Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MSD, FF

Introduction
This hearing dealt with an application by the tenant for return of double the security deposit. Both parties appeared and had an opportunity to be heard.

The landlord had filed evidence in support of a claim for damages against the security deposit but had not made a formal application for dispute resolution for a monetary order. Both parties expressed a desire to have all issues between them resolved at this hearing. Accordingly, I heard evidence and will render a decision on the landlord's claim for damages as well as the tenant's claim for return of the security deposit.

Issue(s) to be Decided
Are either the landlords or the tenant entitled to a monetary order and, if so in what amount?

Background and Evidence
This tenancy commenced may 1, 2012 as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent of $1950.00 was due on the first day of the month. The tenants paid a security deposit of $975.00.

There were three tenants, only one of which – KG – appeared and testified at this hearing. He was also the only applicant on this proceeding.

A move-in inspection was conducted and a move-in condition inspection report completed on April 30, 2012. The tenant said they were not given a copy of the report; the landlord said they were.

The rental unit is the top floor of an old three story house. There are two other rental units in the building. The rental unit itself is a three bedroom/one bathroom suite.

The landlord testified that the unit had been completed renovated prior to the start of this tenancy – new carpets, new paint, new electrical switches.

The tenancy ended August 29. The applicant moved out August 25. The last tenant left in the unit was KD who did the move-out inspection with the landlord on August 29. A move-out inspection condition report was completed and signed by the landlord and KD. A number of deficiencies were noted on the report, only two of which were claimed by the landlord; damage to the front door and missing keys.

The tenant said they had not received a copy of the move-out condition inspection report; the landlord said they were mailed by regular post.

The tenant testified that she did the move-out because her ex-husband, who is a co-owner of the property, was not available that evening. She explained to KD that the male landlord would be doing a move-in inspection the next day with the incoming tenants and that some other deficiencies might be found at that time. She testified that KD said that would be fine.

The landlord testified that during the move-out she was very relieved to see that the tenants had cleaned the carpets and repaired some of the damage that had occurred during the tenancy, including fixing broken doors and touching up scraped walls. KD told her that they had hauled a car seat that had been sitting on the deck. Unfortunately, she later found it under the back deck. KD also told her the front door had been damaged while moving furniture out. The tenant gave the landlord a forwarding address in writing at this time.

The next day the male landlord did a more thorough inspection with the incoming tenants. As part of his evidence the tenant filed a copy of an e-mail from the male landlord outlining all of the damage and cleaning the female landlord had missed during her inspection. The e-mail describes in some detail the mess in the kitchen, the repairs required to the stove and the dishwasher, and the several items of garbage left behind, including a car seat.

The male landlord's e-mail also complains that he had received twelve telephone calls from the tenant on September 16 and fourteen telephone calls from him on September 17 and suggests that the tenant communicate with the landlords in a more professional manner.

The landlord filed a copy of the move-in inspection done on August 30 which was signed by the male landlord and all three of the new tenants. It is four pages of deficiencies.

In fact the landlords have only claimed for the following items;

- $270.00 to repair a broken control on the stove.
- $100.00 to repair the front door.
- $30.00 to replace a broken dimmer switch.
- $36.00 for junk removal.
- $20.00 to missing keys.

The tenant argues that the non-functioning burner is just normal wear and tear. He says they never reported the issue to the landlords when it quit working; they just quit using it. The landlord said the knob was actually broken which indicates misuse, not wear and tear.

The tenant was not at the rental unit for the last few days of the tenancy and was unable to say whether the front door had been scraped or not. He pointed out that the door, like the house, was old.

The tenant argued that a portion of the light switch just fell off and this was only normal wear and tear.

The tenant did not dispute the claim for junk removal.

The landlord said the tenants did not return all the keys they had been given at the start of the tenancy. The tenant was not at the move-out so could not say what keys were returned, only that they had tried their best.

The landlord sent the tenants $430.00 on September 16. When the new tenants were able to fix the dishwasher themselves, at no expense to the landlords, she sent an additional $100.00 on September 23.

Analysis

Landlords' Claim for Damages

Section 21 of the *Residential Tenancy Regulation* provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Although the damage to the stove and dimmer switch were not recorded on the move-out condition inspection report the male landlord's e-mail and the tenant's own admissions that these items were not working does comprise "a preponderance of evidence to the contrary".

"Normal wear and tear" is not the same as "broken". I find that the damage to the stove and the dimmer switch was not normal wear and tear and I allow the landlords' claim for these items in full.

The damage to the front door was acknowledged by a tenant on the move-out condition inspection report. Accordingly, this claim is allowed in full.

Section 37(2) of the *Residential Tenancy Act* states that, at the end of a tenancy, the tenant must give the landlord all the keys or other means of access to and within the residential property. The landlord says that not all of the keys were returned. The tenant does not know what keys were actually returned. This claim is allowed in full.

The tenant did not dispute the landlords' claim for junk removal in the sum of $36.00.

In total I award the landlords $456.00 for damage, key replacement and junk removal.

Tenant's Claim for Double Security Deposit

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue.

In this case the landlords paid a partial refund to the tenants but they never filed an application for dispute resolution claiming against the balance. As a result they are subject to the section 38(6) penalty.

As explained in *Residential Tenancy Policy Guideline 17: Security Deposit and Set off* when determining the amount of the deposit that will be doubled, any amount that the tenant has agreed in writing may be retained for damage is excluded. On the move-out inspection a tenant agreed that the cost of repairing the front door could be deducted from the security deposit. Accordingly, the amount of the deposit to be doubled is $875.00. ($975.00 - $100.00)

From the sum of $1750.00 ($875.00 X 2) the payments already made by the landlords to the tenants, $530.00, are deducted leaving a balance owed to the tenant of $1220.00.

In addition, as the tenant was successful on his application, he is entitled to reimbursement from the landlords of the $50.00 fee he paid to file it.

Set Off

I have found that the landlords are entitled to payment from the tenant of the sum of $456.00 and that the tenant is entitled to payment from the landlords of the sum of $1270.00. Setting one amount off against the other I find that the landlords must pay the tenant the sum of $814.00 and I grant the tenant an order pursuant to section 67 in this amount.

Conclusion

A monetary order in favour of the tenant has been granted. If necessary, this order may be filed in the Small Claims Court and 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: November 21, 2013

Residential Tenancy Branch