



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent and for damage to the unit or loss as a result of this tenancy 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; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both landlords were present. One tenant was present and one tenant was represented by an agent who also resided in the rental unit. Both landlords and tenants acknowledged the receipt of the other party's materials for this hearing, including Application for Dispute Resolution and documentary evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for damage or loss as a result of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit? Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on February 15, 2014 and was scheduled to continue until August 30, 2014. The tenancy continued on a month to month basis after that date. The rental amount of \$1500.00 was payable on the first of each month. The tenants both testified, confirmed by the landlord, that rental payments were made by an online bank transfer each month. The landlords confirmed that they continue to hold a \$750.00 security deposit paid originally by the tenants on or about February 1, 2015.

Landlord NS testified that, on September 1, 2014, the landlords advised the tenants that they were listing the residential premises for sale. Tenant ES testified that, on October 1, 2014 the tenants found a new residence and vacated the rental unit.

Landlord FS acknowledged that, over the course of the tenancy the tenants advised the landlords when they were making modifications to the rental unit. Tenant ES testified that he had sought and received the permission of the landlord prior to completing any renovations in the rental unit.

Landlord NS testified that the residential premises were approximately seven years old. He testified that, prior to this tenancy, the rental unit was very clean and that after this tenancy, the rental unit was both damaged and dirty. Landlord NS testified that any modifications made to the unit should have been returned to their original condition.

The landlords sought compensation with respect to the following damage to the rental unit;

- painting required – cost: \$1436.96 for materials and labour 24 hours @ \$35.00
- carpet cleaning – cost: \$ for labour 6 hours @\$33.00
- broken blinds – cost replacement \$125.60
- outstanding utilities - \$40.00

Landlord NS testified that the rental unit had last been painted in 2007. He testified that approximately 24 hours total over 7 days were lost to painting work in the rental unit. Landlord NS testified that the landlords had done the painting themselves and that their hourly rate was \$35.00. Landlord NS testified that this hourly rate was based on quotes received for painting work in this price range.

Landlord NS testified that the carpet was not clean. The floors had not been swept nor had the carpets been sufficiently cleaned. The tenant submitted a receipt from a carpet cleaning rental company that showed they had rented a professional machine and done the carpet cleaning themselves at the end of the tenancy. Both tenants testified that they had made efforts to clean the rental unit given that the unit was undergoing construction. They testified that the unit was as neat and tidy in all the circumstances. For example, the tenants testified that a large industrial fan was running in the unit at the end of their tenancy as part of the construction work. Both tenants testified that the landlords' fan damaged the carpet.

Landlord NS testified that one of the custom made blinds was broken at the end of the tenancy. Landlord NS testified that the original blinds were white wood and could not be replaced with the exact same blinds at any reasonable cost but they found a replacement in similar looking blinds for \$125.60. Tenant KC (for DH) testified that the blind in question had been up during the entire tenancy and they had not damaged it nor had they seen any damage to it.

Landlord NS testified that a portion of the utilities remained unpaid at the end of the tenancy. The tenants both acknowledged that they owed \$40.00 in outstanding utilities.

Tenant ES testified that, when the tenants vacated the rental unit, it was under construction. He submitted it is impossible for the landlord to estimate any damage as no condition inspection reports had been completed at move-in or move-out and that the unit was in a state of half-repair on move-out. Tenant ES also submitted that some of the cleaning and repairs that the landlord is making a monetary claim for go above and beyond what is required by the *Act* and the Residential Tenancy Policy Guidelines.

Tenant ES submitted that photographs submitted into evidence by the landlord were not date stamped. He submitted that they did not reflect the state of the rental unit at the end of their tenancy. He described how some of the photographs had personal items in the background and suggested that the photographs were taken by the landlords when the tenants still resided in the rental unit. Tenant ES also submitted that the landlord did not provide receipts to support his claim for painting or the estimates that he used to determine his hourly rate. Both tenants stated adamantly that they did not agree with the landlords on the condition of the unit at move-out.

Analysis

Section 23 and section 35 of the *Act* provide that a condition inspection of the rental unit must be completed at the start and the end of a tenancy.

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

At the outset of this tenancy, no condition inspection report was created. At the end of this tenancy, no condition inspection report was created. Section 36 of the *Act* provides the consequences of failure to comply with section 35 of the *Act*.

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the party claiming damage and the landlord of the property, the landlords had an obligation to ensure that condition inspections were completed at the appropriate times. The landlords in this case rely on the tenants' obligation at the end of tenancy and their evidence provided in lieu of a condition inspection report, including photographs and some receipts that dated months before or after the end of tenancy.

Section 37 of the *Act* indicates the obligation of a tenant at the end of the tenancy. It 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..." The landlords claim that the tenants did not leave the unit in a reasonably clean state with only reasonable wear and tear. Their evidence is their testimony as well as photographs submitted for this hearing. The date of these photographs is disputed by the tenants.

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss (the landlords) bear the burden of proof. To prove their claim, the landlords must first prove the existence of the damage/loss, and also prove that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenants. Once that has been established, the claimant/landlords must then provide evidence that can verify the actual monetary amount of the loss or damage.

To prove their loss, the landlords submitted photographs to reflect the condition of the rental unit and in lieu of the best evidence for these hearings, a condition inspection report. The tenant adamantly denied the condition of the unit as depicted in these photographs and testified that they were not taken at the times claimed by the landlord. On review of the evidence submitted by the landlords, the digital markers appear to indicate that the photographs were taken in December 2014 and January 2015. These dates do not accord with the move-in and move-out of the tenants nor do they accord with the testimony of the landlords, specifically Landlord NS.

Given the conflicting testimony, much of this case hinges on a determination of credibility. In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy. The demeanor of the parties at the hearing, particularly the demeanor of Landlord NS and Tenant ES, assisted in convincing me of the tenant's credibility. Tenant ES answered all questions asked of him in a calm and candid manner, and never wavered in his version of what happened. Tenant ES' testimony was fully supported by the testimony of Tenant KC (for DH). Some of the testimony by Landlord FS supported the submissions of Tenant ES. Tenant ES made some important admissions, including the fact that he owed outstanding utilities and he had made alterations to the rental unit.

Tenant ES's testimony, combined with the other evidence, included but not limited to the dating of the photographs has persuaded me on the balance of probabilities that the rental unit was in reasonably clean and undamaged beyond normal wear or tear or, in this case, authorized renovation work. Therefore the landlord's application for the retention of the security deposit must fail.

Given my credibility finding with respect to the landlord, I find that the landlord has met the burden to prove that the painting was indeed required. I also find that the landlord has not presented evidence that sufficiently shows that the materials and labour costs were as described by the landlord. Based on all of the evidence, including receipts from the tenant and the landlord's receipts dated several months after the tenant's move out, I find that the landlord also has not proven that this cost relates to actions of the tenants. As there is no receipt submitted and no supporting evidence with respect to the blind, I find that the landlord is not entitled to cost of a replacement blind.

I find that, based on the admission of the tenants with respect to utilities, the tenants owe the landlords \$40.00.

I find that the landlords are now required to return the security deposit to the tenants less \$40.00 for the outstanding utilities amount.

Conclusion

I order that the landlords return a portion of the security deposit to the tenants in the amount of \$710.00 and retain \$40.00 to pay outstanding utilities.

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: June 29, 2015

Residential Tenancy Branch

