22**

Conclusion

The Tenant's claim is HEREBY DISMISSED, without leave to reapply.

The Landlord has been awarded $320.00 which has been offset against the security deposit. As there is less than one dollar difference in the offset amounts I will not be granting a monetary order.

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 25, 2013

Residential Tenancy Branch