Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MND, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for damage or loss under the Act and to keep the security deposit in partial satisfaction of the claim.

The tenant's application is seeking the return of the tenant's security deposit and credit for heating fuel left in the oil tank of the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act?*

Is the tenant entitled to a refund of their security deposit and compensation for heating fuel left in the oil tank?

Background and Evidence

The tenancy began on March 2, 2012 and rent was $1,600.00 per month. A security deposit of $800.00 was collected by the landlord.

The landlord testified that the parties ended the tenancy on April 6, 2013 and during the move-out condition inspection the unit was found not to be properly cleaned and damaged.

Submitted into evidence were copies of both the move-in and move-out condition inspection reports. The move-in condition inspection report was signed by both parties. However, the move-out condition inspection report was only signed by the landlord.

The landlord acknowledged that the move-in condition inspection was not conducted on the first day of the tenancy, but occurred one month into the tenancy. The landlord pointed out that the unit was obviously clean and in good repair when the tenant took possession because the property had just been purchased it and it was in “show ready” condition. The landlord provided photos of the property from the realty listing.

The landlord testified that the move-out condition inspection took place on the final day of the tenancy in the morning, and new renters were scheduled to move in that afternoon. The landlord acknowledged that a portion of the move-out condition inspection was conducted without the tenant’s participation, and that the report was not signed by the tenant. The landlord explained that she wanted to allow the tenant a chance to fix the damage and clean the areas still dirty before finalizing the report. The landlord pointed out that some deficiencies were also noticed after the joint inspection was already done and were added to the claim.

The landlord testified that, in conducting the move-out condition inspection, the move-out condition inspection report form was not used to make notations during the inspection. However, the landlord stated that the landlord’s findings were later accurately summarized on the form, without need for further participation by the tenant.

According to the landlord, when they talked about the condition of the premises, the tenant acknowledged all of the main deficiencies pointed out to them and agreed to pay for the damage. The landlord stated that the completed move-out condition inspection report form was mailed to the tenant shortly after they vacated.

The landlord also submitted a list of monetary claims including the following:

- $90.00 to clean front stairs, deck and railing,
- $140.00 for closet doors for 2 hours labour at $60.00 an hour and $20.00 parts,
- $60.00 2 hours labour and transportation to buy cleaning product for stove top,
- $600.00 to replace damaged stove top,
- $10.00 labour for ½ hour to clean the oven,
- $50.00 for loss of value due to a white film inside the oven door window,
- $417.00 estimated cost for resurfacing wood floor in bedroom,
- $60.00 for labour to scrub driveway stained by oil,
- $2,000.00 tenant’s share of estimated $5,000.00 to resurface the driveway,

The landlord's total claim shown on the application is for $3,317.00 plus the $50.00 cost of the application.

The tenant disputed the landlord's testimony with respect to what transpired during the move-out condition inspection. The tenant argued that the rental unit was left in a reasonably clean condition when they vacated.

The tenant testified that they did attend the move out condition inspection with the landlord. However, there was only a verbal discussion about the landlord's opinion about the state of the premises and the landlord made no notations on a Move-Out inspection form, but merely pointed out her areas of concern. The tenant testified that, because new tenants were immediately moving into the unit on the same day as the inspection, they were deprived of the opportunity to address most of the condition issues pointed out by the landlord.

The tenant testified that they did not get a copy of the inspection form until later, and it had already been completed by the landlord alone. The tenant pointed out that they were not given any opportunity to sign the form, nor to indicate that their disagreement with the landlord's conclusions written on the form.

The tenant did acknowledge some damage to the unit. However, they felt that the alleged damage was mostly due to normal wear and tear, for which a tenant is not responsible under the Act. The tenant stated that they did not verbally agree to pay the specific amounts now being claimed by the landlord.

