



Dispute Resolution Services

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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 and cleaning and to justify keeping the 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 not refunded by the landlord within 15 days after receiving the forwarding address.

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 testimony and relevant evidence that was properly served.

Preliminary Matter

The landlord testified that the tenant did not serve the hearing package for the tenant's application in accordance with the Act.

With respect to the tenant's application, I find that the tenant is seeking a refund of the tenant's security deposit. I find that the issue of the tenant's security deposit, is a matter that would also be considered under the landlord's application in any case since the landlord is seeking monetary compensation and to retain the security deposit. Even if I accept that the tenant's application was not served in accordance with the Act, I find that this would not be prejudicial to the landlord in any way.

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 or credit for double the security deposit?

Background

The tenancy began on February 1, 2012 and current rent is \$1,981.00. A security deposit of \$950.00 and pet damage deposit of \$950.00 were paid at the start of the tenancy. The tenancy ended July 31, 2013.

The landlord testified that the tenant left the rental unit in a dirty and damaged condition and in the application filed on August 12, 2013 the landlord originally claimed damages of \$4,137.05 seeking compensation. On November 7, 2013, the landlord submitted 102 photos of the unit and the landlord sent in additional evidence and an amendment to increase their monetary claim to \$4,943.81.

Submitted into evidence by the landlord was a copy of the initial tenancy agreement and a copy of an extension to the fixed-term agreement featuring a rent increase of \$81.00 per month.

Also in evidence were copies of communications, copies of the move-in and move-out condition inspection reports, copies of quotes and receipts, a list of alleged damage with costs and proof of service.

The Monetary Order Worksheet attached to the amended application shows that the landlord is claiming the following:

- \$2,291.00 MATERIAL/LABOR
- \$200.00 MISC. REPAIRS
- \$341.76 CARPET
- \$175.00 ELECTRICAL
- \$453.01 SUPPLIES MATERIAL/MISC
- \$335.00 CLEANING TWICE
- \$147.19 PHOTOS/POSTAGE MISC WASTE

The total claim shown on the Monetary Order Worksheet is \$3,943.81 and the following notation by the landlord was also on the document,

"Note: This does not include the damage to the siding."

The Monetary Order Worksheet makes reference to attached invoices and quotes that were submitted by the landlord almost 3 months after the landlord filed the original application.

I find that a copy of a quote shows costs for a screen repair kit, cost of gypsum, a door, paint, flooring and other items. Handwritten notations include vapour barrier, vapour

seal, misc items, adhesive, closet shelves, closet rod, baseboard trim and a spruce tree along with the anticipated costs.

One of the invoices submitted, dated "Aug/2013", refers to, "*MISC LABOUR, PAINT/DRYWALL PATCH, MATERIAL & SUPPLIES*", plus taxes totaling \$2,291.85.

A second invoice dated Sept 2013 refers to "*MISC REPAIRS @ PROPERTY MATERIAL & SUPPLIES*" for \$200.00, tax included.

A third invoice, dated Sept. 2013, indicates, "*REMOVE, REPLACE AND INSTALL NEW CARPET 18 MILL. SUPPLIED/INSTALLED/KICKED IN REMOVE DAMAGED CARPET AND DISPOSE*", for a cost of \$341.76.

An invoice dated September 13, 2013, shows \$175.00, "*REVIEW ELECTRICAL PANEL. SECURE/FASTEN/TEST*" for a cost of \$175.00.

The landlord included numerous cashier receipts from stores for purchases, marked "materials" and several receipts for garbage disposal.

A move-in condition inspection report was completed when the tenancy began and is in evidence. The move-out condition inspection report, dated July 31, 2013, is also completed and signed by the landlord and tenant.

