Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNSD, FF

Introduction

In the first application the tenants seek recovery of a $1680.00 security deposit and a $200.00 "key and fob" deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*").

In the second application the landlord seeks to recover loss of rental income for November 2013 and damages for cleaning, repair, replacement of missing or broken items, and an outstanding Hydro bill.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord or the tenants are entitled to any of the relief claimed?

Background and Evidence

The rental unit is a two bedroom condominium apartment. The tenancy started in October 2012 for a one year term expiring October 26, 2013. The rent was $1680.00 per month. The landlord received and still holds a $1680.00 security deposit and a $200.00 "key and fob" deposit.

The attending tenant testified that a forwarding address in writing was provided by letter to the landlord in October 2013. The landlord claims not to have received the tenants' forwarding address notice until she received their application for dispute resolution.

The landlord testified, through her interpreter Mr. C. that the tenants did not return the keys to the premises until November 9th and so she should have November rent. She claims that the carpets, only a little more than two years old at the start of the tenancy, were so damaged they need to be replaced at a cost of $2850.00.

She says the tenants left garbage out on the sundeck and as a result, the deck was stained beyond cleaning. She seeks $2300.00 for re-surfacing and painting the deck.

The landlord seeks $57.26 for outstanding Hydro charges. The attending tenant acknowledges responsibility for Hydro costs.

The landlord claims that the garburator was damaged and requires replacement at a total cost of $545.17 for removal and replumbing, $201.58 for a new garburator and $350.00 as the estimated cost of installation.

The landlord claims the tenants damaged a set of blinds costing $300.00 to replace. She also seeks $800.00 for a scratched fridge and $1200.00 for repairing and replacing furniture.

The attending tenant Mr. Z. tells quite a different story. He says that the tenants' last night in the premises was October 11th. He says the keys were not returned to the landlord until about November 9th because the painter the landlord and tenant were sharing the cost of, was painting the interior and, by agreement with the landlord was doing so under the supervision of the tenants.

Mr. Z. adduced an email from the landlord, dated November 29, 2013, written in Chinese script, which he says shows the landlord acknowledging receipt of the tenants' letter containing their forwarding address.

Mr. Z. testified, and it was not contradicted by the landlord in reply, that the tenants retained a professional carpet cleaner in October as well as a professional cleaning service to clean the premises. He said that the cleaning service came back twice because the landlord was not satisfied with their initial cleaning job.

He says the drapes were bent or damaged before the tenants moved in. He admits to damaging a bed but says it is still functional. He admits that the tenants damaged and removed three chairs left by the landlord for tenant use. He was unaware of any garburator problems and says that on the day the keys were returned the landlord checked all the electrical equipment in the suite and it was to her satisfaction. He says the sundeck can be cleaned.

Mr. Z. adduced rough, dark photographs of the premises when he left. Unlike the landlord's photos, the carpets appear to have been freshly vacuum or cleaned.

Analysis

Landlord's Claim

The landlord has put herself in a very difficult position. The *Act* requires that she perform a move-in inspection with the tenants and prepare a report. The landlord has referred to a one line document signed by the parties indicating that all was fine at move-in, but it far less than the itemized list the recommended condition report would have confirmed that the parties looked at. Of more significance, there was no move-out inspection report. The *Act* requires a landlord to prepare one and it is a requiredment specifically designed to reduce or eliminate disagreement about the state of the premises at the end of a tenancy. At the least, such an inspection report causes the parties to better define what they do disagree on and to provide each and opportunity to collect evidence, photographs or video, of the items or areas in question.

The landlord's failure to comply with the mandatory inspection and report requirements of the law are not a bar to her claim but without the reports she must prove the state of the premises at the end of the tenancy by other means and must bear the penalty of having put the tenants at the disadvantage of not being formally informed of her claims until over two and one-half months after the tenancy and long after they had access to the premises to gather direct evidence.

The landlord has provided a series of forty-four photographs showing various items in the rental unit. Some photos, particularly the carpet photos, were said to have been taken November 5, 2013. Others, like the bedroom and cleaning related photos, were said to have been taken September 29th. Photos taken almost a month before the end of the tenancy usually have little correlation to the state of the premises a month later. Photos of a kitchen table show crumbs or debris, yet it is not disputed that professional cleaners attended twice after the tenants moved and before possession was returned to the landlord. I consider it very unlikely that professional cleaners would not have wiped crumbs or debris off a kitchen table and so I conclude that those photos do not relate to the relevant time period at the end of the tenancy. To compound matters, the landlord failed to provide the tenants with a copy of her evidence, including the photos. Mainly because their dates are uncertain, I consider the photos to have only limited value.

On a balance of probabilities the landlord has not shown that the carpets were not clean and certainly has not shown their required replacement. I dismiss that item of the claim.

I also dismiss the claim regarding re-surfacing and painting the sundeck. The evidence does not persuade me that it is somehow damaged or even that it needed cleaning.