The tenants also testified that the rental unit was never turned over to them in a pristine state when they moved in, and required a substantial amount of cleaning. The tenant testified that they were forced to deal with dirty appliances, cabinets and fixtures. The tenant submitted photos of the condition of the rental unit upon moving in, including a bathtub and toilets that appeared to be in need of cleaning and a dirty oven. The tenant also supplied photos of renovation debris left on the premises by the landlord's contractors during their tenancy.

The tenant testified that, by the time the move-in condition inspection report was done, a month after they had been living in the unit, the tenants had already cleaned up the rental unit themselves. The tenant pointed out that the Move-in Inspection Report only reflected the satisfactory condition of the unit resulting from their clean-up efforts, and did not reflect the actual condition of the rental unit at the time they initially took possession of the unit. The tenant stated that the realty pictures of the home before it was sold, submitted into evidence by the landlord to verify the condition of the unit, did not clearly show the condition of the home and consisted of staged photos that were taken long before their move-in date.

In regard to the $90.00 being claimed by the landlord, to clean front stairs, deck and railing, the tenant stated that, while they felt it was excessive, they would agree to reimburse the landlord.

In regard to the landlord's claim of $140.00 to re-install the closet doors, the tenants felt this was an excessive charge. The tenant pointed out that the landlord did not provide a receipt for the labour. However, the tenants did agree to reimburse the landlord for the cost of the hardware in the amount of $20.00.

The tenants disagreed with the landlord's claim of $60.00 for cleaning the stove top. The tenant stated that they had already cleaned the cook-top and it merely reflected normal wear. The tenant did not agree with the landlord's claim for the estimated cost of a new cook-top, and pointed out that the current cook-top was fully functional. The tenant also disputed the landlord's claim for alleged damage to the oven and denied that they had ever misused this appliance. The tenant testified that they used the least harsh cleansers possible.

The landlord argued that the tenant failed to use the method of cleaning explained in the appliance instruction booklet given to them and refused to use the recommended cleaning products, opting instead to use vinegar and baking soda. The landlord stated that the tenant had obviously neglected to clean the oven properly by using the self-cleaning feature and this caused food to be baked on over an extended period and rendered impossible to remove. The landlord considers the stove to be ruined, or at the very least devalued by the tenants.

With respect to the landlord' claim for $417.00 estimated cost for resurfacing wood floor in bedroom, the tenant acknowledged that they used tape on the floor, but pointed out that the varnish of this vintage surface was flaking off in other areas of the surface. The tenant stated that they were willing to reimburse the landlord for half the cost of the resurfacing, but wanted proof of this expenditure, rather than an estimated amount.

The landlord acknowledged that the flooring was over 40 years old, but was under a carpet for a long period of time and had very little wear. The landlord testified that the wood was in excellent condition. The landlord pointed out that the tenant damaged the floor surface because of the tape, but, in addition, had caused further damage by trying to re-varnish the bare areas affected by the tape removal.

In regard to the $60.00 claim for the landlord's labour to scrub driveway stained by oil, the tenant pointed out that they had washed the driveway as confirmed by photos in evidence, showing the clean-up in process.

With respect to the landlord's claim for $2,000.00 estimated cost of resurfacing the driveway, the tenant testified that, although they may have contributed to the deposits of oil which had soaked into the surface, they were not solely responsible for all of the deposits. The tenant pointed out that that the driveway was decades old and during their tenancy, was often used by others, including the landlord's contractors.

In any case, the tenant has taken the position that the oil spots on the driveway do not affect its use and should be considered as normal wear and tear. The tenant challenged the landlord's stand that the driveway needed to be resurfaced at all because of the oil stains. The tenants stated that the driveway was an old well-used paved surface of the same vintage as the home, which was built in the 1970's.

The landlord argued that the tenants parked old cars in the driveway and were repeatedly warned that they should put down some cardboard or plywood to protect the surface of the driveway from the oil drippings. The landlord disputed the tenant's testimony that the driveway was previously stained and denied that her contractors had ever parked in the location sullied by oil spots. The landlord pointed out that oil will permanently pit the surface and this causes accelerated deterioration of the driveway. The landlord acknowledged that she had not yet paid the $5,000.00 to have the driveway resurfaced yet, as she is awaiting the outcome of this hearing

Analysis

Burden of Proof: The landlord has the burden of proof to prove that the claims for compensation are justified under the Act.

