Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, FF, O

For the landlord – MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order to recover the security deposit; other issues; and to recover the filing fee from the tenant for the cost of this application. The landlord 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 security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and Counsel for the landlord attended the conference call hearing; the tenants gave sworn testimony and the landlord Counsel submitted evidence on behalf of the landlord. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to recover an amount for propane?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on February 01, 2012 and ended on April 30, 2014. Rent for this unit was $1,500.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of $700.00 at the start of the tenancy. The landlord did not complete a move in condition inspection report at the start or end of the tenancy. The tenants gave the landlord their forwarding address in writing on April 28, 2014.

The tenants' application

The tenants testified that the house and property were left in a good clean condition at the end of the tenancy when they actually left the unit on April 17, 2014. The tenants' current landlord inspected the property with the tenants and has provided a signed affidavit stating that the tenants had left the unit and property in a good clean condition.

The tenants testified that they had given the landlord more than the required 30 days' notice prior to the end of March, 2014, effective at the end of April, 2014. The tenants forwarding address was provided to the landlord by registered mail on April 28, 2014 with a request for the landlord to settle all accounts and return the security deposit to the tenants.

The tenants testified that the landlord failed to return the security deposit and the tenants therefore exercise their right to now claim double the security deposit. The tenants testified that they have never given the landlord permission to keep all or part of the security deposit.
The tenants testified that when they moved into the unit the propane tank was empty. The landlord offered to put some propane in and the tenants paid $500.00 for this propane. The tank gauge registered at 30 percent after the propane was put in. On the day the tenants vacated the unit they took a photograph of the propane tank gauge to show that it registered 30 percent of fuel still in the tank. This has been provided in evidence. The tenants testified that the tank holds 500 gallons and 30 percent of this is 567 litres at 90 cents a litre. The tenants have calculated that the landlord owes the tenants $538.65. The tenants seek to recover this amount from the landlord plus the $50.00 filing fee.

Counsel stated that they do not dispute the tenants' claim to recover double the security deposit.

Counsel submitted that the landlord does dispute the tenants' claim for propane. The tenants paid $505.65 for 531.2 litres of propane at the start of the tenancy and this works out at 95 cents per litre. Counsel disputed that there was 30 percent of propane left in the tank and submitted that this is not an accurate reading. Counsel submitted that the landlord replaced the propane tank and the propane company took out 95 litres of propane from the old tank as they are not allowed to transport the old tank with any propane left in it. Counsel referred to an invoice from the propane company dated April 23, 2014 in which it states they removed 95 litres from the tank; however, this invoice was not provided in evidence for this hearing. Counsel submitted that the gauge on the older tank is rusty and may not have registered accurately. The landlord calculates that the amount owed for propane left in the tank is therefore $90.25.

The tenants disputed the submissions made by Counsel. The tenants testified that the tank was replaced a week after the tenants moved out of the unit. If the landlord had been running the heating system on full blast for that week it could easily use that amount of propane. The tenants testified that they did not have any problems with the gauge on the tank and it always worked correctly when they put propane in during their tenancy.

The landlord's application

Counsel agreed the landlord has extinguished his right to file a claim to keep the security deposit for damages. Therefore the landlord's claim will proceed on the damage claim and not to keep the security deposit.

Counsel submitted that there was damage to the side walk by the use of salt; damage to a section of the laminate flooring in the middle of the floor which involved removing the baseboards, removing 120 sq. feet of laminate, replacing the damaged boards, replacing the laminate floor, and replacing the baseboards. The laminate had scratches in the middle of the floor. The tenants damaged a door in the basement and acknowledged this damage; there was also damage to 10 feet of baseboard which has to be replaced and re-painted and there was a chip in the bathtub. Counsel submitted that this work has not yet been done but the landlord has provided an estimate from a contractor to an amount of $1,975.00 plus GST.

Counsel submitted that the tenants had failed to clean behind the washer/dryer and had left birdseed behind these appliances. The washer and dryer were not on wheels. The tenants also left manure in the barn. The landlord has not itemized an amount for cleaning and Counsel submitted that he believes the work will reasonably take five hours at $20.00 an hour. The landlord therefore seeks to recover $100.00.

The tenants disputed the landlord's claim. The tenants testified that they never put salt down on the sidewalk. Salt was only put on the stairs as these were dangerous in the winter. The tenants referred to the letter from a construction company who saw photographs of the damaged sidewalk and states that "the sidewalk appears to have a skim coat which means that this could heave as the result of any freeze thaw while you go through the various seasons as it looks as though it is flacking right off". The tenants testified that the damage to the sidewalk did not occur through their actions or neglect.

The tenants disputed that they caused any scratches on the laminate flooring. The tenants testified that they had felt pads under their furniture. The floor looks like a hardwood floor and is not a uniform pattern.

The tenants agreed that the door was damaged during their tenancy. The landlord had already removed the door took it away and repaired it in March, 2014. The tenants asked the landlord for the invoice for the repair and were told the landlord had not yet received the invoice. The tenants testified that the landlord has included this repair on the contractor's estimate and is trying to claim twice for the same repair. The tenants agreed to pay $52.40 for the cost of a new door as shown in the printout from Home Depot website. The tenants agreed this amount can be deducted from the tenants' Monetary Order.

The tenants disputed the landlord's claim for cleaning. The tenants referred to their documentary evidence showing how clean the unit was left and the letter from their current landlord who did inspect the unit before they moved out. The tenants testified that the house was left in an immaculate condition.

The tenants disputed the landlord's claim that they left manure in the barn. The tenants testified that the picture provided by the landlord shows another structure that was never used by the

tenants as it was unsafe, it had no doors and it contained manure and other objects such as a sail from previous tenants. The tenants testified that they only used the barn and shed as these were safe structures; the one with the sail was unsafe for their horses and this sail is clearly shown in the landlords photographs provided in evidence.

