Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of telephone conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord and the Tenants. The Landlord applied for a Monetary Order for damage to the rental unit, unpaid rent or utilities and to retain the pet damage and security deposit. The Tenants applied for the return of the security deposit. Both parties also applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement, and to recover the filing fee for the cost of making their respective Applications.

The tenants and the landlord's agent appeared for both hearings. The first hearing mainly dealt with the Landlord's Application, which was adjourned to hear the Tenant's Application and allow the Landlord to serve the Tenants with additional evidence.

No issues in relation to the service of hearing documents, copies of the Landlord's original and amended applications, and documentary in accordance with the Act and Rules of Procedure were raised by any of the parties. Both parties were given a full opportunity to be heard, to present their affirmed testimony, to make submissions and to cross-examine one another. The male Tenant led the testimony for both Tenants during the hearings. While I have turned my mind to all the documentary evidence submitted prior to the hearings, not all details of the respective submissions and arguments are referred to in my decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for damage to the rental unit, unpaid rent and compensation for loss under the Act?
- Are the Tenants entitled to the return of double the security deposit and compensation for loss under the Act?

Background and Evidence

Both parties agreed that this fixed term tenancy for a rental unit in a strata building started on September 15, 2012 for a monthly rent of $1,250.00, payable in advance on the first day of each month. A written tenancy agreement was completed and signed by the parties and the fixed term was to end on September 30, 2013 at which point the Tenants were required to vacate the rental suite in accordance with the written agreement, which they did. The tenants paid a $625.00 security deposit to the Landlord on September 11, 2012 which the Landlord continues to retain.

The Landlord and Tenants completed a move in condition inspection on September 14, 2012 and a move out condition inspection on October 7, 2013. During the move out inspection, the Tenants provided their forwarding address to the Landlord by documenting this on the inspection report. The Tenant testified that the forwarding address had also been provided to the Landlord during a previous hearing held on September 23, 2013 to deal with the Tenants' application to cancel a notice to end tenancy and monetary compensation.

Landlord's claim for unpaid rent

During the September, 2013 hearing, the arbitrator determined that the Tenants had failed to pay rent for the months of August and September, 2013 in the amount of $2,500.00. The arbitrator in the same hearing also determined that the Tenants were owed $525.00 in monetary compensation by the Landlord and that this amount could be deducted from the amount of rent outstanding in accordance with section 72(2) of the Act. However, the arbitrator could not issue the landlord with a Monetary Order for the unpaid rent as the Landlord had not made a formal Application for this. As a result, the landlord made this application on October 22, 2013 and now seeks unpaid rent from the Tenants in the amount of $1,975.00 as this amount still remains unpaid by the Tenants. The Tenants confirmed that this amount is still owing to the Landlord in unpaid rent.

Landlord's claim for carpet cleaning to the rental suite

The Landlord claims $103.95 for carpet cleaning as evidenced by an invoice for this amount. The Landlord provided a number of photographs which indicate multiple staining and dirt marks to the carpet in the rental suite. The Landlord's agent testified the Tenants had left it dirty and referred to a signed addendum to the tenancy agreement which required the Tenants to "professionally shampoo the carpet".

The Tenant testified that the carpets were shampooed using a professional carpet cleaner, which the Tenant used in conjunction with his previous role as a property manager, and provided photographs of this machine he used to shampoo the carpets. The Tenant also provided photographs of the bedrooms and closet areas after he had cleaned them, which indicate no staining and appear to be clean. The Tenant provided a photograph of the living room which he testified was taken during the tenancy, which does indicate staining, which the Tenant testified was caused by prospective buyers when the rental unit was for sale on the property market. The Tenant submits that the carpet contained damage that did not exceed reasonable wear and tear.

Landlord's claim for disposal of a mattress

The Landlord claims $100.00 for the cost of disposing of a mattress left behind by the Tenants at the end of the tenancy, as evidenced by a cheque receipt for this amount. The Landlord submitted a string of e-mails in which the Landlord is alerted to the issue of the mattress being dumped in the parkade by the strata management. The strata management requested the Landlord to send the Tenants a warning letter or contact them by phone asking them to remove it as it is a safety hazard.

