



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord. The tenant's application specifies a claim of double the amount of the security deposit.

The parties both appeared and gave affirmed testimony and the landlord called one witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the tenant advised that the landlord's application had not been received. The landlord has provided evidence that the documents were sent by registered mail on February 3, 2015 and testified that the tenant did not pick up the mail. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to recovery or double recovery of the security deposit?

Background and Evidence

The tenant testified that this tenancy began on April 1, 2012 as a fixed term tenancy until October 1, 2012 and then reverted to a month-to-month tenancy. The tenancy ended on July 31, 2014. Rent in the amount of \$1,400.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlord.

The tenant further testified that the landlord knows where the tenant lives but the tenant did not give the landlord a forwarding address in writing. The tenant also testified that he relies on the Tenant's Application for Dispute Resolution which contains a forwarding address and was served on the landlord by registered mail on December 24, 2014.

The tenant also testified that there was no move-in or move-out condition inspection reports completed and the landlord did not give any notice to the tenant to conduct either inspection. Any damages that the landlord claims are normal wear and tear. The porcelain sink in the ensuite has a crack and the tenant does not believe the crack existed at the beginning of the tenancy. A plumber was at the rental unit twice and didn't mention it. The tenant believes the crack may be as a result of the plumber working on that sink by perhaps tightening something too tight. The crack starts at the drain which is what the plumber worked on. The sink wasn't draining properly so it leaked under the sink. That happened a couple of times. The plumber took it apart, cleaned it out and put it back together. The tenant does not believe he is responsible.

The tenant also testified that he never saw a hole in the door as claimed by the landlord, and the shower tile was cracked when the tenant moved in and under the tiles is a void. The fireplace was plugged into a socket behind the fireplace and the landlord claims it's burned but the tenant never saw a burn. The rental unit had no curtains when the tenant moved in and the landlord bought some and the tenant installed them. The curtains were a wire-type rod and one of the anchors came out of the wall. There is no damage, but the anchors need to be replaced.

The landlord testified that no move-in condition inspection report was completed but the sink was not cracked at the beginning of the tenancy, and the landlord only wanted the tenant to be responsible for the damaged sink. The landlord agrees that a plumber was there twice to repair and replace the faucet and if the sink was cracked certainly the plumber would have disclosed that to the landlord; it would provide more work for the

plumber. The crack started at the drain and the plumber dealt with faucets. He also testified that it was leaking around the faucet and the parties calked it. The plumber cleaned the trap but didn't touch the basin. A document from the plumber states that he found the faucet loose and water was leaking around it. He snugged up the faucet and inspected the drain and sink and both looked fine. The faucet was replaced with a new one on the second service call and the faucet and sink were all in working condition.

The landlord has provided a monetary order worksheet showing a claim of \$228.48 for a new sink, \$147.00 for installation, and \$160.00 for repair parts and labour for the other damages. Quotes from companies setting out the cost of the sink and installation have also been provided as well as a typewritten description of the landlord totalling \$160.00 for the other damages. Also provided are photographs of the sink before and after the tenant took possession, a hole in a bedroom closet door, cracked tile in the bathroom floor, a burned electrical outlet and wall anchors.

The landlord's witness testified that the landlord was out of the province when the tenant was moving out of the rental unit so the witness went to do the inspection. The witness contacted the tenant who said it wasn't necessary for the witness to travel and meet. New tenants arrived and the witness inspected the rental unit with them and completed an inspection report.

The witness also saw the crack in the sink and took the photographs. The witness also saw a hole in the bottom corner of the closet door, and curtain plugs were out of the walls. There was also a crack in the shower and the witness reported it all in the inspection report for the landlord and took photographs. The witness also saw a burned receptacle for the fireplace and testified that it was visible as far as she can remember. The witness stated that she cannot imagine moving the fireplace.

The landlord gave closing submissions stating that the damage was done while the tenant resided in the rental unit whether it was caused by the tenant or not.

The tenant stated that he does not believe he is responsible for the damage to the sink, the shower crack was there at the outset of the tenancy, the tenant never saw a burn on an outlet or a hole in a door, and is not responsible for curtain rods.

Analysis

The *Residential Tenancy Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the tenant claims that the damages claimed by the landlord are normal wear and tear or existed at the beginning of the tenancy. The parties agree that no move-in or move-out condition inspection reports were completed.

In order to be successful in a claim for damages, the onus is on the landlord to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce the damage or loss suffered.

The tenant has disputed the cracked shower tile stating that the damage existed prior to this tenancy and the landlord is not able to prove otherwise. The tenant also testified that he never saw the hole in the closet door or the burned electrical outlet. The landlord's witness testified that the burned outlet was visible, however there is no evidence before me that those damages didn't pre-exist the tenancy.

With respect to the curtains, a landlord cannot ask a tenant to make repairs and then make a claim against the tenant for not doing it right.

With respect to the sink, the parties agree that the damage was not there at the commencement of the tenancy, and the parties agree that a plumber was at the rental unit twice and did not notice a crack. The *Act* requires a tenant to repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. The test to be met is whether or not the landlord has established that the damage was caused by the actions or neglect of the tenant or guests. I find that it is just as reasonable to assume that the plumber tightened something and perhaps the crack appeared later as suggested by the tenant. In any event, the tenant disputes that he damaged it and I find that the landlord has failed to prove that the tenant is responsible.

The landlord's application is hereby dismissed.

With respect to the tenant's application for double the amount of the security deposit, the *Act* requires a tenant to provide a landlord with a forwarding address in writing. The landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address in writing is received to return the security deposit or make a claim against it. If the landlord fails to do so, the tenant is entitled to double the amount. The

tenant has not provided a forwarding address and therefore the tenant is not entitled to double. However, having found that the landlord has failed to establish a claim for damages, the tenant is entitled to recovery of the security deposit.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$750.00.

This order is final and binding and may be enforced.

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 19, 2015

Residential Tenancy Branch

