Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid utilities, for alleged damages to the rental unit and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord supplied his documentary evidence for the hearing late. The Tenant did not object to the evidence being late. As the evidence is relevant to the issues in this hearing, I have considered this evidence as described below.

At the outset of the hearing the disposition of the security deposit was discussed. The Landlord had not included a claim against the deposit in his Application. He wrote in his written submissions that he felt his claims, "... more than justifies the forfeiture of the damage deposit." [Reproduced as written.] Nevertheless, the Landlord requested his Application be amended to include a claim against the security deposit.

I note the Landlord supplied a copy of the tenancy agreement in evidence; however, he omitted the page dealing with the security deposit from the tenancy agreement.
The Tenant explained she had informed the Landlord he had a certain amount of days to return the security deposit and the Tenant did not agree that the Landlord could amend his Application to include a claim against the deposit.

I find the Landlord did not claim against the security deposit in this Application. I do not allow the Landlord to amend his Application to include a claim against the deposit.

I note that even if the Landlord had made a claim against the security deposit in his Application it would have been dealt with in the manner ultimately determined in this decision, in accordance with the provisions of the Act and Policy Guidelines.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on March 1, 2012, with the parties entering into a written tenancy agreement. The rent was established at $1,400.00 per month, payable on the first day of the month and the Tenant paid a security deposit of $700.00. The parties testified that they were not exactly sure when the deposit was paid. The Tenant suggested in February of 2012 and the Landlord suggested in March of 2012. The Landlord had submitted a copy of the tenancy agreement; however, he had not included 3 pages of the tenancy agreement, one of which was the one that dealt with the security deposit as described above.

In this instance, the date the deposit was paid is more relevant to whether or not it was paid at a time when interest was payable. I note that interest has not been payable on deposits since 2009, and therefore, no interest has accrued on the security deposit.

In evidence the Landlord also submitted a copy of a condition inspection report completed for both incoming and outgoing inspections; however, the Tenant did not sign this document. The Tenant testified that the Landlord had not performed a written condition inspection report at the beginning of the tenancy or at the conclusion, and he had made up this report for the hearing.

The Tenant testified that the extremely dirty condition of the rental unit at the outset of the tenancy would have been embarrassing for the Landlord to acknowledge in writing. The Landlord did not deny this testimony and explained the rental unit was very dirty, but there were no damages done to it.

The Landlord also included copies of two estimates for repairs at the rental unit.

The Landlord is claiming that the Tenant removed a gas fireplace at the rental unit without his permission. The Landlord alleges that the Tenant damaged the gas line and did not use a qualified person to remove the gas fireplace, which is apparently required although no substantive evidence was provided to support this. The Landlord supplied an estimate to re-install the gas fireplace in the amount of $1,352.45, and testified that in fact it cost him a lot more for this work.

The Landlord also claims for the replacement of linoleum in the rental unit which he alleges was painted with a concrete paint by the Tenant and is now peeling off the linoleum. The Landlord initially testified that he was unsure how old the linoleum was, although he then estimated it was five years old. He testified he supplied this paint to the Tenant and the can was marked that it was for use on concrete only. The Landlord claims $368.80 to replace the lino.

The Landlord is also claiming for a utility bill for water and sewage from the Tenant for $143.67. The Tenant agreed during the course of the hearing that she would allow the Landlord to deduct this from the security deposit.

The Landlord alleged the Tenant removed curtain rods from the rental unit, although he was not making a claim for these.

In reply, the Tenant recounted that she had done significant work at the rental unit at the outset of the tenancy to clean the rental unit. She testified it was in a filthy state, for example when she moved in there were feces left in the toilet and she had to spend significant time cleaning urine from walls around the bathroom.

The Tenant testified the Landlord initially agreed to pay her $15.00 an hour for this work. She testified she worked many hours to clean the rental unit. However, the Landlord then refused to pay her for all the cleaning but did allow her to deduct $150.00 from rent for this cleaning, according to the Tenant.

The Tenant testified that at the outset of the tenancy she and the Landlord had come to some arrangements regarding painting the rental unit. She explained that initially the verbal deal with the Landlord was that she would charge $100.00 to paint each room and he would supply the materials. The Tenant testified that after she had completed this work the Landlord changed the amount he was willing to pay to $75.00 per room. The Tenant did not agree that the lino that was painted black was only five years old. She suggested it was much older.

The Tenant alleged the Landlord is not trustworthy as he would agree to things and then change his mind and the terms of the verbal agreement.

