Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction
This hearing dealt with the landlord's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties agreed that this tenancy ended on November 30, 2013, on the basis of a written notice to end this tenancy which the tenants handed to the landlord on October 31, 2013.

The tenants both confirmed that they received copies of the landlord's dispute resolution hearing package, which the landlord had sent to the tenants by registered mail on December 20, 2014. In accordance with sections 89(1) and 90 of the *Act*, I find that the tenants were deemed to have received the landlord's dispute resolution hearing package on December 27, 2013, the fifth business day after their registered mailing.

Issues(s) to be Decided
Is the landlord entitled to retain all or a portion of the tenants' deposits?

Background and Evidence
This periodic tenancy began on December 1, 2009. Monthly rent was set at $1,774.00 by the end of this tenancy, payable in advance on the first of each month. The landlord continues to hold the tenants' $850.00 security deposit and $850.00 pet damage deposit, both paid on or about December 1, 2009.

Although the tenants agreed that they participated in a joint move-in condition inspection with the landlord's mother who was then looking after the rental unit on January 4, 2010, there were no signatures on the report provided to the tenants. The landlord also conducted his own condition inspection on November 30, 2013. Although the landlord outlined the results of that inspection in a letter entered into written

evidence, the landlord did not obtain any signatures on a joint move-out inspection of the premises at the end of this tenancy.

The landlord applied for authorization to retain the tenants' deposits on December 15, 2013, fifteen days after this tenancy ended. He entered written and photographic evidence and undisputed sworn testimony that the tenants used the rental unit as a "reptile nursery" where a range of reptiles, roaches, maggots, crickets, snakes, spiders and geckos were kept. He estimated that the tenants were keeping at least 100 snakes in the rental unit. He testified that by the end of this tenancy, the smell of reptile and cat urine was overpowering. Although he entered no written evidence of any receipts to substantiate his expenditures, he said that he had to replace carpet in one of the bedrooms with laminate at a cost of $300.00 for materials and $500.00 for labour. He testified that he had to have the premises repainted at a cost of over $600.00. He also estimated that he spent at least 20 hours cleaning the rental unit at the end of the tenancy. He testified that the premises could not possibly be rented to anyone until considerable work was done on the rental unit, which delayed re-renting the premises to another tenant until February 15, 2014.

The tenants observed that the rental unit was in poor condition when they took occupancy of the premises. The tenants testified that the landlord and some of his friends had been living in the rental unit and had left it in poor condition, which was reflected in the joint move-in condition inspection report entered into written evidence by the landlord. The female tenant testified that the tenants had been promised that the premises would be cleaned and repaired by the time they were to take occupancy, but these repairs and cleaning had not been completed by the time they began their tenancy. The female tenant said that the oven, fridge, and cupboards in the kitchen and the bathroom were filthy when the tenancy began. She said that she had to spend 20 or 30 hours cleaning the rental unit at the start of this tenancy, and also had to repaint the walls, because of extensive damage to the rental unit.

Analysis

When disputes arise as to the changes in condition between the start and end of a tenancy, signed joint move-in and move-out condition inspection reports are very helpful. The joint move-in condition inspection report of January 4, 2010 was not signed by anyone, although a copy of it was provided to the tenants. While the landlord did attempt to conduct a joint move-out condition inspection with the tenants, no actual joint move-out condition inspection of the premises was conducted, and the landlord has not demonstrated that he provided the tenants with two written opportunities to conduct a joint move-out condition inspection. Although the landlord did provide the tenants with a copy of what had not been cleaned, this list does not adequately compare the premises

inspected at the beginning of this tenancy and as set out in the joint move-in condition inspection with the condition of the premises at the end of this tenancy.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

> ***36*** *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> > *(a) does not comply with section 35 (2) [2 opportunities for inspection],*
> >
> > *(b) having complied with section 35 (2), does not participate on either occasion, or*
> >
> > *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Similar provisions are in place with respect to a landlord's failure to meet the requirements of a joint move-in condition inspection.

The male tenant maintained that the landlord failed to adhere to the provisions of the inspection sections of the *Act* and, as such, the landlord's rights to claim against the tenants' deposits were extinguished. I find it quite possible that the landlord's rights to claim against the tenants' deposits were extinguished as a result of the landlord's failure to comply with the requirements of section 36(2)(a) of the *Act*. I also find that the "list" provided by the landlord describing the condition of the rental unit at the end of this tenancy does not meet the requirement placed on the landlord by section 36(2)(c) of the *Act* to supply the tenants with a report of the inspection of the premises. For these reasons, I dismiss the landlord's application to retain the tenants' deposits on the basis that his right to retain these deposits has been extinguished by his failure to adhere to the requirements of section 36(2) of the *Act*.

However, even if I were wrong regarding this determination, I also find that the landlord has not supplied sufficient evidence to demonstrate his entitlement to a monetary award. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this regard, I find that the tenants' description of the condition of the rental unit at the beginning of this tenancy is supported to a considerable extent by the unsigned move-in condition inspection of the rental unit. This inspection was conducted between the tenants and the landlord's mother who was looking after the rental property for him while he was out of town before this tenancy began. The female tenant gave direct sworn testimony regarding the condition of the rental unit and the measures that she had to undertake to make this rental unit habitable for the tenants. Her estimate of the time it took to clean the rental unit at the beginning of this tenancy exceeds the time the landlord stated was required to conduct cleaning and refurbishing at the end of this tenancy. Although the landlord said that he had receipts for expenses incurred, he produced none of these for this hearing.

Separate from the time he claimed it took to clean the rental unit after this tenancy ended, the landlord's chief specific expenses were for the replacement of carpet with laminate flooring, and for the repainting of the walls and ceilings. At the hearing, I noted that the Residential Tenancy Branch (the RTB) has established Policy Guidelines to assist Arbitrators in making decisions with respect to the useful life of various items in a tenancy.

RTB Policy Guideline 40 establishes that the useful life for an interior paint job is set at four years. The tenants said that the rental unit was in such poor shape when they commenced their tenancy that the female tenant had to paint some of the premises herself, after the tenancy began. While the landlord paid for the paint, the female tenant performed the labour at no charge. The landlord estimated that the last time that the premises were painted prior to the beginning of this tenancy was about five years ago. Thus, I find that the existing paint job in place in the rental unit when this tenancy

started had exhausted its useful life by the end of this tenancy. Under these circumstances, even if the landlord had provided receipts for his painting costs, the landlord would be responsible for these costs as the premises were due to be repainted.

The landlord also stated that the carpets that were damaged by the tenants and had to be replaced had been there since his parents bought this property in 2004. Policy Guideline 40 establishes that the useful life of indoor carpeting is set at ten years. Again, I find that any flooring replacement costs that the landlord incurred resulted from a failure to replace the existing carpet within the useful life of that carpeting. These carpets were due for replacement when the landlord had new laminate flooring installed after this tenancy ended. I also note that the move-in condition report showed there being stains and burn marks on the existing carpeting at the beginning of this tenancy in 2009. This again supports the tenants' claims as to the condition of the rental unit and the carpeting at the start of their tenancy.

For the reasons outlined above, I dismiss the landlord's application as I find that the landlord is not entitled to retain any portion of the tenants' deposits. I order him to return these deposits to the tenants forthwith. No interest is payable over this period.

Conclusion

I dismiss the landlord's application without leave to reapply. As the landlord continues to hold the tenants' $1,700.00 in deposits, I order the landlord to return these deposits to the tenants. I find that the tenants are entitled to a monetary Order in the amount of $1,700.00 for the return of their deposits.

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 04, 2014

Residential Tenancy Branch