Damage listed on the July 31, 2013 report by the landlord included the following:

- Damage to the entry closet doors (both beginning and end of the tenancy),
- Scratched post,
- Top of cabinet grease in the kitchen,
- Ice built up inside the freezer,
- Nails in wall near closet in the living room,
- Floor water damage in the living room,
- Fireplace turned off in living room,
- Missing film on door in living room.
- Screen has hole from animal in living room,
- Master bedroom two mirrors attached to wall. Two different places,
- Wall has shelf attached. Damage to repair in Utility room,
- Floor damage (water) dining room,
- In stairwell and hall, Patch to walls & trim not same paint,
- Stairwell & hall, nut and bolt holding handle on closet door, not on in inspection,
- Main bathroom mirror attached to wall not in lease or first inspection,
- Master bedroom shelf and pole in closet both missing,
- Exterior Large rock in pond, pond dirty – cleaning required

- Switch for humidifier not working at out inspection
- Wiper sniper missing & lawn mower not working both thrown away.

In the section marked, "*Z Damage to rental unit or residential property for which the tenant is responsible:*" there are no notations by the landlord.

The tenant's forwarding address was also written on the report.

Attached to the report by the landlord were two handwritten pages listing other damage and details not included on the move-out condition inspection report form. These pages were signed only by the landlord.

The tenant disputed all of the landlord's claims for compensation. The tenant disagreed with the claimed cleaning costs of \$335.00 and stated that the move-out condition inspection verifies that the unit was left reasonably clean. The tenant pointed out that they had hired professional cleaners and the carpets were shampooed before they vacated.

The tenant's position is that some of the alleged damage shown on the report was not caused by them and the remainder should be considered in the category of normal wear and tear.

The tenant pointed out that the repair invoices submitted in the landlord's November evidence package are too vague, show additional damage than that previously claimed, and appear to be self generated. The tenant testified that these invoices do not reflect genuine costs to restore the property to the condition it was in when the tenant first took occupancy.

According to the tenant, they were permitted by the landlord to do some improvements to the property and actually left it in a better state than when they first took possession. The tenant testified that there were structural deficiencies in the home that they corrected at their own expense, including altering steps that were not compliant with the building code. The tenant testified that the landlord was aware of these changes and approved them. The tenant pointed out that the move-in condition inspection report has a notation verifying that the tenants were permitted to do some painting to move in early.

The tenant submitted photos of the rental unit showing areas that were improved and the condition of the home in general at the time they vacated.

In regard to the mismatched paint, the tenant acknowledged that the touch-ups were visible, but stated that they used the available paint in the colours labeled for the rooms in question to do the retouching.

The tenant testified that the claims submitted by the landlord months after the tenancy ended were created after-the-fact and should not be allowed. The tenant testified that some of the new claims contradict the move-out condition inspection report.

With respect to the alleged water damage to the floors, the tenant stated that this was not caused by them and was related to a damaged hose bib that was leaking. According to the tenant, this was reported to the landlord, but was left unrepaired.

The tenant does not agree with the landlord's claim for the cost of replacing the carpet and pointed out that no carpet damage is shown in the move-out condition inspection report.

In regard to the missing closet shelf in the downstairs bedroom, the tenant testified that the landlord's plumber had installed a new water heater and had removed the shelf.

The tenant denied discarding the gas trimmer but did admit discarding the lawn mower, which, according to the tenant, was old and broken and of no value.

The tenant disputed the landlord's claim for alleged damage to the exterior of the house and pointed out that they merely attached a mailbox, and house numbers. The tenant feels that this should not be considered as altering or damaging the exterior of the building.

The tenant stated that cable wires were discreetly fastened and the satellite dish was installed and attached to the home. The tenant pointed out that this was completed in accordance with normal building code practices used when such services are purchased and would not be considered as damage to the infrastructure, requiring new siding of the building as claimed by the landlord..

The tenant also disagreed with the landlord's testimony about the tenant's failure to maintain the pond. The tenant testified that they did not use this feature and there is nothing in their tenancy agreement requiring that they maintain it to a specific standard.

Analysis: Landlord's Monetary Claim

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 an arbitrator 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, dealing with move-in and move-out inspections, state that the landlord must complete a condition inspection report in accordance with the regulations. I find that, in this instance, the landlord did comply with the Act and completed both a move-in and move-out condition inspection report which were signed by the parties.