The Landlord's agent testified that the Landlord contacted the Tenants the same day by e-mail informing them that they will arrange to move the mattress and charge the cost back to them. The Landlord provided a photograph of the mattress in the parkade by the recycling trash bins. The e-mail string goes on to show the Tenant's response five days later which states that the mattress was not dumped but placed in the area for recycling.

The Tenant testified that the mattress was recyclable, and in their efforts to be 'green', they left the mattress in the recycling area of the building on the basis that it was an acceptable item that would be taken by the local authorities. The Tenant submitted at no time were they given an opportunity by the Landlord to remove the mattress or was a date and time set up to allow them access to the building to remove it.

Landlord's claim for damages to the rental suite

The landlord claims a total of $443.04 for cleaning and repairs of the rental suite. This comprises of the following: $75.00 charged for 5 hours at $15.00 per hour for the cleaning of the; fridge, stove, dishwasher, washing machine, kitchen floor, doors, door frames, balcony, patio screen door, a lazy Susan, and blinds; $125.00 for the filling and painting touch ups for 115 small holes in the walls charged for 6 hours at $22.50; $243.04 for supplies including paint, rollers and trays, glue for repairing countertop

striping, lights, cleaning sprays, a microwave grill, microwave filters and fuel costs for obtaining these materials.

The Landlord provided a number of photographs indicating the absence of stripping to the countertop bathrooms, a dirty washing machine and fabric filter, a lazy Susan which had not been wiped clean, numerous holes in the walls which had been filled in and wiped clean, scuff marks to the countertop, a crack in the microwave grill, an unclean stove top and the inside of the oven which indicates that it had not been cleaned. The Landlord also provided individual receipts for the cleaning supplies detailed above including the parts to repair the microwave.

The Tenant testified that the Landlord had added items onto the condition inspection report without consent such as a “damage to the microwave”. The Tenant testified that they did patch up some holes in the walls they caused on the day they moved out but did not paint over them as they had not changed the colour of the wall in accordance with the tenancy agreement addendum which states that the Tenants only have to do painting if the colour of the wall is changed; however, the Tenant denied the Landlord’s claim that there were 115 spots on the wall and provided photographs showing that no pictures were hung up on the walls during the tenancy. The landlord disputed this and said that there was a requirement for them to paint over the holes they had repaired.

The Tenant denied the damage to the microwave and the cleaning costs and testified they had it professionally cleaned by a company. The Tenant submitted that the Landlord’s photograph showing the unclean stove top were taken after the Landlord had messed around with the microwave to take their photographs which was housed above the stove top. The Tenants provided several photographs which indicate that the rental unit was left clean including the kitchen and bathroom cabinets.

Landlord’s claim for car parking fines

The Landlord claims $200.00 for a fine levied against the Landlord by the strata management because the Tenants had failed to remove a storage box housed in one of the Tenants’ parking spaces. The Landlord’s agent testified that the Landlord received a notice in December, 2012 which was provided to the Tenant asking them to remove the storage box which they did not.

The Landlord’s agent testified that he thought the Tenants had removed the storage box until he learnt on May 27, 2013 by a strata letter that the Landlord was being fined for $200.00. The letter was produced as evidence and states that the Landlord has received numerous complaints about this before but the issue was not corrected.

The Tenant testified that they had a large storage container housed in the parking stall and that they received no written notification from the Landlord to remove this and that the container was causing an infarction until it was removed by the strata on May 23, 2013 and given back to Tenants at the end of the tenancy.

The Landlord's agent referred to a string of e-mails and previous Notices issued to the Landlord from the strata management, provided after the first hearing, where the Tenants were asked to remove an oil container. The Tenant testified that the notice was not in relation to the large storage container but to an oil can which was placed into their parking bay by an unknown party which the Tenants removed when they discovered it.