I grant the landlord recovery of BC Hydro costs but only to October 26, 2013 as I find the tenants were moved by then and it was only the painters hired by the landlord and tenants who were still in the premises. I grant the landlord $50.00 for this item.

For the foregoing reasons, I dismiss the landlord's claim for recovery of November rent. The tenants did not overhold but continued to have access to the premises to supervise the painters, with the landlord's consent.

The landlord also claims the $350.00 she agreed to pay the painters. The tenants paid $800.00 of the total painter bill, apparently because of wall damaged occurring during their tenancy. It seems to me that this was a deal struck by the landlord back in October. There is no reason she should be allowed to claim it back from the tenants..

Though it is apparent the landlord had a workman attend to work on the garburator, it has not been shown what was wrong with it or that its failure was caused by the tenants actions or neglect. I dismiss the landlord's claim regarding the garburator.

The landlord has not proved the blinds were damaged during the tenancy or that the refrigerator door was somehow damaged and I dismiss those items.

The tenant denies leaving a red stain on the kitchen table. In the face of competing evidence about the alleged stain, I find the landlord has not satisfied the burden of proof and dismiss this item of the claim.

The landlord claims $1200.00 for repairing and replacing damaged furniture. As far as can be determined, the finish on a bedframe post has been damaged and peeled away. As well, one of the rough lumber cross supports has been broken. The attending tenant acknowledged responsibility for these items. Three chairs are missing from an Ikea set of six or seven. The attending tenant acknowledges responsibility for these as well.

I consider the bedframe to be repairable and useable but of significantly diminished value. I allow $50.00 for the acquisition and insertion of a new lumber cross frame. I consider the bed, worth perhaps $200.00 new, to have lost $100.00 of its value and so I award the landlord $150.00 for damage to the bed.

The three missing chairs are more difficult to value. Neither party could provide significant evidence about their worth other than the landlord remarking the chairs came from a $1200.00 set of chairs and table at Ikea. It may be assume the set is about three

and one-half years old. In all the circumstances I award the landlord $360.00 for the replacement cost of the chairs.

In result, the landlord is entitled to a monetary award totalling $560.00

Tenants' Double Deposit Claim

At this stage of the dispute, once the landlord's entitlement has been determined, the tenants are entitled to receive any remaining balance of those deposit monies. However, they claim double.

Under s. 38 of the *Act*, a landlord who fails to deal with a security deposit in time is penalized by a doubling of that deposit. The relevant portions of s.38 are:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> * * *
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> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

According to the attending tenant the landlord was in receipt of the forwarding address in October and certainly prior to the landlord's November 29, 2013 email acknowledging "the tenants' letter." The landlord claims it was not until receipt of the tenants' application that she received that address in writing.

From the evidence before me, the landlord is caught by s. 38 in either case. The tenants' application was served on the landlord by registered mail sent December 29, 2013 and received by the landlord, signed for by her representative Mr. Q. C. on January 4, 2014. The landlord did not make her application until January 20, 2014, more than fifteen days later. She was therefore outside the period allowed by s.38 and must account for double the deposit.

A further question is “how much was the deposit?”

It is evident the landlord took more than the maximum one-half month’s rent equivalent for a security deposit but at this stage of the parties’ relationship there is no penalty or recourse for her having done so. Clearly, the “security deposit” is $1680.00, but does it include the “key and fob” deposit? I find that it does not and that the “key and fob” deposit is not an amount doubled under s. 38..

The “key and fob” deposit is a charge allowed under s. 6 of the Residential Tenancy Regulation, a regulation made under s.97 of the *Act* and which provides:

> **Refundable fees charged by landlord**
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> **6** (1) If a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is
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> (a) refundable upon return of the key or access device, and
> (b) no greater than the direct cost of replacing the key or access device.
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> (2) A landlord must not charge a fee described in subsection (1) if the key or access device is the tenant's sole means of access to the residential property.

At the same time, the *Act* defines “security deposit” to be:

> **"security deposit"** means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:
>
> (a) post-dated cheques for rent;
> (b) a pet damage deposit;
> (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

I conclude that though the tenants are entitled to recover the “key and fob” deposit, it is a separate fee and excluded from the definition of “security deposit” as it is “a fee prescribed under section97(2)(k) *[regulations in relation to fees]*;” and so is not doubled with the security deposit.

In result, the tenants are entitled to a doubling of the $1680.00 security deposit to $3360.00 plus the $200.00 “key and fob” deposit for total of $3560.00.

Conclusion

The landlord is entitled to a monetary award totalling $360.00. As she has been largely unsuccessful on this application I decline to award recovery of any filing fee. I authorize her to recover the $360.00 award from the deposit she holds.

The tenants are entitled to recover the remainder of the doubled deposit and "key and fob" deposit and are entitled to recover their $50.00 filing fee. They will have a monetary order against the landlord in the amount of $3250.00.

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: February 07, 2014

Residential Tenancy Branch