Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, OLC, RPP, O, FF

Introduction

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

- a monetary order for damage to the unit, site or property, pursuant to section 67;
- a monetary order 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 tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to return the tenants' personal property, pursuant to section 65;
- authorization to obtain a return of all or a portion of the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72; and
- other unspecified remedies.

The two landlords ("landlord PP" and "landlord KP") and the two tenants ("tenant JLR " and "tenant JR") attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

Service of Documents

The tenant JLR testified that the landlords were served with the tenants' application for dispute resolution hearing package ("tenants' application") on December 11, 2014, by way of registered mail. The tenants provided a Canada Post receipt and tracking number as proof of service with their application. The landlords confirmed receipt of the tenants' application and evidence. In accordance with sections 89 and 90 of the Act, I find that the landlords were duly served with the tenants' application, as declared by the parties.

The landlord PP testified that the tenants were served with the landlords' application for dispute resolution hearing notice and written evidence on December 24, 2014, by way of registered mail. The landlords provided two tracking numbers, orally at the hearing. The tenants confirmed receipt of the landlords' notice and written evidence but not any photographs. The landlords submitted these photographs as separate from their written evidence to two different locations of the Residential Tenancy Branch ("RTB") on December 22 and 24, 2014 and I had them before me at this hearing. When questioned as to whether the tenants had been served with the photographs, the landlord PP initially testified that the photographs were mailed to the tenants by her agent, "AR," with the landlords' other evidence on December 24, 2014.

The landlords' witness, AR, testified at this hearing and both parties were given an opportunity to ask questions and to cross-examine the witness. AR testified that she did not serve the photographs to the tenants at all. She served the photographs to the two RTB locations only. She stated that she was not permitted to pick them up from the RTB once the evidence package was ready, because she was not a party. She claimed that the landlord PP was supposed to retrieve this evidence package, including the photographs, from the RTB and mail it to the tenants herself. AR then claimed that the landlord PP probably did not know that she had to serve the photographs on the tenants because she and the landlord PP believed that the RTB prepared the packages and sent them out to the tenants. During AR's testimony, the landlord PP agreed with the statements of AR.

After AR's testimony was completed, the landlord PP confirmed AR's testimony that AR had not, in fact, mailed the photographs to the tenants, that AR was unable to pick up the evidence package from the RTB and that the landlord PP picked up the package herself. The landlord PP then stated that she was confused and misunderstood her own testimony earlier regarding AR's service of the photographs. The landlord PP indicated later that when she picked up the evidence package from the RTB, she did not check to see whether the photographs were included before she mailed it to the tenants. She also stated that it was the RTB's obligation to check to make sure that the photographs were included in the landlords' evidence package before providing it to the landlord. She later claimed that it was her own mistake for not checking whether the photographs were in the landlords' evidence package and she was no longer certain whether the photographs were sent to the tenants in the evidence package.

During the hearing, I informed both parties that I would not be considering the landlords' photographs as part of their evidence for their application, as they were not served upon the tenants, as required by RTB Rules of Procedure 3.1, 3.10 and 3.14.

Preliminary Issues

During the hearing, the tenants confirmed that their security deposit had been returned in full by the landlords on December 30, 2014. The tenants confirmed that they are not seeking the return of double the amount of their security deposit. The tenants stated that they had cashed the landlord's cheque in the amount of $850.00 for return of their security deposit but were unsure if the cheque would bounce, as a previous cheque was cancelled by the landlords and took 10 days for the tenants to be notified. Given that it has not yet been 10 days since they cashed the cheque, the tenants were unsure about their application for return of their security deposit. The landlords confirmed that the cheque had been successfully cashed by the tenants and that the landlords' funds had been debited.

Given that neither party produced any proof that the landlords' cheque had not gone through successfully, the tenants' claim for return of their full security deposit is considered abandoned at this hearing. If the tenants produce evidence that the cheque did not go through successfully, they are at liberty to reapply for return of their security deposit.

During the hearing, the landlords withdrew their claim to keep all or a portion of the tenants' security deposit, given that it has already been returned to the tenants in full, as noted above.

During the hearing, the tenants withdrew their claim for return of their personal property. The tenants confirmed that a copy of their tenancy agreement was returned to them by the landlords. The tenants stated that the only item they had not yet received was a copy of the landlords' cancelled cheque in the amount of $650.00, which they confirmed was not their personal property, in any event.

