Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MNDC, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for costs incurred due to an insurance claim they made during the tenancy as well as repairs and cleaning left at the end of the tenancy and to keep the tenant's security deposit in partial satisfaction of the claim.

The application was also to deal with the tenant's claim for the return of double the security deposit that was not refunded by the landlord.

The landlords and the tenants 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 testimony and relevant evidence that was properly served.

Issue(s) to be Decided

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

Is the tenant entitled to a refund of the security deposit?

Background

The tenancy began in December 2009. Current rent was $750.00 and a security deposit of $375.00 was paid. No move-in condition inspection report was completed.

The tenancy ended on October 31, 2012. The landlord testified that a written forwarding address was provided to the landlord on August 29, 2013. A copy of the letter is in evidence and is dated July 16, 2013. On September 9, 2013, the landlord made an application for dispute resolution seeking monetary compensation for damages.

The tenant testified that the forwarding address was sent to the landlord on July 16, 2012 and it is the tenant's position that the landlord did not refund the deposit, or make an application to keep it, within the required 15 days. The tenant is requesting a refund of double the security deposit in the amount of $750.00.

The landlord testified that, during the tenancy, the tenant had caused a flood on July 5, 2012, by leaving a stopper in the sink with the water taps running. The landlord provided photos of areas of the rental unit that had been affected by flooding.

The landlord testified that this resulted in an insurance claim they had to make which cost the landlord $500.00 in deductible expenditures and an increase in premiums of $227.00 per year for the next 3 years totaling $681.00. The landlord is claiming $1,181.00 in compensation.

The tenant is disputing the landlord's claim that they were responsible for the flooding. According to the tenant, they reported a drain problem to the landlord on July 2, 2012 and their offer to try and get it cleared on their own was rejected by the landlord. The tenant testified that the landlord did not address the problem. According to the tenant, about a week later, the tenant's were suddenly alerted by the landlord that there was a problem with flooding. The tenant testified that they were later made aware that the landlord did not consult with qualified repair professionals and there were also issues with the water pump. The tenant disagrees with the claim.

The landlord testified that, when the tenant vacated, additional damage was left and the unit was not left reasonably clean. The landlord made reference to photos showing areas of the unit that appear to require cleaning and repairs. The landlord is claiming cleaning and repair costs of $190.00 and provided a copy of a hand-written invoice for the cleaning and repairs.

The tenant disputes the landlord's claim for cleaning and repairs. The tenant testified that the unit was not in perfect repair when they moved in. The tenant stated that they left the unit reasonably clean as evidenced by their photos submitted into evidence. The tenant pointed out that the landlord's hand-written receipt for the cleaning and repairs is not from a professional and could have been created by anyone.

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,
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof was 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).

Sections 23(3) and 35 of the Act provide details about the requirements for the move-in and move-out inspections. Both the Act and Regulations state that the landlord must complete condition inspection reports and I find that, in this instance, neither a move-in condition inspection report nor a move-out condition inspection report were completed.

I find that the landlord has a burden to prove that the rental unit was not left in a reasonably clean state. I find that merely supplying a receipt for cleaning costs is not sufficient proof that the tenant left the unit in a state that was below the standard of "*reasonably clean*" as the Act provides. I find that it is a common practice for landlords to do some additional cleaning to bring a unit up to a higher standard for the purpose of re-renting it.

With respect to the landlord's claim that the tenant left the unit damaged and in need of wall repairs, I find that the tenant testified that this damage pre-existed their tenancy contradicting the landlord's testimony. I find that the inclusion of valid move-in and move-out condition inspection reports would suffice to verify the before and after condition of the rental premises, to resolve the stalemate. However, the absence of these reports adversely affects the landlord's ability to prove their claim, even though I do accept that there was damage existing at the end of the tenancy.

For this reason, I find that the landlord's claim for cleaning and repairs must be dismissed.

With respect to the landlord's claim for expenditures they incurred for the flooding, I find that the landlord has a burden of proof to establish that the tenant was solely at fault in causing the flooding.

I find that the tenant did report a problem with the drain on July 3, 2012, and I accept the tenant's testimony that they did not utilize this sink thereafter. I find as a fact that the landlord failed to repair the clogged drain immediately and I accept that four days passed after which there was a flood apparently caused by water running into the affected sink which could not drain away and overflowed.

With respect to the question of establishing the tenant was at fault, I find that the landlord has not produced any evidence, other than their disputed testimony, to prove that the tenant caused this flooding.

I find that, if the faucet had a slow drip that was not noticed, is possible that the water could have accumulated, filling the basin and eventually overflowed without any involvement by the tenant. I find that, even if the tap was inadvertently left on by the tenants, there still would not have been any flooding if the drain had been repaired without delay as soon as it was reported. I accept the tenant's testimony that the landlord could have consulted with a professional plumbing repair contractor instead of delaying the repairs or attempting to address problems with the water or drainage system independently.

Under section 32 of the Act, 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. However, while a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by their actions or neglect, a tenant is not required to make repairs for reasonable wear and tear.

The landlord's claim is for reimbursement of an increase in their insurance premiums they incurred due to a claim for the costs associated with repairs after the flooding, and reimbursement for the deductible amount that was charged by their insurer for the flood damage costs.

In regard to whether or not this is a claim anticipated by section 32 of the Act, I find that the landlord is generally responsible for plumbing and infrastructure repairs under the Act.

I find that there is nothing specific in the Act that provides for a landlord being able to delegate a liability charged under another contract to a tenant, as a third party.

If this is a risk that the tenant will incur as a part of the tenancy agreement, I find that it must be based on specific terms in the rental contract that are clear to both parties at the time the tenancy is entered into.

Section 58 of the Act provides 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 any of the following:

> (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 the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

With regard to the premium increase penalty that is included in the landlord's insurance policy, and the $500.00 deductible, I find that, the tenancy agreement between these two parties did not contain a clearly-worded term to ensure that the tenant was aware that this type of liability could ever be allocated to them under a particular circumstance.

I find that, at the start of the tenancy there would be no way for the tenants to know that they were incurring this liability and that they could possibly be held financially accountable for costs of insurance premiums and deductible amounts if the landlord believed that their actions caused, or contributed to insurance claims made by the landlords under their policy.

I find that the landlord's contractual relationship with the insurance company does not involve the tenants in any way and the tenants are not party to this agreement. Therefore, I find that costs based on certain contractual terms contained in the landlord's own insurance policy are matters that are solely between the landlord and their insurer. I find is unconscionable to impose the repercussions onto a tenant.

For the reasons cited above, I find that the landlord's claim for the three-year increase in their household insurance premium and the $500.00 deductible must be dismissed.

In regard to the tenant's claim for a refund of double the security deposit, I find that the Canada Post tracking number supports the landlord's testimony that they did not receive the tenant's forwarding address until August 29, 2013. I find that they made their application within the 15-day deadline under the Act. Accordingly, I find that the tenant is not entitled to receive double the security deposit. I find that the tenant is entitled to total compensation of $375.00 for a refund of their security deposit.

I hereby grant a monetary order in favour of the tenant in the amount of $375.00. This order must be served on the landlord and may be enforced through an order from Small claims court if not paid.

The landlord's application is dismissed without leave.

Conclusion

The landlord is not successful in the application for damages and the tenant is granted a monetary order for a refund of the security 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: November 12, 2013

Residential Tenancy Branch