Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs to the rental unit and to keep the tenant's security and pet damage deposits in partial satisfaction of the claim. The landlord is also claiming compensation for the $1,000.00 per month rent reduction granted to the tenant for work to be performed, based on a verbal contract that the tenant failed to fulfill.

The application was also to deal with the tenant's claim for the return of the security deposit and pet damage deposit not refunded by the landlord, a rent abatement for restricted use of one bathroom and the yard for 2 months during the tenancy and compensation for loss of quiet enjoyment due to the landlord's entry into the rental unit without proper notice.

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.

Preliminary Matters

A portion of the landlord's claim related to repayment of a rent-reduction credit granted to the tenant for work performed. The landlord testified that the monthly rental rate of $2,700.00 was reduced to $1,700.00 based on an agreement between the landlord and the tenant, requiring that the tenant perform certain labour tasks on site, in exchange for the discounted rent.

I find that, if the tenant has been given responsibilities that go beyond what is basically required under section 32 of the Act, this would have to be founded on the tenancy agreement made between the parties.

Section 6 of the Act provides that an arbitrator can determine rights, obligations and prohibitions between a landlord and tenant that were established either under the Act or under a tenancy agreement and a party may make an application for dispute resolution if the landlord and tenant cannot resolve a tenancy dispute.

However, I find that the tenancy agreement submitted into evidence shows the rental rate as $1,700.00 per month and makes no mention of any additional obligations of this tenant beyond the Act nor does it make reference to a rent reduction of $1,000.00.

In any case, I find that, even if I fully accept that a work-for-rent arrangement was entered into by the parties, before or after the written tenancy agreement was signed, this would be, an ancillary contract that was not part of a tenancy agreement that pertains to responsibilities other than those required of a tenant under the Act.

Section 58 of the Act states that a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that:

> (i) are required or prohibited under this Act, or:
>
> **(ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities**. (my emphasis)

I find that the landlord's monetary claim to recoup an alleged rent reduction for labour duties, does not relate exclusively to the tenant's use, occupation of the unit.

I also find that the contractual obligations relating to the alleged reduction of $1,000.00 per month would likely pertain to some form of an employment contract, and as such is not governed by the Residential Tenancy Act.

Accordingly, I find that determining a claim for compensation or damages based on the values of work to be performed by the tenant, clearly falls beyond my authority under the Act. Therefore this portion of the landlord's claim will not be determined as if falls outside of the jurisdiction of the Act.

I further find that the tenancy agreement signed by the parties set the rental rate at $1,700.00 per month and this is not affected by any other contractual or employment arrangement that may have been entered into by the parties.

Issue(s) to be Decided

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

Is the tenant entitled to a refund of double the security deposit and a retroactive rent abatement in compensation for damages and loss?

Background

The tenancy began on June 15, 2012. Rent was $1,700.00. A security deposit of $850.00 and pet damage deposit of $850.00 is being held in trust for the tenant.

Landlord's Claim

The landlord testified that a move-in condition inspection was completed at the start of the tenancy and the tenant signed the report, a copy of which is in evidence. However, according to the tenant the move-in condition inspection was not done properly as the tenants did not have the opportunity to discuss the existing deficiencies in the unit.

The tenancy ended on June 15, 2013. The landlord testified that, when the tenant vacated, they left the rental unit in need of cleaning and repairs.

No copy of the move-out condition inspection report was submitted into evidence. However the landlord listed damage that was allegedly caused by the tenant. This included repairs to the laundry room door and frame, replacing flooring in the laundry room, replacing laminate in the entry, repairs to a broken closet door, repairing a broken garage door and the costs for professional carpet cleaning of stains on the rugs.

In evidence was a copy of a One Month Notice to End Tenancy for Cause terminating the tenancy as of June 15, 2013.

The reason given on the Notice for terminating the tenancy was, "*Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee*." The tenant did not dispute the Notice and vacated in accordance with the Notice.