The tenants' application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement and for other unspecified relief, is considered abandoned at the hearing. The tenants confirmed they were improperly evicted from the rental unit by the landlords, one week early, as they had paid rent until November 30, 2014 and were evicted on November 23, 2014. However, the tenants claimed that they were unsure of the specific relief they were seeking and were not seeking any monetary orders at this time for this one week rent amount.

Issues to be Decided

Are the landlords entitled to a monetary award for damage to the unit, site or property?

Are the landlords entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords and/or tenants entitled to recover the filing fees for their applications?

Background and Evidence

The tenants testified that this tenancy began on July 28, 2011. The landlord PP stated that the tenant JLR vacated the rental unit on November 22, 2014 and the tenant JR vacated the rental unit on November 23, 2014. Monthly rent in the amount of $850.00 was payable on the first day of each month. A security deposit of $850.00 was paid by the tenants for this tenancy.

The landlords seek a monetary order in the amount of $1,222.42 from the tenants, for damage to the rental unit. The landlords claim for $100.00 to clean the carpets in the living room and bedroom; $283.11 to replace the carpets with laminate flooring due to stains and smell; $150.00 to install the laminate flooring; $577.50 to paint the ceilings and walls in the bathroom and kitchen; $92.88 to replace a broken window; and $18.93 to develop photographs for this hearing, in order to show damage.

The tenants disputed the entire amount of the landlords' damage claim. The tenants stated that the landlords are exaggerating their damage claims, have a personal vendetta against the tenants, and made these claims in response to the tenants' application. They further stated that the landlords are trying to recover money to renovate this rental unit, as it has been listed for sale, unsuccessfully, on the market for approximately 3 years.

The landlord PP indicated that a move-in inspection occurred on July 16, 2011. Both parties agreed that a move-out inspection occurred on November 23, 2014, at which time the tenant JR vacated the rental unit and returned the rental unit keys to the landlord PP. Both parties agreed that no condition inspection reports were completed for this tenancy. The landlord PP indicated that the tenants did not ask for any condition inspection reports. Both landlords stated that they were not aware that they had to complete any condition inspection reports, as they were unaware of the *Act* provisions in this regard.

The landlord PP indicated that the move-out inspection occurred while it was very dark at night, there was no heat in the rental unit, all the lights were not lit, the carpets were wet, and the tenant JR was in a rush to leave. The tenant JR indicated that he had a fire going during the inspection, he did not remove any lightbulbs, and the carpets were wet because they were still drying from the steam cleaning he had performed the day before and that morning.

During this move-out inspection, the landlord PP sought only $200.00 from the tenants, for cleaning the stove and oven. While the tenant JR initially agreed with this $200.00 amount, he says he did so under protest, hoping to recover at least some of the tenants' deposit from the landlords and out of fear because the tenants' van was still on the landlords' property. A cheque in the amount of $650.00 was provided to the tenant JR on November 23, 2014, accounting for the $200.00 deduction from the security deposit. The tenant JLR disputed this $200.00 amount, advised the landlord the next day on November 24, 2014, and subsequently filed the tenants' application on December 6, 2014.

Both parties testified that a heated dispute ensued between them from November 24, 2014 onwards, involving verbal altercations. The tenants provided e-mails and letters with their application, documenting verbal and physical threats, altercations, and being forced off the property by the landlords. In these documents, the tenants also stated that they were forced to remove their van from the property because the landlords threatened to run it over.

The landlords stated that they cancelled their $650.00 cheque returning the balance of the security deposit to the tenants because the extent of the damage was more than this amount, and the damage was unclear until after the inspection. The landlord PP claimed that she did not notice the smell of dog feces on the living room and bedroom carpets during her inspection with the tenant JR on November 23, 2014, but noticed an overwhelming smell so powerful the next day on November 24, 2014, that she had to leave the rooms. She stated that it was strange that she did not notice this smell the day prior, probably because the tenant had air fresheners located nearby. The landlord PP also indicated that she did not notice the paint peeling from the wall in the kitchen, because the kitchen table was up against the wall at the time, and even though the kitchen was lit, it was still dark outside. The landlord PP said that she did not notice the white plaster which was “swiped across” the bathroom and kitchen walls during the inspection even though these areas were lit, because the tenant was in a rush to leave. The landlord PP stated that she did not notice the broken window during the inspection because it was hidden behind a curtain; she does not know who broke the window, but assumes the tenants did because it was not broken at the beginning of the tenancy.

