Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MND, MNR, MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for cleaning and damage to the unit and money owed for water utilities.

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.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damages or loss?

Background and Evidence

The landlord testified that the tenancy began on August 15, 2012 for a one-year fixed term. The rent was $2,900.00 and a security deposit of $1,450.00 was paid. The landlord testified that there was no move-in condition inspection report completed at the start of the tenancy. However, according to the landlord, the home was clean and in good repair and was approved of by the tenant's parents.

The tenants moved out on August 15, 2013 at the end of the fixed term tenancy. The landlord testified that they attempted to do a move out condition inspection at the end of the tenancy, but the tenants did not cooperate and said that they were too busy. The landlord testified that the tenant failed to leave the unit in a reasonably clean condition and there was substantial damage to the property.

Cleaning

The landlord made claims for cleaning including $302.35 for carpet-cleaning, $300.00 for 12 hours of cleaning the kitchen, bathroom, family room and laundry

area, $75.00 to clean the fireplace, $50.00 to power wash the deck, $25.00 to clean the barbeque and $150.00 to clean the room above the garage.

The landlord testified that they always engage a professional carpet cleaning firm to shampoo the carpets before each tenancy, including this one. The landlord acknowledged that there were pre-existing stains on the carpets, but stated that they were otherwise completely clean. The landlord testified that the carpets were not considered to be properly cleaned by the tenant because the tenant had not engaged a professional carpet-cleaning firm to do the job and instead used a rented machine. The landlord also made an allegation that the carpet's condition was affected by the fact that the tenant kept a cat in the home, in violation of the tenancy agreement.

The tenant disputed the landlord's claim that the carpets were completely clean at the start of their tenancy and pointed out that the carpets were stained by previous occupants. The tenant also pointed out that there was no obligation under the tenancy agreement requiring that they must use a *professional* carpet cleaning contractor to shampoo the carpets at the end of the tenancy. The tenant testified that, at the end of the tenancy, they shampooed the carpets themselves using a rental machine and left the floors at least as clean as they were when the tenants first moved in. The tenant acknowledged that, during the tenancy, they had temporarily cared for a friend's cat for a short time, but stated that the animal did not cause any damage and said that the landlord's agent had given them permission to keep the cat for the limited duration.

In regard to general cleaning, the landlord testified that the tenants failed to clean the appliances, the walls and the floors and the landlord spent 12 hours doing general cleaning for $25.00 per hour. The landlord stated that they also had to wash the deck, clean the barbeque and the fireplace. The landlord stated that they spent 6 hours cleaning a very filthy room above the garage that had tape stuck to the walls and dents in the drywall. The landlord testified that this room and other parts of the property were littered with bullets from a BB gun.

The tenant testified that, although they may have missed a few areas, the unit was left reasonably clean when they moved out. The tenant pointed out that the rental unit was not very clean on the day they moved in. The tenant stated that they rarely used the fireplace or the barbeque and stated that the deck was merely littered with leaves.

The tenants stated that none of them owned a BB gun. According to the tenant, the BB-gun pellets were already there before they moved in.

Repairs

The landlord testified that the tenants damaged thermostats and light switches, which had to be replaced at a cost of $200.00 and that the tenants caused $150.00 in damage to a heater that apparently had been stepped on.

The tenants denied causing this damage and stated that they did notice one of the thermostats was already broken when they moved in. The tenants stated that they had no knowledge of any damaged heaters and as far as they knew the heaters were functioning fine.

The landlord testified that the tenants caused a large scratch in the flooring, which required more than $150.00 to refinish. According to the landlord, the damage occurred during a party that the tenants held one night. The landlord testified that it appeared a piece of furniture with an exposed nail underneath had been dragged across the floor causing a lengthy scratch

The tenants denied scratching the floor and pointed out that none of their furniture was ever dragged across the floor, particularly in the area in question, since this space was always kept clear of furniture. The tenant testified that most of the wooden flooring already had numerous scratches throughout the home when they moved in, which were left there by previous occupants.

The landlord testified that the tenants had broken off a vintage door handle from the main entrance and replaced it with a locking door knob, for which the landlord did not have any key. The landlord is claiming compensation of $198.00 for the purchase of a new entry door handle and lockset.

The tenant testified that the door lever, which was likely originally installed when the home was built, suddenly fell off one day, trapping the tenants inside. The tenants stated that they did inform the landlord's agent, but nothing was done, so they simply replaced the knob with one that they had on hand. The tenant stated that the locking mechanism on the new door knob was not in use. The tenant testified that the original deadbolt of the door was not affected by the loss of the lever and remained usable for locking the door. The tenant feels that the loss of the vintage door handle was due to normal wear and tear and was not caused by any abuse by the tenants.

