Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF
MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by a landlord as against one tenant, and an application by both tenants as against both named landlords. The landlord has applied for a monetary order for damage to the unit, site or property and to recover the filing fee from the tenant for the cost of the application. The tenants have 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 landlords. The tenants' application seeks double the amount of the security deposit.

One of the landlords and both tenants attended the hearing and each gave affirmed testimony. The parties also provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on July 15, 2013 and was to expire on July 15, 2014, however the tenants vacated the rental unit on June 1, 2014 and the landlord moved into the rental unit.

Rent in the amount of $1,450.00 per month was payable on the 1st day of each month, however the tenancy agreement, a copy of which has been provided states that rent is payable on the 29th day of each month. The landlord collected a security deposit from the tenants in the amount of $725.00 at the outset of the tenancy which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord further testified that about a month after the tenants moved out the landlord received the tenants' forwarding address in writing but cannot recall if it was in a note or a text message, but the landlord did receive it.

The landlord also testified that the rental unit was brand new at the beginning of the tenancy, and no move-in condition inspection report was completed because there were no damages so there was nothing to sign, and the tenants conducted a walk-through of the rental unit with the landlord and also with the landlord's parents. At the end of the tenancy the landlord attended the rental unit but the tenants were not finished moving items out and the landlord had to leave for work out-of-town, so no move-out condition inspection report was completed.

The tenants left damage to the hardwood floors in the dining room and living room at the end of the tenancy; big scratches and dents or divots in the wood. The landlord had re-finished the floors a few months before the tenancy began and pointed it out to the tenants. The tenants said they had hardwood before and knew how to take care of them, and that they had furniture protectors. The landlord has provided photographs of before and after the tenancy as well as an invoice dated September 11, 2014 for repairing the dining room floor at $294.00 which the landlord claims as against the tenants. The living room has not yet been completed and the landlord received an estimate from the same contractor in the amount of $350.00 or $400.00 for its repair, which the landlord also claims. The landlord testified that the living room is a larger room so the cost will be more than the dining room. No written estimate has been provided.

The landlord also provided photographs of a damaged wall in a bedroom, a chipped ceramic tile, and the landlord testified that the tenants didn't leave all keys to the rental unit or the mailbox and the landlord has provided receipts for $30.24 for re-keying the locks and $26.25 for the mailbox key. However the landlord is not claiming other damages and stated that all he wanted was the floors fixed. The landlord sent a text message to the tenant about the damaged floors and the tenant flatly refused to go to the rental unit to see the damage or explain it.

The landlord's application claims $725.00.

The first tenant testified that the tenants moved out on May 31, 2014 and rent was due on the 15th. The landlord did not mention a move-in condition inspection at the outset of the tenancy and the tenants had already moved in by the time the landlord arrived, and the tenant denies that any walk-through was completed with the landlord or the landlord's parents.

The tenant also testified that the landlord gave the tenants one key at the beginning of the tenancy which was returned to the landlord with the mail key. The tenant had 2 more house keys cut during the tenancy, but does not know where they are and were perhaps thrown away.

The tenant further testified that the hardwood floors were not in mint condition at the outset of the tenancy and were made of a soft wood. The tenant claims that the photographs provided by the landlord show normal wear and tear. At move-in, the parties had a conversation about the floors and talked about floor protectors, but the landlord's girlfriend had scratched the floors and mentioned a product for them.

The tenant has provided copies of strings of emails exchanged between the parties. The landlord texted the tenants on May 31, 2014 saying that the landlord's father had inspected the rental unit and said the place looked great. The landlord was asked about getting back the security deposit on the day the tenancy ended, and the landlord said that he didn't have the cash but would be back in town on June 6. On June 8 the tenants still hadn't heard from the landlord so the tenant sent him a text message offering to exchange the mail key for the security deposit or meet at the tenant's residence and an address is provided. The landlord replied that he didn't agree because he wasn't in town yet, so the tenants waited again. On June 16 the tenants texted the landlord asking him to e-transfer the money and gave the landlord an email address. The landlord replied that he was up north and didn't have very good internet service but would be back in town on the 18th and asked that the tenants leave the mail box key. The tenants did not try to contact the landlord again but returned the house key and mail box key to the landlord on June 15, 2014 by placing them in an envelope and leaving them on the deck.

The tenant is not aware of any drywall damage left in the rental unit at the end of the tenancy.

The second tenant testified that they were still moving when the landlord attended the rental unit on May 31, 2014.