On November 24, 2014, the day after the joint move-out inspection, the landlords noticed a lot of damage to the rental unit. The landlords stated that the carpets in the rental unit had brown and red stains and a foul dog feces smell that could not be removed. The landlord KP indicated that the tenant JR told him that he was unable to remove the stains or get rid of the smell from the carpet, with a steam cleaning machine. The landlords claimed that they had to replace the carpets with laminate flooring that had to be installed by the landlord KP and another worker “RW.” They did not claim for the materials or the labour for the landlord KP’s installation of the flooring, only the other worker, RW. They provided a handwritten note stating that RW charged $30.00 per hour for 6 hours of work, which totalled $180.00, but the landlords indicated that they were only charging for $150.00 for this installation, in order to be “fair” to the tenants. The tenants indicated that the carpets were not filled with dog feces, stains or foul smells. The tenant JLR said that she had two dogs at the rental unit, but they were well-trained, stayed on the outside porch and went to the bathroom outside. She further stated that she would not allow her small children to play on the carpets if they were in a foul or dirty condition. The tenants indicated that they rented a steam cleaner to clean the carpets before vacating the rental unit. The tenants provided a receipt for a 24-hour steam cleaning machine rental from November 22 to 23, 2014 in the amount of $31.35. The tenant JR indicated that he steam-cleaned the carpets twice to make use of his 24-hour steam cleaning machine rental, while the landlord PP said it proved the carpets were in a very dirty state.

The landlords claimed for $577.50 for painting of the ceiling and walls of the kitchen and bathroom of the rental unit. The landlord PP claimed that she had to paint these areas because the walls were painted a different color by the tenants, after they had filled the holes with white plaster. She stated that the tenants used the wrong color of paint in the kitchen and bathroom and therefore, these entire walls had to be repainted. She further claimed that the ceilings had to be painted in order to match the walls that were being painted. The tenant JR testified that he filled tiny nail-size holes with plaster and painted over these areas in the kitchen with the same colored paint left by the landlords in the rental unit. The tenant JR indicated that there was no matching paint left by the landlords for the bathroom color, so he was unable to paint over the holes there. The tenant JR said that the tiny nail-size holes were as a result of photographs and artwork hung by the tenants in these areas and were not large holes or areas where plaster was spread. The tenant JR indicated that condensation due to single paned glass windows may have caused the paint to peel near the kitchen table, where the landlord PP claims paint was missing. The tenant JR testified that the landlords advised him not to bother with painting the rental unit when he vacated.

The tenants stated that they cleaned the rental unit thoroughly before leaving. They wiped down appliances, in addition to the above work described. They stated that they left the rental unit in the same condition as when they moved in. The tenants indicated that they did not provide photographs of the rental unit condition when they vacated because they were forced off the property by the landlords and unable to return to take photographs.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, receipts and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

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 landlords to prove, on a balance of probabilities, that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. The landlords provided oral testimony to support their claim. They did not provide sufficient documentary proof that the tenants caused damage to their rental unit. As noted earlier, I did not consider the landlords' photographs submitted with their application, as they were not served upon the tenants.

There were no condition inspection reports completed by the landlords to demonstrate the condition of the rental unit before the tenants moved in and after they vacated. The landlord PP completed a move-out inspection with the tenant JR on November 23, 2014. However, none of the damages sought in the landlords' application were identified or mentioned to the tenant JR during this move-out inspection. Only $200.00 was sought by the landlords at this inspection, for cleaning a dirty stove and oven. This specific damage was not sought in the landlords' application. The landlords stated that they examined the rental unit the next day, November 24, 2014, after the inspection and after the tenants had vacated. They claim to have found additional damage, which is noted in their application. There is no evidence that the landlords communicated this additional damage found, to the tenants, until the landlords filed their cross-application on December 22, 2014 after receiving the tenants' application first. Both parties testified that there were heated altercations as of November 24, 2014.

I do not find the landlords' evidence to be credible. The landlords repeatedly altered their testimony when questioned as to service of documents, the amounts stated on their damage invoices, the condition of the rental unit, and the damage amounts they were claiming.