The landlord is claiming $3,900.00 compensation for the estimated cost of repairs including the following:

- Repair linoleum in laundry room
- Replace laundry room door and frame

- Replace laminate flooring in entrance way
- Repair broken closet door in master bedroom
- Repair garage door
- Carpet cleaning

A copy of a written estimate dated July 20, 2013 was submitted into evidence showing that the repairs and replacement items described above would cost $3,900.00 "*plus GST*". The bill included a basic outline of repairs that reflected the landlord's list of damage, but did not include the respective charges for each task and no further details were included. The landlord acknowledged that they had not yet incurred these claimed expenditures.

The landlord pointed out that, although some of the finishes, such as the closet doors, are original to the home dating back to1983, none of the damage described above had pre-existed the tenancy, as shown by the move-in condition inspection report in evidence.

The tenant disputed the landlord's claims. According to the tenant, the landlord's motive in making the application is as a reprisal for the fact that the tenants had called the municipal inspectors about health and safety concerns with the property, which had not been rectified by the landlord.

The tenant pointed out that the linoleum in the laundry area was not secured properly and was lifting in spots, but did agree that some damage occurred.

The tenant stated that the closet door never functioned properly and these were vintage doors likely original to the home, build around 1983. The tenant's position is that the alleged damage represents normal wear and tear.

The tenant testified that the garage door also had condition issues with the track that predated their tenancy. The tenant argued that they should not be held responsible for the deficient condition of this door.

With respect to the landlord's claim for the cost of cleaning the carpets, the tenant stated that they cleaned the carpets at the end of the tenancy.

Tenant's Claim

The tenant was initially seeking compensation of $1,500.00 including a half a month rent abatement in the amount of $850.00 for the final two weeks of the tenancy due to the landlord's violation of the Act by entering the tenant's residence without Notice, a rent abatement for loss of use of one bathroom for two months and the return of the security deposit and pet damage deposit.

The tenant amended their application to increase the claim to $4,900.00 and also requested a refund of double the $850.00 security deposit and $850.00 pet damage deposit, on the basis that the landlord failed to refund the deposits within the 15-day deadline under the Act.

The tenant's amended application indicated that they feel that they deserve additional compensation for "*all the stress they have caused my family as well as the time and sleepless nights*."

The tenant feels they should be compensated for the fact that their health was allegedly compromised by problems with the septic system and other matters. The tenant stated that, after the landlord failed to rectify the problems, they then contacted the Health Authority and were told that the septic system was deficient and that the past repairs were not completed properly. The tenant testified that the yard and one bathroom were affected for two months and the tenant feels entitled to be compensated $350.00 for the loss of use of the bathroom and a further $350.00 for loss of use of the yard.

The landlord disputed the claim and stated that they attended to the septic problems without delay as soon as they were reported by the tenant. The landlord submitted copies of several invoices from a septic service company, some of which had the dates partially obscured on the photocopies. An invoice dated May 20, 2013, from an Engineering Service Contractor was in evidence and confirmed that an engineer did a "Site visit and Inspection and Issuing of Documents.

The landlord stated that the tenant was only without use of the toilet for two days and there were other bathroom facilities to use in the residence. In regard to the yard, the landlord stated that there was only a very limited portion of the yard compromised by the repairs to the septic field.

The landlord testified that there was never a genuine risk to the tenant's health.

Analysis

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these 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 person making the monetary claim for compensation 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.

Landlord's Claim

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).

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, only the move-in condition inspection report was completed and there is no move-out condition inspection report to use for comparison purposes. However, the landlord listed damage that was allegedly caused by the tenant and supplied photos and a receipt for repairs.

In regard to the landlord's claim that the carpets were left dirty by the tenants, I find that the move-in inspection report, signed by both parties does not indicate that there were any pre-existing stains on the carpeting when the tenants moved in. I find that the photographs submitted by the landlord show discoloration to the carpet at the end of the tenancy. Therefore, I find on a balance of probabilities that the tenant did not have the carpets professionally cleaned as the landlord has testified.

However, I also find that the landlord failed to offer sufficient evidentiary proof of the actual costs that they had incurred for cleaning the carpets. I find that the estimate from the contractor fails to provide sufficient detail with respect to the specific costs for the carpet cleaning and only gave a blanket amount for an amalgamated list of repairs and the cleaning. Therefore I find it impossible to make a determination on the individual claim for the carpets. Given the above, I find that this portion of the landlord's claim fails element 3 of the test for damages.

