Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing her to retain the security deposit and a cross-application by the tenants for the return of double their security deposit. Both parties participated in the conference call hearing with the tenant WR representing both tenants. In this decision where I refer to the tenant in the singular form, I refer to the tenant WR who testified at the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to the return of double their security deposit?

Background, Evidence and Analysis

The parties agreed that the tenancy began October 26, 2013 at which time the tenants paid a $625.00 security deposit and a $625.00 pet deposit. The tenants vacated the unit on August 31, 2014 and the landlord filed her application for dispute resolution on September 15, 2014. The parties did not inspect the unit together at either the beginning or the end of the tenancy and did not produce a condition inspection report.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and
4. (if applicable) Proof that the applicant took reasonable steps to minimize the loss.

I address the landlord's claims and my findings around each as follows:

Lawn restoration: The landlord seeks to recover $660.00 as the cost of restoring the lawn at the end of the tenancy. The landlord testified that the tenants' dog was allowed to run free in the garden and the lawn and left waste all over. She testified that the dog's urine left a high acidity in the soil and as a result, she had to hire a landscaper to bring in new soil and re-seed the lawn at a cost of $660.00. The landlord provided a copy of an invoice showing that she paid this amount and photographs showing numerous brown areas on the lawn. The tenant testified that the lawn was brown because they vacated the unit in the summer and that the brown patches had nothing to do with their dog. The landlord's photographs show a lawn which is not brown all over from lack of water, but dead in patches throughout. The tenants did not deny that their dog had free reign of the lawn and that the dog urinated and defecated on the lawn.

I find that the tenants had an obligation to maintain the lawn in a reasonable condition during the tenancy as they were living in a single family dwelling and not sharing the lawn with other tenants. I find that it more likely than not that the dog caused the grass to die in several places and I therefore find that the tenants' actions caused the landlord to suffer a loss. However, the landlord's photographs also show that the lawn had a significant amount of weeds. I find that the tenants should be held responsible for the damage done by their dog to the grass but they should not be held responsible for the landlord having re-seeded areas which were previously overgrown with weeds. It is impossible to precisely calculate how much of the damaged lawn is the responsibility of the tenants and I must therefore apply a rough estimate. I find that an award of one half of the invoice will adequately compensate the landlord and I award her $330.00.

Plumbing: The landlord seeks to recover $330.00 as the cost of replacing the faucet in the kitchen sink at the end of the tenancy. The landlord testified that there was a hole in the faucet which was leaking and that the faucet had to be replaced as a result. The tenant testified that the faucet was in the same condition as it was when they moved into the rental unit. The landlord provided a photograph of the bathtub faucet, which she claimed was also damaged but for which she is not making a monetary claim, but no photograph of the kitchen faucet. She provided a copy of an invoice showing that she paid $330.00 to replace the faucet which the repairman claimed was "damaged by twisting of faucet". Tenants are not responsible to repair items which have been damaged through normal wear and tear, but only those items which are damaged through their abuse or negligence. It is not possible for me to determine whether the damage to the faucet was caused by abuse or negligence as I do not have photographs of the faucet and the repairperson's statement does not fully explain what the problem

was. For this reason, I find that the landlord has not met her burden of proving her claim and I dismiss the claim.

Carpet cleaning: The landlord seeks to recover $126.00 as the cost of cleaning the carpet at the end of the tenancy. The landlord provided photographs of the carpet, some of which were taken during the tenancy and some of which were taken after the tenancy, and a copy of an invoice in which the professional carpet technician noted that there were "dog stains (pee)". The tenant testified that he cleaned the carpet at the end of the tenancy and provided a receipt showing that he had rented a steam cleaner and performed the work himself. The tenants resided in the rental unit for almost 1 year and had a dog in the unit. The technician noted that there were stains from dog urine and I find that it is more likely than not that even though the tenants did clean the carpet at the end of their tenancy, there were still stains in the carpet created by their dog which had not been adequately treated. I find that the tenants failed to leave the carpet in reasonably clean condition and I find that this violates s. 37(2)(a) of the Act. I find that the landlord had to pay $126.00 to clean the carpet and I find that the tenants should be liable for that amount. I award the landlord $126.00.

Door frame and wooden step repair: The landlord seeks to recover $147.00 as the cost of repairing a door frame and a wooden step at the end of the tenancy. The landlord testified that the bedroom door was damaged and loose and had to be repaired and repainted. The tenant acknowledged that there were scuff marks on the door but stated that the damage was insignificant and that it could be characterized as reasonable wear and tear. The landlord testified that a wooden step just inside the front door was new at the beginning of the tenancy but at the end, the corner was loose and had to be nailed down and re-glued. She provided photographs of both the door and the step as well as an invoice showing what she paid for the repairs. The tenant testified that there were decorative nails holding the trip together on the step and testified that he put the step back together in the same condition as when he had found it. I am not satisfied that the damage to the door frame and the wooden step goes beyond what may be characterized as reasonable wear and tear. The damage to the door frame looks more like scuff marks than actual damage and as the home is an older home, I find it entirely possible that if the door frame was loose, it loosened over time. Without the benefit of a condition inspection report showing the condition of the door frame at the beginning of the tenancy, it is not possible to determine whether the frame was in significantly worse condition at the end of the tenancy. The wooden step is clearly one which was constructed by a non-professional and I am not satisfied that the corner came loose as a result of damage done by the tenant or poor craftsmanship. I find that the landlord has failed to prove that the tenants caused damage beyond

reasonable wear and tear or that they breached their obligations under the Act and I therefore dismiss this claim.

