



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Canzed Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

At the outset of the hearing the landlord's agent clarified that the landlord wished to change their claim amount to be equivalent to the amount of the security deposit only, based on their submissions of the condition and work required they only wish to retain the deposit.

The tenants submitted substantial documentation and evidence regarding events during the tenancy and assertions that the landlord had violated the *Residential Tenancy Act* (Act). The tenants seek compensation in the form of double the security deposit and the costs incurred responding to the landlord's claim. The tenants also seek to have the corporate landlord and the landlord's agent each be fined up to \$5,000.00.

While the disposition of the security deposit is a part of this decision because it formed a part of the landlord's Application and such consideration requires the assessment of whether or not the tenants are entitled to return of double the amount of the deposit I cannot consider the tenants' request for costs incurred in responding to this Application as the tenants have not submitted an Application for Dispute Resolution seeking any compensation.

Further, should the tenants seek administrative penalties or fines pursuant to Divisions 2.1 and 3 of the Act, I refer the tenants to submit such a request to an Information Officer through the administrative arm of the Residential Tenancy Branch

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for cleaning the rental unit; for smoking; for all or part of the

security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the Act.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on May 12, 2007 a tenancy that began on June 1, 2007 as a month to month tenancy for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. The date of signatures on the agreement is listed as May 12, 2009 but the parties agree the tenancy began in 2007 and the agreement was signed at that time.

The parties agree the tenancy ended after the tenants gave their notice to end the tenancy and they vacated the unit on May 31, 2013.

The landlord's agent submits that the previous agent was her deceased husband. The agent submits that she could not find a move in condition inspection report for this tenancy but that she had found all of the other reports.

She also testified that she did not complete a move out condition inspection with the tenants because they had people there at the time and she did not want to get into a "hornet's nest". The tenants submit that the only person there at the time was the neighbour who both parties have provided separate letters from.

The landlord submits that when she entered the rental unit she was dismayed at the work that was required. She submits that the tenants smoked in the rental unit and as such everything needed painting, including the walls and ceilings and that the windows; patio doors; and their respective tracks and sills required cleaning.

The landlord claims \$400.00 for additional costs of painting due to smoking over the \$400.00 cost to paint the unit; \$125.00 for cleaning of the windows and patio doors and the cleaning of the tracks and sills. The landlord testified the unit was last painted prior to the start of this tenancy and that there were no restrictions regarding smoking in the rental unit in the tenancy agreement.

The landlord also claims that the tenants damaged the draperies in the rental unit and that it may result, at least in part, because of the smoking; washing the tenant's undertook; and/or the tenants' cat. The landlord testified the draperies were likely in the unit at least by February 2006 and potentially as early as December 2004.

The tenants testified that they followed the instructions provided by the landlord for cleaning the drapes. The tenants submitted a copy of the instructions that were handwritten on a document entitled "Information for Vacating Tenants". The document included other requirements and information to the tenants, including how much the landlord would charge for various activities that may have been required if the tenant failed to complete them prior to the end of the tenancy.

The tenants submit that they had cleaned the rental unit thoroughly including the windows. I note that the landlord has provided photographic evidence of the windows and tracks showing dirty tracks and trying to illustrate dirty windows. The tenants did provide several photographs in their evidence but none were of the tracks or windows without the draperies closed.

Analysis

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The Section goes on to state that it is the landlord's obligation to set the time of the inspection; to complete a Condition Inspection Report; and to provide a copy of that Report to the tenant.

Section 24 stipulates that the landlord extinguishes their right to claim against a security deposit if the landlord does not provide the tenant with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenant.

Section 35 of the *Act* stipulates that the landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The Section goes on to say the landlord must offer the tenant at least 2 opportunities to complete the inspection.

Section 36 states that, 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 the residential property is extinguished if the landlord does not provide 2 opportunities for an inspection; does not participate in the inspection; or having made an inspection does not complete a condition inspection report.

I find, based on the landlord's agent's testimony, that the landlord has failed to complete a move in and move out condition inspection or their respective Reports for this tenancy and as such the landlord has extinguished their right to claim against the deposit for damage to the rental unit.

I also find that because the landlord has no record of the condition at the start of the tenancy they cannot establish the condition of the unit at the start of the tenancy. As a result, the landlord cannot provide any evidence that could substantiate that any damage to the walls; ceilings; or draperies was a result of this tenancy.

Further, as the last painting of the unit was conducted over 6 years ago, from the landlord's testimony, and the useful life of an interior paint job is 4 years, according to Residential Tenancy Policy Guideline #40, I find that even if the tenants were responsible for painting the unit the amount would be discounted by 100% based on this useful life. The same applies to the draperies in that the landlord has confirmed the

draperies are at least 9 years old and the useful life of draperies is 10 years any amount would be discounted by at least 90%.

As to the landlord's claim for cleaning, specifically of the patio doors; windows; and tracks the landlord has provided photographic evidence of the windows; patio doors; and tracks. The tenants dispute that the windows; patio doors or tracks required cleaning.

As the landlord deliberately did not attend the move out condition inspection I find the photographic evidence that *may* have been taken at the end of the tenancy in the unit is of little value to establish any facts regarding the condition left by the tenants. Therefore, I find the landlord has failed to provide sufficient evidence to establish the tenants are responsible for the costs of this cleaning.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Despite the tenants' submission that because the landlord had extinguished their right to claim against the deposit for damage to the rental unit they are entitled to double the amount of the security deposit, I find no such entitlement exists.

As per Section 38(1) the landlord **must** either return the deposit or make an application for dispute resolution claiming against the security deposit. Section 38(6) states that if the landlord does not comply with Section 38(1) **then** the landlord must pay the tenant double the amount of the security deposit.

Section 38(2) stipulates that Section 38(1) does not apply if the tenant has extinguished their right to claim the deposit under Sections 24 or 36. Section 38(3) addresses the landlord's right to retain any amounts previously awarded by an arbitrator.

Section 38(4) stipulates that a landlord may retain from a deposit either any amounts agreed upon by the tenant or after the end of the tenancy are ordered by an arbitrator. Section 38(5) states that if the landlord has extinguished their right to claim against the deposit for damage they cannot retain any amount agreed upon by the tenant. There is no reference in 38(5) to a similar condition to orders may by an arbitrator.

Section 38(6) is not contingent, in any way, on Sections 24 or 36 and the landlord's extinguishment of their right to claim against the deposits. There is nothing in Section 38 that requires the landlord to double the amount of the deposit if they have complied with Section 38(1) regardless of the extinguishment of their right to claim against the deposit.

Therefore, and based on the testimony of the parties, I find the tenancy ended on May 31, 2013 and that the landlord had until May 15, 2013 to either return the deposit in full or file an Application for Dispute Resolution seeking to retain the deposit. I find that the landlord applied on June 5, 2013, well within the 15 day requirement. I therefore find the landlord has complied with Section 38(1) and the tenants are not entitled to double the amount of the security deposit.

Conclusion

As per the above, I dismiss the landlord's claim in its entirety and order the landlord return the security deposit in full to the tenants.

I grant a monetary order to the tenants in the amount of **\$450.00**. This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 10, 2013

Residential Tenancy Branch