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

The burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to cleaning and repairs, I find that section 37 (2) of the Act states 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. (my emphasis)

I find that the tenant's role in causing damage can normally be established by comparing the condition *before* the tenancy began with the condition of the unit *after* the tenancy has ended. In other words, through the submission of properly completed and signed copies of the move-in and move-out condition inspection reports.

In this instance, I find that the tenant had participated in the move-in and signed the form agreeing to the condition as stated. However, the Inspection occurred a month after the tenant had already been living in the unit with all their possession in the unit.

I find that the move-in condition inspection did not accurately document the condition of the rental unit at the time the tenant moved in because of the lapse of one month. I accept the tenant's testimony and photos verifying that they had been forced to clean the unit upon moving in.

Moreover, section 14 of the Residential Tenancy Regulation provides that the landlord and tenant must complete a condition inspection when the rental unit is empty of the tenant's possessions.

In addition, I note that the move-out inspection was not conducted in accordance with the Act and Regulations. I find that the tenant was not afforded an opportunity to sign and make comments in the applicable spaces on the form, because the landlord did not utilize the prescribed form during the move-out inspect process.

I find that the landlord completed the form after-the-fact in the absence of the tenants, and therefore cannot rely on the content of the move out condition inspection report to verify the move-out condition. I find that the failure of the landlord to follow the correct protocol as required under the Act and Regulation, has affected the evidentiary weight of the move-in and move out condition inspection reports.

However, the landlord did provide photos and testimony with respect to the cleaning and repairs and the landlord's evidence will be duly considered. The tenant also agreed to some portions of the landlord's claim.

Stove

In regard to the landlord's claims for $60.00 to clean the stove top and the $10.00 to clean the oven, I accept the tenant's claim that they did make reasonable efforts to clean the stove surface and that they left the oven in a cleaner state than it was when they moved in. I find that the landlord is entitled to be compensated $10.00 for the cleaning as agreed upon by the tenant.

In regard to the $600.00 claim by the landlord to replace damaged stove top, I find that the stove is still fully functional and the landlord has not yet incurred the claimed expenses. Therefore the claim fails to meet element 3 of the test for damages. I find that this also applies to the landlord's claim for $50.00 in compensation for loss of esthetic value to the oven, due to the white film inside the oven door window. I find that this claim also failed element 2 of the test for damages as the landlord has not sufficiently proven that the tenant caused the condition. Given the above, I find that the landlord's claim for the replacement of the range-top and the loss of value to the oven door msut be dismissed.

Floors

In regard to the landlord's claim for reimbursement for the cost of resurfacing the hardwood floors in the bedroom, I find that a portion of the damage was attributable to the age of the finish on the floor which presumably dates back to the original age of the home, and I accept the tenants testimony that portions of the varnish were already in the process of flaking in areas that were not compromised by the tape.

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. Items and finishes have a limited useful life and this is recognized in Residential Tenancy Policy Guideline number 40 which lists the estimated useful life of interior and exterior finishes, items and fixtures.

I find on a balance of probabilities that the finish on the flooring had long exceeded its average useful life of 20 years. That being said, I find that the tenant's actions in attempting to "restore" the finish did cause additional damage that may impede the refinishing process. I also note that the tenant agreed to

reimburse the landlord in the amount of $208.00 once the landlord completes the restoration of the floor and provides proof to the tenant.

Accordingly, although I find that the landlord's claim for the cost of resurfacing the flooring must be dismissed, I do so with leave to reapply once the restoration is complete and the landlord is prepared to furnish paid invoices for the job. In the alternative, the parties are free to make their own mutually agreeable arrangements for the tenant's contribution after the cost for refinishing have genuinely been incurred by the landlord.

