Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

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 tenant's counsel (counsel) confirmed that the landlord handed his office a copy of the landlord's dispute resolution hearing package on November 18, 2013. Both parties also confirmed that they received one another's written, photographic and, in the case of the landlord, digital evidence. I am satisfied that all of the above documents and evidence were served in accordance with the *Act.*

At the commencement of this hearing, the landlord reduced the amount of her requested monetary award from $4,292.22 to $1,250.00, the amount of the security deposit she retains from the tenant.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on November 2, 2012. The tenancy ended on October 31, 2013, as per the terms of this one-year fixed term tenancy agreement. Monthly rent was set at $1,250.00, payable on the first of each month. The landlord continues to hold the $1,250.00 security deposit paid by the tenant on November 2, 2012.

The parties agreed that they both participated in a joint move-in condition inspection on November 2, 2012. The landlord gave undisputed sworn testimony and written evidence that she provided the tenant with a copy of the joint move-in condition inspection report she prepared as a result of the joint move-in condition inspection of the premises.

I received conflicting sworn testimony and written evidence from the parties regarding the arrangements made to conduct a joint move-out condition inspection of the premises. The tenant and his counsel maintained that the tenant tried a number of times to arrange for a joint move-out condition inspection of the rental unit. The landlord attributed the delay in conducting the joint move-out condition inspection to the tenant and his counsel.

The parties agreed that on November 11, 2013, the landlord, her witness, the tenant and the tenant's counsel attended the rental unit for the purpose of conducting a joint move-out condition inspection. The landlord gave written evidence and sworn oral testimony that she attempted to conduct a joint move-out condition inspection on November 11, 2013 and obtain a signed statement from the tenant or his counsel regarding the accuracy of her inspection. She said that the tenant's counsel refused to co-operate with this inspection and she had to conduct her inspection and prepare her report without the tenant's participation, despite the tenant and his counsel agreeing to attend the move-out inspection on November 11, 2013.

The landlord entered into written undisputed written evidence in the form of emails exchanged between the landlord and the tenant's counsel. In his November 7, 2013 email, the tenant's counsel maintained that the tenant had asked for what would appear to have been a request to conduct a preliminary final inspection of the rental premises so as to determine if there was anything that the tenant needed to repair or clean before the end of his tenancy. In his email, the tenant's counsel stated that the landlord refused to conduct this preliminary inspection "and said to my client that he had until October **31**, 2013 to do any work." The tenant's counsel also noted that the tenant, the landlord and the tenant's counsel met at the rental unit on October 31, 2013, for the purposes of the final condition inspection. However, the tenant's counsel noted that the

landlord advised the tenant that she was parked in the loading zone and did not have time to conduct this final inspection. After the landlord refused additional proposals by the tenant to arrange alternate times for a joint move-out condition inspection, the tenant sent the landlord his forwarding address by email on November 4, 2013, requesting a full return of his security deposit. The tenant's counsel maintained in his email of November 7, 2013, that it was only at this point that the landlord agreed to conduct a joint move-out condition inspection, eventually arranged for November 11, 2013.

The landlord maintained that by the time the tenant and his counsel attended the rental premises on November 11, 2013, the tenant and his counsel were only interested in obtaining a full return of the tenant's security deposit and not in conducting any meaningful inspection of the rental unit. The landlord said that she went through the rental unit room-by-room after the tenant and his counsel refused to conduct this type of thorough inspection on November 11, 2013, and completed the report of her inspection of the rental unit without their participation.

I also heard conflicting evidence with respect to the actual condition of the rental unit both before and after this tenancy ended.

The landlord gave undisputed sworn testimony that the tenant told her at the joint move-in condition inspection that the premises looked "brand new." She testified that she repainted the rental unit in approximately April 2011. She said that the appliances were "spotless" and there were no scratches on the appliances, the floors or the walls. She said that the inspection report she prepared at the beginning of this tenancy and entered into written evidence accurately reflected the condition of the rental unit at that time.

The landlord's witness testified that he helped the landlord prepare her rental unit for occupancy before this tenancy began. He said that the rental unit was in "A1" condition at the beginning of this tenancy. He testified that the rental unit was not in the same condition when this tenancy ended.