Curtains: The landlord seeks to recover $123.15 as the cost of replacing curtains, a curtain rod and curtain rings. The landlord testified that curtains were in place at the sliding glass door at the beginning of the tenancy but that at the end of the tenancy, the curtains were missing as were the curtain rod and rings. She testified that the curtains were approximately 4 years old at the beginning of the tenancy. The tenant claimed that they did not remove the curtains and insisted that they were still in place. I believe the testimony of the landlord over that of the tenant for a number of reasons. First, I find it unlikely that the landlord would fabricate this claim and remove the curtains and curtain rod in order to gain the relatively insignificant amount of money she is claiming. If the landlord had wanted to replace the curtains, there is no reason why she would have also replaced the curtain rod. Neither party claimed that either the curtains or the curtain rod were damaged. Second, I find it possible that the tenant who did not attend the hearing could have removed the curtains without W.R.'s knowledge. Although W.R. claimed that "we" left the curtains in place, he did not claim to have specifically asked his co-tenant whether she removed the curtains, nor was the co-tenant at the hearing to testify on her own behalf. W.R.'s hearsay testimony is given less weight than direct testimony, particularly where it is uncertain whether the co-tenant ever specifically stated that she did not remove the curtains. The tenants were obligated under the Act to return the unit in the same condition in which they had found it, less reasonable wear and tear. I find that the tenants breached the Act by removing the curtains and curtain rod and not replacing them at the end of the tenancy. I find that the landlord is entitled to recover the loss she suffered, which is the loss of curtains which would have been 5 years old at the end of the tenancy. To reflect the depreciation of the curtains, I find that the landlord is entitled to recover one half of the value of the new curtains and I award her $61.58.

Washing machine: The landlord seeks to recover the cost of replacing a washing machine at the end of the tenancy which she claims was broken by the tenants. The landlord testified that the machine was approximately 5-6 years old and she described the machine as "older but working well". The landlord testified that she saw the tenants return from a camping trip and hang a sleeping bag outside to dry and presumed that they washed the bag in the washing machine. Shortly thereafter, the tenants reported that the washing machine was not working. The landlord hired a repairman who charged her $89.25 to inspect the machine. The repairman advised that the machine could not be repaired and said that the motor had "burned", noting "too heavy load". The repairman then sold her a used machine at a cost of $259.35. The tenant testified that he did not wash his sleeping bag in the machine as it is down filled and cannot be

machine washed, but had simply hung it to air it out before packing it away. He denied having abused the washing machine in any way. The tenant estimated that the washing machine was more likely 20 years old. I am not satisfied that the tenants' actions caused the washing machine to break. Although the repairman's invoice states that there was a "too heavy load", I find it more likely than not that the landlord told the repairman that the tenant had washed a sleeping bag in the machine. I find it very unlikely that the tenant would risk damaging his sleeping bag by washing it in a machine and find it more likely that the machine had simply expended its useful life as the landlord's photographs seem to show a machine which is older than 5 years. I find that the landlord has not proven this claim and I dismiss the claim.

As the landlord has been only partially successful in her claim, I find she should recover one half of the filing fee from the tenants and I award her $25.00.

Turning to the tenants' claim, pursuant to section 38(6) of the Act, the only circumstances under which the landlord would be responsible to pay the tenants double the security deposit is if she failed to either return the deposit or file a claim against it within 15 days of the tenancy ending and having received their forwarding address, which are the triggering events. The tenancy ended on August 31, 2014 and the landlord filed her claim exactly 15 days later. The tenants argued that the landlord had extinguished her right to claim against the security deposit because she failed to perform a move-in or move-out condition inspection of the unit. I accept that the landlord extinguished her right to claim against the deposit pursuant to sections 24(2) and 36(2). However, section 38(1) of the Act places a positive obligation on the landlord to file a claim against the deposit, in part so a legal determination can be made as to whether she has a right to claim against it. Section 38(6) does not say that the landlord owes the tenants double the deposit if they have extinguished their right to claim against the deposit. Rather, it says that the landlord must pay double *only* where she has failed to either file a claim or return the deposit within 15 days of the triggering events. As a legal determination as to her right to claim against the deposit had not yet been made within 15 days of the end of the tenancy, I find that the landlord acted appropriately in retaining the deposit and filing a claim against it and I find she was in compliance with the Act . I find that the tenants are not entitled to double their deposit and I dismiss their claim in its entirety.

The landlord has been successful as follows:

Lawn restoration	$330.00
Carpet cleaning	$126.00
Curtains	$ 61.58
Filing fee	$ 25.00

Total:	**$542.58**

The landlord has been awarded $542.58. Section 72(2) permits me to apply a security deposit to an amount owed to a landlord by a tenant and I find it appropriate to do so in these circumstances. I order the landlord to retain this amount from the $1,250.00 in deposits which she currently holds and I order her to return the balance of $707.42 to the tenants forthwith. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants' claim is dismissed. The landlord will retain $542.58 from the security deposit and is ordered to return the balance of $707.42 to the tenants. The tenants are granted a monetary order for $707.42.

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 14, 2015

Residential Tenancy Branch

This decision is amended pursuant to section 78(1) of the Residential Tenancy Act this 12th day of May, 2015.