Driveway

With respect to the landlord's claim for the $60.00 in labour to scrub the driveway surface stained by oil, I find that the tenant's had already made a reasonable effort to cleanse the driveway surface, as evidenced in the photos they submitted. I accept that there was no pooling of oil present, merely residual stains. I also find that the landlord has not submitted adequate evidentiary proof to establish that the tenant was solely responsible for the stains.

In regard to the landlord's claim for $2,000.00 compensation for resurfacing the driveway, I find that the landlord has not sufficiently met the burden of proof to show that the oil spots had physically compromised the durability of the surface, nor that the oil spots affected the function of the driveway in any respect. In addition to the above, I find that the landlord has not incurred the costs being claimed. It is apparent that the driveway is currently being used by new renters without a n urgent need for it to be resurfaced. Given the above, I find that the landlord's claims for compensation of the $60.00 for cleaning and the $2,000.00 for resurfacing, failed to satisfy any elements of the test for damages and must therefore be dismissed.

Other Cleaning and Repairs

In regard to the landlord's $90.00 claim for cleaning the front stairs, deck and railing, I find that the tenant agreed to cover this cost and therefore the landlord is entitled to compensation of $90.00.

With respect to the $120.00 claimed for the labour in installing the closet doors, I find that the landlord has not provided adequate proof of this expenditure and therefore this portion of the claim must be dismissed as it fails element 3 of the test for damages. However, the tenant has taken responsibility for the $20.00 cost of replacing the hardware and I find that the landlord is therefore entitled to compensation of $20.00.

Tenant's Security Deposit

Section 38 of the Act deals with the rights and obligations of landlords and tenants in regard to the return of the security and pet damage deposits. Section 38(1) states that, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address the landlord must either repay the deposits, as provided under subsection 8, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that the tenancy was ended and the forwarding address was given to the landlord on April 6, 2013, as verified on the move out condition inspection report of the same date. I find that the landlord should either have returned the deposit, or made an application for dispute resolution, within the following 15 days, in compliance with the Act. I find that the 15-day deadline expired after April 26, 2013.

In this instance, I find that the landlord retained the deposit and failed to make an application until April 29, 2013, which was beyond the fifteen-day deadline.

Section 38(6) states: If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security or pet damage deposit, and

(b) ***must*** pay the tenant double the amount of the deposits.(My emphasis)

I find that section 38(6)(b) imposes a compulsory requirement that the landlord must pay double the amount of the deposit under these circumstances.

I find that the amount of the deposit as of the end of the tenancy was $800.00. I find that, because the fifteen days had expired without the landlord meeting their responsibility under section 38(1) of the Act, the tenant would therefore be entitled to double this amount. This would be $1,600.00.

Tenant's Fuel Rebate

I find that both parties agree that the tenant left $212.50 worth of heating oil in the oil tank and the tenant is entitled to reimbursement of this amount.

Based on the evidence I find that the landlord is entitled to total compensation of $120.00, comprised of $10.00 for cleaning the stove, $90.00 for cleaning the deck, stairs and railings and $20.00 for the closet door hardware.

The landlord's claim for the $417.00 cost of refinishing the floor, is dismissed with leave to reapply, once the expenditure has actually been incurred and can be verified. The remainder of the landlord's claims are dismissed without leave.

Based on the evidence, I find that the tenant is entitled to total compensation of $1,812.50, comprised of the $1,600.00 refund of the double security deposit and a credit of $212.50 for the fuel oil left in the tank.

In setting off the two amounts, I find that $1,692.50 remains in favour of the tenant. I hereby issue a monetary order to the tenant for in the amount of $1,692.50. The order must be served on the landlord and may be enforced through Small Claims Court if not paid.

I order that each party is responsible for their own costs of their application.

Conclusion

The parties are each successful in their respective applications. Tenant's monetary claim is granted in full and a portion of the landlord's monetary claims are granted, with some of the remainder dismissed with leave to reapply and others are dismissed without leave.

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: July 23, 2013

Residential Tenancy Branch