With respect to the landlord's claim for damage to the laundry room floor, closet door and other woodwork in the rental unit, I find that these interior finishes were of the same vintage of the home, which was built around 1983, approximately 30 years old.

I find that awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position he or she would be in, had the damage not occurred. Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value.

In order to estimate depreciation of the replaced item, reference was made to Residential Tenancy Policy Guideline 40 to accurately assess the normal useful life of a particular item or finish would be. For example, the average useful life of doors is set at 20 years. Accordingly, I find that using a pro-rated value of the affected items, no compensation is warranted.

In regard to the damage to the garage door, I find that the age of this door is not known. However, I note that the tenant testified that there was already damage to this door when they first took occupancy in the rental unit. I find that the move-in condition inspection report does not include any notation about the garage door at all. I find that the landlord was not able to supply evidentiary proof that the door was in good condition when the tenancy started. Therefore, I find that the landlord has not met the burden of proof to justify compensation from the tenant for repairs to the garage door.

With respect to the claim for the cost of repairing the laminate flooring in the entrance way, I find that the move-in inspection report shows no damage at the start of the tenancy, but the photos appear to indicate that there was some buckling at the end of the tenancy. However, the landlord's estimate does not isolate the flooring repair expenses and therefore I find that this claim also fails to meet element 3 of the test for damages, and must be dismissed.

Tenant's Claim

Security Deposit

In regard to the tenant's claim for double the security deposit I find that he Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit.

However, a landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by the tenant.

The landlord must either make the application or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the case before me, I find that the tenancy ended on June 15, 2013 and the landlord made an application seeking to keep the security deposit for damages on June 27, 2013. Accordingly, I find that the landlord is currently holding the tenant's $850.00 security deposit and $850.00 pet damage deposit in trust for the tenant, to be credited or refunded. However, I find that the landlord did make the application claiming the deposits within the 15-day deadline, and therefore the refund will not be doubled under section 38(6). I find that the amount of the security deposit and pet damage deposit being held in trust total $1,700.00.

Rent Abatement

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While 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, a tenant is not required to make repairs for reasonable wear and tear.

The tenant is seeking compensation for enduring deficiencies in the rental unit before and during the repair process. I find that the landlord did perform repairs in accordance with section 32 of the Act and was not in violation of the Act.

That being said, from the contractual perspective, I find that the tenants paid for and expected a residence where they had full use of all of the facilities and services included in their rent.

I find that, some of the services and facilities were interrupted, through no fault of either the tenant or the landlord. However this a adverse effect on the tenancy for a period of time. Although the parties differ in their testimony about the duration and level of impact the repairs had on the daily lives of these tenants, I find as a fact that there was some devaluation of this tenancy.

Aside from reducing the use of certain areas, I find that the tenants were caused inconvenience and stress due to their fear of health risks as well as ineffectual efforts to repair the problem, thereby prolonging the situation for the tenants.

Accordingly I find that the tenants are entitled to compensation in recognition of the above. For the interior effect of the septic issues I set the amount of compensation at 10% of the rent for two months totalling $320.00. I set the amount of compensation for the digging and the hole in the yard at 10% of the rent for two months, totalling $320.00. I find that the total rent abatement to which the tenants are entitled is $640.00.

Given the above, I find that the landlord is not entitled to monetary compensation for cleaning and repairs, and the landlord's application is therefore dismissed.

I find that the tenant is entitled to monetary compensation of $2,390.00, comprised of $850.00 refund of the security deposit, $850.00 refund of the pet damage deposit, $640.00 for loss of amenities and devalued tenancy and the $50.00 cost of the application.

I hereby issue a monetary order in favour of the tenant for $2,390.00. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The rest of the landlord's and the tenant's applications are dismissed without leave.

Conclusion

The tenant is partly successful in the application. The tenant is granted a rent abatement and a refund of the tenant's security and pet damage deposit.

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: September 23, 2013

Residential Tenancy Branch