The Landlord's agent then referred to the notice issued in December, 2012 which details the infraction regarding the oil can but also states "An owner, tenant or other occupant shall not: use any part of the common property (other than established storage rooms or lockers) for storage, without the written consent of the council", and that this was evidence to show that the Tenants could not use their car park as storage for any item, be it a can of oil or a storage box. In addition, the Landlord's agent referred to an email dated December 6, 2012 which stated "Kindly please remove all stuffs at the parking stall to avoid any fines levying on the unit."

The Tenant submitted that they had not been told that a failure of them to remove this box was going to result in a fine to the Landlord and that the formal notices only relate to the oil can and not the storage box.

Tenant's claim for return of the security deposit

The Tenants testified that the Landlord owed them double the amount of the return of the security deposit pursuant to Section 38(6) (b) of the Act, because the Landlord had not filed within the time limits stipulated by the Act.

Tenant's claim for monetary compensation

The Tenant testified that they seek from the Landlord a total of $1,850.00 in monetary compensation which they had assigned as an appropriate amount for the Landlord engaged in fraud, defamation of their character and for stress.
The Tenant testified that their claim for fraud was based on the fact that the Landlord had added two items ('Microwave – top cap broken' and 'Hold-up – no refund') to the condition inspection report after it was completed and signed by the Tenants.

In relation to the defamation of character, the Tenant testified that the Landlord's agent had provided them with a letter during the tenancy which portrayed them as good Tenants; however, after they left the tenancy, the Tenants claim they were denied the prospective rental of another suite because the Landlord's agent had provided a 'bad' reference which was not true. The Landlord testified that the Tenants had been provided with the reference letter before they failed to pay their rent for this tenancy and as a result, when the Landlord's agent was contacted by the prospective landlord for the Tenants, he explained that the Tenants had not paid rent.

The Tenants testified that this tenancy had caused them undue stress because they had been tricked into a fixed term tenancy by the Landlord. The Tenant referred to evidence that had been submitted for the previous hearing. The Landlord submitted that this claim for compensation had already been dealt with in the previous hearing.

Analysis

In relation to the evidence provided above, I find that the Act requires a Tenant to give to the Landlord a forwarding address in writing. As a result, the only verifiable evidence of the Tenant providing their forwarding address in writing was on the condition inspection report, completed on October 7, 2014. As a result, I find that the Landlord made the Application to keep the Tenants' security deposit within 15 days of receiving the Tenant's address pursuant to Section 38(1) (d) of the Act.

Analysis of Landlord's claim for unpaid rent

Based on the decision of the arbitrator for a hearing that took place on September 23, 2013, which was provided as evidence by the Landlord, and the parties affirmed testimony that rent in the amount of **$1,975.00** is still outstanding, I award this amount to the Landlord.

Analysis of Landlord's claim for disposal of a mattress

Section 37(2) (a) of the Act provides that at the end of a tenancy, the Tenant must leave the rental unit reasonably clean and undamaged.

The Tenants disputed the Landlord's claim for the cost of disposing of a mattress based on the fact that the Landlord did not give them an opportunity to come back after the tenancy had ended to dispose of it. However, I find that it is not reasonable to dispose of a large piece of furniture in this manner. If the Tenants felt that they wanted to protect the environment then it would have been prudent for them to dispose of this at a

recycling center that would be able to accept and deal with such a large item. I also find that it would have been prudent for the Tenants to seek the Landlord's consent in writing to leave such a large amount of furniture behind, which the Tenants failed to do. In this case, I find that there was no obligation on the Landlord to give the Tenants an opportunity to come back to remove the mattress and I find that the Tenants failed to conform to Section 37(2) of the Act. As a result, the Landlord is awarded this cost in the amount of **$100.00.**

Analysis of the Landlord's claim for cleaning and damages and to the rental suite

In my analysis of the Landlord's claim for the cleaning of the rental suite, carpet cleaning and damages claimed by the Landlord, I have not considered the Condition Inspection Report submitted by the Landlord which would have been a useful key piece of evidence in making a determination of the Landlord's claim.