The landlord testified that at the end of this tenancy the washroom and walls were dirty. There were multiple holes and gouges in the walls. She noted that there was grease that had burnt onto the stove which had apparently led the tenant to use the wrong product or by using a steel brush or knife to clean the metal stovetop and the microwave. She maintained that the stove had been scratched badly during this tenancy. She said that she spent hours trying to sand these appliances down and repair the damage to these appliances. She also noted that the tenant claimed to have

cleaned the floors with “laminate cleaner” when there was no laminate flooring in this rental unit. She said that the floors cleaned by the tenant with laminate cleaner were hardwood floors, scratched in the process. She provided photographic and video evidence to support her assertions regarding the condition of the rental unit at the end of this tenancy.

The tenant confirmed that he signed the joint move-in condition inspection report. However, the tenant’s counsel maintained that the joint move-in condition inspection did not reveal the true condition of the premises at the beginning of this tenancy because it was conducted at night. The tenant testified that before the end of his tenancy he undertook a major effort to clean the rental unit. He also provided photographic evidence, although these photos provided less detail than those of the landlord. He said that he bought professional cleaning products and used a 3M product to clean the stove. He said that there were a few marks and scratches which arose during the course of his tenancy, but these were typical of wear and tear. The tenant’s counsel noted that the tenant spent four days cleaning the rental unit. He said that the tenant believed that the rental unit was left in good condition and was in at least similar condition to when the tenancy began. The tenant’s counsel maintained that the landlord decided to repaint the rental unit so that she could sell it, as the landlord had listed the property for sale.

The landlord supplied few actual receipts for her costs of cleaning, repairing and painting the rental unit. She entered into written evidence a November 12, 2013 handwritten “price quote” on the cost of labour and paint for the repainting of the premises. This quote estimated labour costs of $600.00 and paint costs of $179.20, for a total of $779.20. The landlord gave sworn testimony and entered written evidence that she and her mother commenced repainting the rental unit on December 6, 2013. She also provided receipts of $110.39 for paint and $17.36 for cleaning supplies.

In support of her claim for a monetary award for damage, the landlord also submitted a cleaning and painting “record.” This record, essentially a list of dates and times she and her mother allegedly spent cleaning and painting walls, totalled 153.75 hours. She maintained that the time spent by her and her mother should be charged at a rate of $40.00 per hour, totalling $6,150.00. While her true expenses far exceeded the value of the tenant’s security deposit, the landlord asked that she be allowed to keep the tenant’s security deposit plus the recovery of her filing fee.

Analysis

At the hearing, I noted that a landlord is only allowed to charge up to one-half month's rent for a security deposit in this province. I advised the landlord that she had illegally charged the tenant a security deposit of a full month's rent in contravention of the *Act*. Operating a rental unit is a business and a landlord needs to be informed of her rights and responsibilities as a landlord. Ignorance of the law is not an acceptable excuse for overcharging tenants for items covered under the *Act*.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful.

The joint move-in condition inspection report of November 2, 2012, entered into evidence by the landlord, showed that, with few exceptions, all parts of the rental unit were in either good or fair condition at that time. The stove and stovetop were identified as being in both good and fair condition. The only specific notation on the joint move-in condition inspection report signed by the tenant was that there were "some scratches" on the ceiling in the living room. No repairs were identified as required during that joint move-in condition inspection. I give little weight to the claim made by the tenant's counsel that the move-in inspection was less than accurate because it was conducted in the evening. The tenant's failure to raise any concerns with the landlord shortly after he viewed the rental unit in daylight negates the claim made by his counsel as to the accuracy of the joint move-in condition report. I find that the contents of the joint move-in condition inspection report are consistent with the landlord's claim and that advanced by her witness that the rental unit was in good condition at beginning of this tenancy.

No joint move-out condition inspection was conducted and conflicting evidence was provided by the parties to explain why this did not occur. 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:

> ***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...*

Although the landlord did expect that the tenant and his counsel were intending to participate in a scheduled joint move-out condition inspection on November 11, 2013, the same might also be said for the tenant and his counsel on October 31, 2013, when the tenant surrendered possession of the rental unit to the landlord. Joint move-out condition inspections are not conducted prior to the end of a tenancy or 11 days after a tenancy ends. They are generally conducted as close to the scheduled time to end the tenancy as possible.