I am not satisfied that the tenants caused the damage claimed by the landlords. Both parties participated in an inspection on November 23, 2014, and the only damage identified was for a dirty stove. This claim was not pursued in the landlords' application. The next day, November 24, 2014, the tenants disputed the landlords' $200.00 claim for a dirty stove. Heated exchanges took place between the parties from that day forward. The tenants provided written letters of these heated exchanges between the parties, identifying verbal and physical threats from the landlords towards the tenants. The landlords claim that the tenants were also verbally abusive towards them. November 24, 2014, was also the same day when another inspection was undertaken by the landlords on their own and $1,203.49 in damage (not including the $18.93 for the development of pictures as indicated above) was suddenly identified. The landlords did not claim for this damage until December 22, 2014, after receiving the tenants' application.

I am not persuaded by the landlords' evidence that such significant damage, as they claim, was identified only the day after the joint inspection, and that it was caused by the tenants. I find that the inspection was the opportunity for the landlords to thoroughly inspect the rental unit and discuss any damage with the tenants at that time. The landlords claim such glaring damage in their application, but yet none was apparent on the day of the inspection. This includes foul-smelling carpets, so terrible that they had to leave the room, remove the carpets and install laminate flooring. Yet the smell was not apparent to the landlords, just the day before. The peeling paint and "streaked" white plaster was so apparent the day after the inspection, but was not visible on the day of the inspection, despite appropriate lighting, because the landlords say that the tenant JR was in a rush to leave. The broken window, which would likely have caused cold air to draft inside the rental unit on the day of the inspection, given that it was during the fall/winter season, was not evident until the next day because it was hidden behind a curtain.

The landlord PP claimed there was no heat during the inspection, but still did not notice the broken window.

The invoices submitted by the landlords are not particularly helpful, in my view. The handwritten "labour" statement for installation of laminate flooring was not properly explained by the landlords, as they were claiming for only $150.00 of $180.00. The statement does not prove that any amounts were actually paid for this installation. Laminate flooring was apparently purchased for the entire rental unit in the total amount of $527.19, but was only installed in the living room, costing $283.11 (handwritten by the landlords on the receipt) because that was where the stains and smell were, as per the landlords' evidence. Similarly, glass for the landlords' own farm property was apparently purchased for a total of $479.18, but only $92.88 was for the broken window in the rental unit, of which the glass itself was only $9.80 but the labour and travel was $75.00. The glass estimate is a quotation only, not a receipt of payment, although the landlords included a handwritten date of payment and an arbitrary number with it. The painting invoice for $577.50 is a single quotation for a price only, not a receipt of payment.

The tenants stated that the landlords were intending to renovate this rental unit for sale, rather than because of damage, and the extra glass and flooring purchased above, may be an indication of this. The tenants also claimed that the rental unit was old and needed work in any event.

Residential Tenancy Guideline 40 provides a guide of "useful life of building elements" which states the expected lifetime of an item under normal circumstances and can be used to determine damages. Interior painting has a useful life of 4 years. The landlord PP testified that interior painting was last done in the rental unit approximately 4-5 years ago, before the tenants moved in. Therefore, another interior painting job would likely need to be done for this rental unit in any event.

As I advised the landlords during the hearing, they are not entitled to recover $18.93 to develop photographs for this hearing in order to show damage. The only hearing-related costs that are recoverable as per section 72 of the Act, are for filing fees.

On a balance of probabilities and for the reasons outlined above, I find that the landlords failed to meet their burden of proof to demonstrate that the tenants caused damage in the rental unit. Accordingly, the landlords' claim for a monetary award for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed without leave to reapply.

As the landlords were unsuccessful in their application, they are not entitled to recover their filing fee for their application from the tenants.

As the tenants did not pursue their application at this hearing, they are also not entitled to recover their filing fee for their application from the landlords.

Conclusion

The landlords' application for a monetary award for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed without leave to reapply.

Neither party is entitled to recover the filing fee for their application from the other party. Each party must bear their own costs for the filing fees.

The tenants' application for return of their full security deposit is abandoned. The tenants are at liberty to reapply if they produce evidence that their security deposit was not returned as claimed by the landlords.

The tenants' application for return of their personal property, is withdrawn.

The tenants' application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement and for other unspecified relief, is abandoned.

The landlords' application to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award, is withdrawn.

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: January 13, 2015

Residential Tenancy Branch