Both parties decline the opportunity to cross examine each other evidence.

Analysis

The tenants' application

I refer the parties to section 38(1) of the *Act* that says a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Further to this; section 23 of the *Act* require a landlord to complete a condition inspection report at the start of a tenancy and to provide a copy of it to the tenants even if the tenants refuse to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection when the tenants moved in, I find the landlord contravened section 23 of the *Act*. Consequently, section 24(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenants within 15 days of either the end of the tenancy or the date the tenants give the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenants' forwarding address in writing on May 03, 2014 five days after it was posted. As a result, the landlord had until May 18, 2014 to return all of the tenants' security deposit. As the landlord failed to do so, the tenants have established a claim for the return of double the

security deposit to an amount of **$1,400.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

With regard to the tenants' claim to recover $538.65 for propane paid for by the tenants and left at the unit. The tenants have the burden of proof in this matter to show that the propane tank was empty at the start of the tenancy, that they paid to have propane put in the tank to 30 percent full and that there was still 30 percent of propane left in the tank at the end of the tenancy. Counsel for the landlord argued that the tank only contained 95 liters; however, this document was not provided in evidence for me to review. I am satisfied with the tenants' evidence before me that the tank gauge showed that there was 30 percent of propane left in the tank at the end of their tenancy. There is nothing to show that this gauge is inaccurate or faulty. I therefore uphold the tenants' claim to recover the cost for this propane of **$538.65**.

As the tenants' claim has merit I find the tenants may recover the **$50.00** filing fee from the landlord pursuant to section. 72(1) of the *Act*.

The landlord's application

As the landlord has extinguished his right to file a claim to keep the security deposit as the move in inspection report was not completed at the start of the tenancy and because I have awarded double the security deposit to the tenants; the landlord's claim to keep the security deposit is dismissed without leave to reapply.

With regard to the landlord's claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on

the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlord's evidence before me; I am not satisfied the landlord has sufficient evidence to show that the tenants' actions or neglect have caused damage to the sidewalk. The tenants' evidence is equally compelling from a contractor who has stated that the sidewalk appears to have a skim and that the weather conditions have caused this to deteriorate. I therefore find the landlord's claim that this damage was caused by the tenants is dismissed.

With regard to the landlord's claim that the tenants damaged the flooring; the tenants have provided photographic evidence showing the condition of the unit, although these pictures are not close up pictures of the floor they do show how well the unit has been cared for. The landlord photographic evidence is more difficult to see and while I can just make out one or two minor scratches on the floor there is nothing to show that these scratches are any more than normal wear and tear. Consequently, I am not satisfied that the tenants can be held responsible for any costs incurred to repair the flooring and this section of the landlord's claim is dismissed.

With regard to the landlord's claim to replace a damaged door; the tenants testified that the landlord had already made a repair to this door and the tenants acknowledged that there are responsible for the damage to the door. Yet the landlord has included the replacement door on the contractors estimate. A landlord is not entitled to replace a door that a landlord has already had repaired; however, the tenants are willing to pay for the replacement cost of the door and have provided evidence showing that this cost will be **$52.41**. I therefore find the landlord may recover this amount from the tenants. The tenants have agreed at the hearing that this amount may be deducted from their security deposit.

With regard to the landlord's claim to replace a 10 foot section of baseboard and repair a chip in the bathtub. The tenants disputed that they caused this damage. Without the landlord providing a move in condition inspection report showing the condition of the unit at the start of the tenancy it is difficult for me to determine what, if any, damage was done during the tenancy and

recorded on a move out condition inspection report. Without corroborating evidence from the landlord it is one person's word against that of the other and the burden of proof is not met. This section of the landlord's claim is dismissed.

With regard to the landlord's claim for cleaning behind the washer/ dryer and the cleanup of the manure from the barn; I refer the parties to the Residential Tenancy Policy Guidelines #1 which states, in part, that If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it. The same principal applies to the washer and dryer. Counsel for the landlord stated that the washer/dryer were not on rollers and there is no evidence to show that the landlord instructed the tenants how to pull these appliances out without causing injury to the tenants or damage to the floor. Therefore I am not satisfied that the tenants are responsible for cleaning behind and under the appliances.

Furthermore the tenants disputed the landlord's claim that they left manure in the barn. The tenants disputed that the picture of the manure is even taken in the barn as they testified that the sail shown in the pictures was in another building that was not used by the tenants as it was unsafe. Without further corroborating evidence from the landlord to show that the tenants did leave manure in the barn that the tenants used, I am not satisfied that the landlord has met the burden of proof that the tenants are responsible for this cleaning. The landlord has also failed to meet the burden of proof regarding the amount spent to clean the unit and barn and Counsel for the landlord only estimated this at the hearing. This section of the landlord's claim for cleaning is therefore dismissed.

As the landlord's claim as little merit the landlord must bear the cost of filing his own application.

A Monetary Order has been issued to the tenants for the following amount:

Double the security deposit	$1,400.00
Propane	$538.65

Filing fee	$50.00
Subtotal	$1,988.65
Less amount for the door	(-$52.41)
Total amount due to the tenants	$1936.24

Conclusion

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Sections 38(6)(b), 67 and 72(1) of the *Act* in the amount of **$1,936.24**. This Order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlord fails to comply with the Order.

The landlord is entitled to recover the replacement cost for the door of **$52.41**. This amount has been offset against the tenants' monetary award. The reminder of the landlord's claim is dismissed without leave to reapply.

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: May 05, 2015

Residential Tenancy Branch