I find that there is ample evidence that both parties were partially at fault in the resulting failure to undertake a joint move-out condition inspection of this rental unit. However, the *Act* places more of an onus on a landlord to ensure that such inspections are properly scheduled in a timely fashion at the end of a tenancy. Once the tenant and his counsel refused to participate in the November 11, 2013 joint inspection, the landlord did undertake her responsibility to conduct this inspection herself and forward the tenant a copy of her report of that inspection.

While I have given the landlord's very detailed move-out condition inspection report, her photographs and video, and the sworn testimony of her witness careful consideration, I also note that the tenant supplied photographs that displayed a different view of the condition of the rental unit at the end of this tenancy. I find in general that much of the alleged damage and lack of cleaning claimed by the landlord in her written evidence and narrative account on her video of the rental unit exaggerates the true extent of the cleaning and repair required at the end of this tenancy.

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.

As was outlined above, the landlord provided very few actual receipts to demonstrate the losses she claims to have incurred as a result of the actions attributed to the tenant. She also submitted a single handwritten "estimate" that was not on any business letterhead or invoice. The landlord has no doubt worked on the repair, repainting and cleaning herself and with the assistance of her mother. However, I find her claim that she and her mother spent 153.75 hours on these tasks at a grossly inflated hourly rate of $40.00 per hour wildly excessive. With such scant evidence of receipts showing actual expenses incurred or losses experienced by the landlord, I find that her eligibility to claim against the security deposit for damage arising out of the tenancy is limited.

Based on a balance of probabilities, I find that the rental unit likely did require painting and minor repairs associated with the repainting process as a result of damage that did arise during this tenancy. I accept that the landlord incurred costs of $110.39 for paint. While the estimate for labour associated with repainting submitted by the landlord was for $600.00, the landlord's actual hours spent on this task appear far in excess of that estimate. Since I find both of these estimates of the time associated with painting submitted by the landlord deficient, I allow 24 hours of labour at a rate of $20:00 per hour for the labour associated with repainting the rental unit.

However, the tenant's counsel is correct in noting that some of this deterioration in the condition of the existing paint job results from reasonable wear and tear. In this regard, the RTB's Policy Guideline #40 establishes that the useful life of an internal paint job is four years (i.e., 48 months). In this case, I heard undisputed sworn testimony from the landlord that the rental unit was last repainted in April 2011, 31 months before the landlord had to repaint the premises again in December 2013. Under these circumstances, I allow the landlord a monetary award of 35.4 % {i.e., (48-31)/48 = 35.4%} of her total repainting costs or $208.97 ($110.39 + 24 hours @ $20.00 per hour = $590.39 x 35.4% = $209.00).

Section 37(2) of the *Act also* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. Based on the oral, written, photographic and video evidence of the parties and the sworn testimony of the landlord's witness, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean and undamaged" as some cleaning and repair was likely required by the landlord after the tenant vacated the rental unit. For that reason, I find that the

landlord is entitled to a somewhat nominal monetary award of $200.00 for general cleaning and repair that was required at the end of this tenancy. I also allow the landlord to recover the $17.36 she spent on cleaning supplies.

As the landlord has been partially successful in this application, I allow the landlord to recover her $50.00 filing fee from the tenant.

I allow the landlord to retain the amounts outlined above totalling $476.36 from the tenant's security deposit. I order the landlord to return the remaining amount of the tenant's security deposit plus applicable interest to the tenant forthwith. No interest is payable over this period.

Conclusion

I allow the landlord a monetary award of $476.36, which allows the landlord to recover damage and the filing fee for this application from the tenant, calculated as follows:

Item	**Amount**
Repainting	$209.00
Cleaning Supplies	17.36
General Cleaning and Repair	200.00
Less Security Deposit	-1,250.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**($773.64)**

I order the landlord to return the remaining $733.64 from the tenant's security deposit to the tenant forthwith.

The tenant is 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: March 11, 2014

Residential Tenancy Branch