The landlord testified that the tenant caused $100.00 damage to the frame of an entry door to the garage. The landlord made reference to photos of the frame showing damage.

The tenant testified that they did find it necessary to force the door at one point and this caused the frame to split. According to the tenant, the damage was minor and they managed to glue the wood framework back together again. The tenant pointed out that the door and trim were likely original to the house when it was built and therefore would be subject to extensive wear and tear over the years.

Utility Charges

The landlord is requesting $554.00 for the tenant's portion of the household water bill. The landlord acknowledged that the tenancy agreement specifically states that the charges for water usage would be $10.00 a month per occupant. However, according to the landlord, the parties made an additional verbal agreement that, should the water bill exceed the amount already charged to the tenants, then they would later be billed for the excess cost at the end of the tenancy. The landlord testified that the amount of water used by these tenants greatly exceeded the estimated cost charged for water usage and also pointed out that this was likely due to additional unauthorized occupants living in the unit.

The tenants denied that they ever made any verbal agreement to pay extra water charges, to be billed at the end of the tenancy. The tenants also denied that they had ever allowed additional occupants. The tenants' position is that they paid for their water use in full, as required in the written tenancy agreement, and therefore do not owe any additional charges.

Mailing Costs

The landlord is claiming $50.00 compensation for the cost of mailing the evidence to the tenants.

The tenants do not agree with this claim.

Analysis

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.

In this instance, the burden of proof is on the claimant, that being 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.

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.

I find that the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

With respect to the move-in inspection, section 23(1) on the Act requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Both sections 23(3) of the Act, for move-in inspections and section 35, for the move-out inspections, require that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be arranged and completed.

In this situation, I find that the landlord failed to comply with the Act in regard to the statutory requirement to conduct a move-in condition inspection report signed by both parties, and the requirement to give a copy of the report to the tenant.

In regard to the landlord's allegation that the tenant did not cooperate with the landlord's attempt to schedule a move-out condition inspection, the legislation also contains provisions that anticipate such situations. In particular, section 17 of the Regulation details exactly how the inspection must be arranged as follows:

> (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
>
> (2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

A landlord can complete the inspection in the absence of the tenant by following all of the required steps described above and must be prepared to prove that this was done.

In this instance, I find that there is insufficient proof that the landlord ever issued the notice on the approved form giving the tenant a final opportunity to participate in the move out condition Inspection and insufficient proof that it was properly served on the tenant.

I find the landlord's practice with respect to both the start-of-tenancy and the end-of-tenancy inspections, to be noncompliant with the Act and Regulation.

Given that the landlord's claims for cleaning costs and the costs of repairs are being challenged by the tenant, in the absence of completed inspection reports to support the landlord's position, I find that the monetary claims do not sufficiently satisfy element 2 of the test for damages. The landlord holds the burden of proof to establish that the unit was damaged during the tenancy, beyond normal wear and tear and I find that the landlord has not completely met this burden. Therefore I find that the landlord's claims for compensation for cleaning and repairs must be dismissed.

In regard to the additional charges of $554.00 for water utilities, I find that the written tenancy agreement sets out the monthly cost for the water as $10.00 per person per month, and that the tenant has paid this amount during the tenancy.

Section 6(3) of the Act states that a term of a tenancy agreement is **not enforceable** if a) the term is not consistent with the Act or Regulations, b) the term is unconscionable,

or c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (My emphasis)

I find that a verbal term that purports to amend a written tenancy term on a contract that was previously agreed to and signed by both parties, is not sufficiently clear and therefore cannot be enforced. The reason that I find it to be unclear, is because one of the parties to the agreement is denying the existence of the subsequent verbal term.

In regard to the landlord's claim for mailing costs incurred for serving the documents for this hearing, I find that, with the exception of the $50.00 cost of filing the application, claims for mailing or other costs for preparing for a Dispute Resolution Hearing, are not compensable expenditures covered under any provision of the Act and must therefore be dismissed.

Given the above, I find that the landlord's claims for cleaning, repairs, utilities and mailing costs must be dismissed. As the landlord is not successful in the application, the claim for the filing cost is also dismissed.

Based on the testimony and evidence I hereby dismiss the landlord's application in its entirety without leave to reapply. find that the tenants are entitled to a refund of the security deposit in the amount of $1,450.00 and I grant a monetary order in this amount. The tenants must serve the monetary order on the landlord and, if unpaid it may be enforced through Small Claims Court.

Conclusion

The landlord is not successful in the application and the tenants are granted a monetary order for a refund of their 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: December 05, 2013

Residential Tenancy Branch