The Condition Inspection was completed by both parties; however, it does not adequately show the condition of the suite at the end of the tenancy. The Landlord has marked off boxes at the start of the tenancy but there is no such indication as to what the condition of the suite was at the end of the tenancy on the report, apart from a general statement that the carpets were not clean.

Therefore, I turned my mind to the remaining evidence submitted by the parties and applied the following test. 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 Tenants. 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 Landlord 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.

The Tenants denied the monetary claim of the Landlord. In addition, the Tenants provided photographic evidence and invoices which contradict and undermine the Landlord's evidence that the carpet and the rental suite were not reasonably cleaned at the end of the tenancy. The Tenants submit that a lot of the damage claimed by the Landlord such as the dirty stove, broken microwave and 115 holes in the walls was not caused by them. The Tenants admitted that any damage caused to the walls were filled in and patched up by them as required by the addendum to the tenancy agreement.

As a result, I find that the Tenants have provided a plausible explanation to refute the Landlord's evidence and I find that the Landlord has not provided sufficient evidence to prove this aspect of the claim which I dismiss accordingly.

Analysis of Landlord's claim for car parking fines

The Landlord and Tenants disagreed with each other on the interpretation of the notices that the Landlord had submitted as evidence and what items they referred to. The Tenants submitted that they had only been informed by the Landlord of items in their parking space relating to an oil can and no notice in relation to a mobile box unit for which the Landlord had received a fine for, had been given to them. The Landlord maintained that the notices that the Tenants admitted to receiving also documented the fact that they were not allowed to have any storage items in their car parking spaces.

In this case, I find that a failure of a Landlord to alert the Tenants to the fact that they were in contravention of a strata rule, does not absolve the Tenants of the infraction. I accept the evidence of the Landlord, in particular the 'warning' email sent to the Tenants which informed them that all items should be removed from the parking stall to prevent fines. As a result, the Landlord was not obligated to keep providing the Tenants with an opportunity to move a particular item, for which they had been clearly informed. In addition, the strata rules clearly stipulate the rules around having any items stored in the parking spaces which was clearly detailed and communicated to the Tenants on the notice about the oil can which they did acknowledge receipt of. As a result, I award the Landlord **$200.00** for the strata parking fine incurred as a result of the Tenant's action.

Analysis of Tenant's claim for compensation

The Tenants provided no supporting evidence in relation to their claim the Landlord had provided false information to a prospective Landlord that involved defamation to their character. If the Tenants choose to use the Landlord as a reference then they have to accept that a Landlord has a right to provide information. In this case the Landlord told the prospective new Landlord that the Tenants had not paid rent; I find this was a factual and true statement based on the evidence before me and I find that the Tenants have not disclosed sufficient evidence for this portion of their claim which I dismiss.

The Tenants also provided no supporting evidence to suggest that the Landlord added items to the condition inspection report after it was signed by both parties that constituted fraud. The Landlord denied this claim and in the absence of corroborating evidence by the Tenants, I dismiss this portion of the Tenants' claim.

I relation to the Tenants' claim for stress, I find that the evidence alluded to by the Tenant was evidence that had been presented and dealt with during the previous hearing on September 23, 2013. Section 77 of the Act provides that a decision or an order is final and binding on the parties. As this matter was already dealt with in the previous hearing, I dismiss the Tenant's claim for monetary compensation for stress.

Conclusion

The Landlord has established a total claim against the Tenants for $2,275.00, which I subsequently award to the Landlord. As the Landlord had to make the Application to recover the unpaid rent, I award the Landlord the $50.00 filing fee pursuant to Section 72(1) of the Act. Therefore the total amount awarded to the Landlord is $2,325.00.

As the landlord already holds $625.00 as a security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4)(b) of the Act. As a result, the Landlord is awarded a Monetary Order in the amount of **$1,700.00**. The Tenant's Application is dismissed without leave to re-apply.

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: March 29, 2014

Residential Tenancy Branch