He further testified that there is one scratch on the wall and perhaps it happened while the tenants were moving out but does not agree that the hardwood floors were

damaged during move-out. He also testified that the floor was substandard and installed incorrectly without a protective seal, and the photographs reveal normal wear and tear.

The tenant testified that landlord's parents were at the rental unit off and on and then 18 days later the landlord decided to discuss damages to the floor. The tenant didn't want to deal with the nonsense of the landlord so gave the landlord a Fact Sheet from the Residential Tenancy Branch respecting security deposits. The relationship of the parties was over and done and the landlord had already agreed to return the security deposit.

The tenant also testified that the landlord has not provided dates that the photographs were taken.

The tenants claim double the amount of the security deposit, or $1,450.00 and recovery of the $50.00 filing fee.

Both parties have provided copies of text messages exchanged.

Analysis

Firstly, the *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed with the tenant and the regulations go into great detail of how that is to happen. The *Act* also states that if a landlord fails to complete the reports in accordance with the regulations and give a copy to the tenant, the landlord's right to make a claim against the security deposit for damages is extinguished. The *Act* does not say that if the rental unit is brand new the reports are not necessary. The landlord testified that the move-in condition inspection report wasn't completed because there were no damages so there was nothing to sign. I disagree. The landlord ought to have completed the inspection report with the tenant showing that there were no damages, if that were the case. Therefore, I find that the landlord's right to make a claim against the security deposit for damages is extinguished.

The *Act* also states that a landlord must return a security deposit in full or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Having found that the landlord's right to make a claim against it for damages is extinguished, the landlord could only make a claim against it for unpaid rent or utilities, which is not the case. If a landlord fails to return the deposit within that 15 day period, the landlord must be ordered to return double the amount to the tenant. In this

case, I find that the landlord received the tenant's forwarding address in writing on June 15, 2014 in a text message and the landlord responded by text message the same day. The landlord filed the Landlord Application for Dispute Resolution on July 31, 2014, which is 16 days later and did not return the security deposit within 15 days and therefore I find that the tenants are entitled to double recovery.

Although the landlord's right to make a claim against the security deposit for damages is extinguished, the landlord's right to make a claim for damages is not extinguished. However, in order to be successful, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exits;
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 such damage or loss.

The *Act* requires a tenant to repair any damage caused by the tenant's actions or neglect during a tenancy, and states that at the end of a tenancy the tenant must leave a rental unit reasonably clean and undamaged except for normal wear and tear and provide the landlord with all keys that give access to a rental unit. In this case, the tenants did not provide the landlord with all keys and therefore I find that the landlord was justified in changing the locks and the landlord is entitled to recovery of $30.24. The tenant testified that the mail key was given to the landlord on June 15, 2014 which was a full 2 weeks after the tenancy ended. Therefore, I find that the landlord has established a monetary claim for $26.25.

With respect to the damaged wall and chipped floor tile, I have no evidence before me of the cost to repair either, and therefore, I find that the landlord has failed to satisfy the 4-part test.

With respect to the hardwood floors, I have reviewed the photographs and I accept the testimony of the landlord that the floors were in new condition a few months before the commencement of the tenancy. The first tenant testified that the hardwood floors were not in mint condition at the beginning of the tenancy, were made of a soft wood, and submitted that the photographs provided by the landlord show normal wear and tear. The second tenant testified that the floor was substandard, installed incorrectly without a protective seal, and also submits that the landlord's photographs reveal normal wear and tear. I have no idea what the qualifications of either tenant is with respect to those opinions, however the tenancy lasted for approximately one year and judging by the photographs I do not agree that the damage is normal wear and tear. However, I have

reviewed the text messages, and on May 31 the landlord advises the tenant that the landlord's father said the house looked great. The tenant raised the fact that the photographs are not dated and on June 18 the landlord raises the issue of damages. The invoice for repair to the dining room floor is dated September 11, 2014. In the circumstances, I find that the landlord has failed to establish that the condition of the rental unit at the end of the tenancy, being May 31, 2014 was beyond normal wear and tear. The landlord's application for a monetary order for damage to the unit, site or property is dismissed.

Having found that the landlord is indebted to the tenants for $1,450.00 and the tenants are indebted to the landlord the sum of $30.24 for changing locks and $26.25 for a new mail key, for a total of $56.49, I order the amounts be set off from one another, and I grant a monetary order in favour of the tenants for the difference in the amount of $1,393.51.

Since both parties have been successful with the application, I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $1,393.51.

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: April 08, 2015

Residential Tenancy Branch