I accept the tenant's testimony that the landlord's claims shown on the Monetary Order Worksheet for:

- \$341.76 for a replacement carpet,
- \$175.00 electrical costs, and
- \$335.00 cost of cleaning

are not supported by the move-out condition inspection report. For this reason, I find that the landlord has not met the burden of proof to satisfy all elements of the test for damages and loss and these claims must be dismissed.

In regard to the landlord's claim for \$147.19 for postage and photos, in preparation of the hearing, I find that the landlord's claim for reimbursement of these costs for preparing for the Hearing, are not compensable expenditures covered under any provision of the Act and must therefore be dismissed. However, an applicant may be

entitled to be reimbursed the \$50.00 cost of the application should their application succeed.

I find that it is not clear on the Monetary Order Worksheet exactly what is included in the landlord's claims of \$2,291.00 for "*materials and labour*", \$200.00 for miscellaneous repairs and \$453.01 for "*supplies material/ miscellaneous*". I find that these supporting receipts and the other cashier receipts are not sufficiently detailed to isolate and allocate all of the expenditures to specific tasks as they relate to the deficient items and areas shown on the move-out condition inspection report.

In reviewing the other issues described on the move-out condition inspection report, I find that the In the section marked, "*Z Damage to rental unit or residential property for which the tenant is responsible:*" does not have notations by the landlord at all. I find that the attached handwritten sheets describing damage was not part of the report because these were not in the prescribed format as required under the Regulations and also were not signed by the tenants.

On the move-out condition inspection report, I find that some of the damage such as scratches to the post, nails or screw holes in the walls, the hole in the magnetic screen, a repaired handle on the bi-fold door and the missing film on the glass door, all to be minor damage and likely due to normal wear and tear, as alleged by the tenant.

With respect to the mismatched paint, I accept the tenant's testimony that they did utilize available paint for the purpose, but the colours were not a perfect match, likely due to aging of the existing paint on the walls.

In regard to water damage to the floor, I find that the landlord has not sufficiently proven that this water damage was caused by the tenant and therefore, the claim fails element 2 of the test for damages.

In regard to the tenant's failure to leave the pond in a clean state, I accept the landlord's evidence on this matter. However, I find that this responsibility is not one that would normally be included as part of a tenancy, being that pond maintenance could be considered as a specialty field requiring a certain amount of knowledge and experience. In any case, even for basic maintenance, I find that the specific expectations, describing the tasks required, should be included in detail within the tenancy agreement, so that both parties understand the responsibilities involved from the start of the tenancy.

In regard to the missing implements, I find that, although the landlord placed a value of \$90.00 on the mower and \$40.00 on the trimmer, 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 that there is no way to ascertain the value of the used items since their age is unknown.

Based on the evidence before me, I find that the landlord has not sufficiently met the burden of proof to justify the compensation being claimed. Accordingly, I find that the application of the landlord must be dismissed.

Analysis: Tenant's Claim for Security Deposit

With respect to the return of the security deposit and pet damage deposit, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must either: a) repay the security deposit or pet damage deposit to the tenant with interest or; b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act provides that the landlord can only retain a deposit if, at the end of the tenancy, the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, the landlord has obtained an order through dispute resolution permitting the landlord to retain the deposit to satisfy a monetary claim against the tenant.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit.

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 after the forwarding address has been given, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the deposit.

In the case before me, I find that the landlord did make their application seeking to retain the deposit for damages within the 15-day deadline after the end of the tenancy.

I find that the tenant's security deposit is \$950.00 and the pet damage deposit is \$950.00. I find that the tenant is therefore entitled to a refund of the deposits in the amount of \$1,900.00 plus the \$50.00 cost of this application.

Based on the above, I find that the tenant is entitled to monetary compensation of \$1,950.00. I hereby issue a monetary order in favour of the tenant for \$1,950.00. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is not successful in the application and the monetary claim for damages is dismissed. The tenant is granted a monetary order for the return of the security deposit 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 December 13, 2013

Residential Tenancy Branch