The Tenant also alleged that the Landlord was supplying paint to her which he had taken from work.

The Tenant testified that when she told the Landlord he was acting dishonestly, he informed her he would not pay for any more work or materials at the rental unit.

The Tenant testified that when she moved into the rental unit the gas fireplace was left running. She had no information or instructions from the Landlord on how to turn the fireplace off. The Tenant said about three months into the tenancy she received a notice from the gas company that the gas had been shut off to the rental unit, for non-

payment. The Tenant testified she was surprised because she did not even know she was supposed to put the gas bill into her name.

The Tenant testified that when the gas company came to turn on the gas back on they refused to start the gas fireplace, as it had a cracked glass and it had wiring covered with tape.

The Tenant testified that she called the Landlord and discussed removing the gas fireplace as it was unsafe to reconnect. The Tenant testified they had ongoing discussions with him that the fireplace was not safe and had discussions about what to do with the heating of the rental unit. The Tenant explained they even had discussions about the Tenant "chipping in" for a heater. The Tenant asserted the Landlord gave her permission to remove the fireplace as it was unsafe to re-install.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenant failed to pay the utility bill of $143.67, and as she has agreed to pay for this, it will be deducted from the security deposit as described below.

I dismiss all the other claims of the Landlord without leave to reapply, as I find the Landlord had insufficient evidence to prove these claims or to prove that the Tenant breached the Act or tenancy agreement.

I found much of what the Landlord supplied in evidence to lack credibility. For example, the condition inspection report he submitted appears on the surface to have been completed at the beginning and end of the tenancy; even multiple pens appear to have been used on the reports. However, the Tenant testified that the Landlord did not do this report at the time he and she walked through the rental unit or at the times and dates he has claimed. Furthermore, she was not given an opportunity to sign it at any time, as required by the regulation. The regulation requires the forms to be completed and signed at the time of the inspection by both parties. Here the Landlord has failed to do this.

I note that the Landlord also states in his written materials that the security deposit should be "forfeited" by the Tenant, and that he omitted the pages of the tenancy agreement dealing with the security deposit, and then he did not claim against the deposit. From these facts, it appeared that the Landlord intended to ignore the issue of the security deposit from the outset of making this claim against the Tenant.

I find the evidence of the Tenant as to the events that took place to be more credible regarding the permission received from the Landlord to remove the gas fireplace.

From the testimony and evidence before me, I find there was a pattern of the Tenant discussing what changes in the rental unit she wanted to make with the Landlord, prior to the Tenant actually making any changes. This started from the beginning of the tenancy according to the testimony of both parties.

The Tenant's testimony that she learned very early on in the tenancy that the Landlord had a tendency to go back on his arrangements with her and refute them or otherwise alter them in his favour, also supports the premise of her seeking permission prior to making any changes in the rental unit.

As to the linoleum being painted black by the Tenant, Policy Guideline 40 sets out that,

> "When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. **Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.**"
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> [Emphasis added.]

This guideline, the testimony, and the evidence lead me to find the Landlord has failed to prove the linoleum had not passed the useful life.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
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> [Reproduced as written.]

I find that the Landlord has established a total monetary claim of **$153.67** comprised of the utility amount agreed to by the Tenant of $143.67 and I allow $10.00 towards the fee paid for this application. I have reduced the application fee recovered by the Landlord as I find much of the claim lacked merit. The awarded amounts are subject to the set off described below with the disposition of the security deposit.

Security deposits in all tenancies must be dealt with in accordance with the Act. In this instance, I find the Landlord failed to perform incoming or outgoing condition inspection reports as required. By failing to do these reports, the Landlord extinguished a right to claim against the security deposit under sections 24 and 36 of the Act.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38 of the Act.

Therefore, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made from it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the Landlord feel they are entitled to keep the deposit or that the Tenant forfeited it based on unproven claims.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant.

Having made the above findings, I must order pursuant to sections 38 and 67 of the Act, that the Landlord pay double the balance of the deposit to the Tenant after the deduction of the amount awarded above.

Therefore, I order the Landlord to pay the Tenant the sum of **$1,092.66**, comprised of $700.00 less the $153.67 awarded, leaving a balance of $546.33 which must be doubled in accordance with section 38 and returned to the Tenant in accordance with the Policy Guidelines (2 x $546.33 = $1,092.66).

The Tenant is granted a monetary order in accordance with the policy guidelines for the balance due. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 25, 2014

Residential Tenancy Branch