Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sea to Sky Community Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND, MNSD
Tenant: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent; the tenant and her witness.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and for all or part of the security deposit, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The parties agree the tenancy began in August 2001 as a month to month tenancy for the monthly rent of $276.00 (at the end of the tenancy) due on the 1st of each month with a security deposit of $414.00 paid. The tenancy ended on November 30, 2013.

The landlord has submitted a Condition Inspection Report that records the condition of the rental unit at the start and end of the tenancy. The Report also contains a declaration signed by the tenant that stipulates that she acknowledges liability for cleaning and damages noted in the Report. The declaration goes on to say that she

agrees the cost of cleaning and repairs may be deducted from her security deposit. The declaration is signed December 2, 2013.

Both parties provided copies of written communications between them attempting to negotiate an amount to be paid for damage to the bathroom floor. In the documentation the tenant acknowledges responsibility for the damage. She states her daughter caused it. The landlord offered to deduct $200.00. When these negotiations failed the landlord indicated that they would be seeking the full cost of replace in the amount of $413.37.

The landlord submits the residential property was built in 1994 and the flooring in the bathroom was installed at that time. The landlord has submitted into evidence an inspection report from a building restoration and renovation company stating the flooring had 10 years of usefulness left. The report goes to state that a replacement product would have a 25 – 35 year useful life expectancy.

The tenant submitted her Application for Dispute Resolution on February 5, 2014 seeking double the amount of the security deposit because the landlord did not provide it to her within 15 days of ending her "residency". The parties agree that the landlord received the tenant's forwarding address on December 2, 2013. The landlord filed their Application for Dispute Resolution on December 13, 2013.

Analysis

Section 38(4) stipulates that a landlord may retain **an amount** from a security deposit or a pet damage deposit if the tenant agrees in writing the landlord may retain **the amount** to pay a liability or obligation of the tenant. [Emphasis added].

Based on the testimony and evidence submitted by the landlord I find the declaration signed by the tenant on the Condition Inspection Report does not include a specific amount. As such, I find the landlord is not entitled, under Section 38(4), to retain any portion of the security deposit held because they do not have written agreement from the tenant to retain any specific amount.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based on the evidence and testimony of both parties I find the tenant acknowledges having caused the damage during the tenancy. As the tenant did not repair the damage at the end of the tenancy I find the tenant has failed to comply with the requirements of Section 37 and as such is responsible for the repair.

However, the flooring is 19-20 years old. Residential Tenancy Policy Guideline 40 provides the useful life for building products and lists the following flooring options and the useful life as:

- Carpets – 10 years
- Tile – 10 years
- Harwood and parquet 20 years.

There is no specific listing in the Guideline for vinyl flooring. As such I must rely on the landlord's submission from a potential supplier that the useful life for vinyl product flooring has a useful life of between 25 and 35 years. In addition, the report indicates that while the flooring is 20 years old there is another 10 years left. As such, I find the useful life for this vinyl flooring is 30 years.

I also accept the landlord's evidence that the replacement of the vinyl flooring cost the landlords $413.37. However, as the flooring has gone through 2/3 of its useful life I must discount the amount of the landlord's claim by 2/3 for a total discount of $275.58. I therefore find the landlord is entitled to $137.79.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In relation to the tenant's claim for double the security deposit I find, based on the testimony of both parties, that the landlord received the tenant's forwarding address on December 2, 2013. As such, the landlord had until December 17, 2013 to either return the deposit in full or file an Application for Dispute Resolution claiming against the deposit. As the landlord filed their Application on December 10, 2013 I find the landlord has complied with Section 38(1) and the tenant is not entitled to receive double the amount of the deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$162.79** comprised of $137.79 for damage and $25.00 of the $50.00 fee paid by the landlord for this Application, as the landlord was only partially successful in their claim.

I find the tenant is entitled to compensation comprised of $414.00 security deposit plus $20.05 interest and $25.00 of the $50.00 fee she paid for this Application, as she was only partially successful in her claim less the amount above that I have granted to the landlord. I grant a monetary order to the tenant in the amount of **$296.26**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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