Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, 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. Both parties participated in the conference call hearing.

The landlord submitted to the Residential Tenancy Branch 2 packages of evidence. The tenant acknowledged having received the second package but the parties agreed that she did not receive the first, which was sent to her forwarding address via registered letter. The tenant testified that at the time the first package arrived, she did not have access to her mailbox and by the time she was given access, the letter had been returned to the landlord. At the hearing, I advised the landlord that if she chose to proceed with her claim, I would not consider the first package of evidence and I gave her the option of adjourning the hearing to give her opportunity to serve the tenant with the first package. The landlord and tenant agreed that the hearing should proceed and the landlord acknowledged that she understood that I would not consider the first package of evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on October 1, 2005, that the tenant paid a $400.00 security deposit on September 16, 2014 and that the tenant vacated the rental unit on November 30, 2014. They further agreed that they did not complete a condition inspection of the unit together as each time the landlord arrived at the unit to perform the inspection, the tenant was still in the process of moving and asked the landlord for more time.

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

Parking fee: The tenant agreed to pay the parking fee claimed by the landlord and I therefore award the landlord $20.00.

Suite cleaning: The tenant agreed to pay the suite cleaning fee claimed by the landlord and I therefore award the landlord $200.00.

Carpet replacement and work involved with containing odour: The landlord testified that the tenant had 3 cats in the unit throughout the tenancy and that at the end of the tenancy, the carpet, which the landlord estimated to be approximately 12 years old, was badly stained and had an offensive odour as did the underlay. She testified that she did not attempt to clean the carpet because in her opinion, it was "beyond cleaning." She provided evidence showing that she replaced the carpet at a cost of $1,494.20 and seeks to recover $800.00 of that cost from the tenant. The landlord further testified that cat urine had seeped into the subfloor of the bedroom, stained it badly and that in order to avoid replacing the subfloor, which would have been very costly, the landlord took steps to treat the area and prevent the odour from entering the room. She provided evidence that she removed the hardwood floor which was under the carpet, treated the subfloor with a primer designed to seal in odour and stains, replaced the baseboards and treated the bottom few feet of the walls and then repainted. The tenant argued that the stains could have been removed from the carpet and that the stains in the bedroom carpet and subfloor could have been attributed to a recent hot water leak rather than her cats. She questioned one of the landlord's photographs, suggested that the photograph showed the hardwood on the right side of the photograph and a layer of some other substance on top of the hardwood on the left side of the photograph and argued that the layer on top of the hardwood should have acted as an extra layer of protection. She testified that she telephoned a flooring company and was told that it was extremely unlikely that the cat urine could have seemed through several layers onto the subfloor. The tenant acknowledged that over the course of her tenancy there were accidents in which her cats urinated on the carpet and further testified that during the tenancy other people had complained that the odours produced by her cats could be detected from the hallway.

Residential Tenancy Policy Guideline #40 contains depreciation tables which list the useful life of common household building elements. It identifies the useful life of carpet as 10 years and the useful life of interior paint as 4 years. In this case, both the carpet and the paint on the wall had long outlived their useful life and I find they had no actual value. As the carpet had no value at the end of the tenancy, I find that the tenant

cannot be held responsible for the cost of replacing the carpet and underlay and I dismiss that claim. However, I accept that the tenant's cats urinated in the bedroom and caused an offensive odour. I have based this finding on the tenant's admission that her cats urinated on the carpet and that the odour was strong enough to seep into the hallway. I find that had the tenant's cats not urinated on the carpet, the treatment of the subfloor would not have been necessary. It may be that the leak in the bedroom caused some staining in the subfloor, but I find it more likely than not that the offensive odour the landlord was seeking to mask was caused by cat urine. I do not accept that there was an additional layer of protection over the top of the hardwood as in my view, the photograph which the tenant questioned shows the subfloor on the right and the hardwood on the left. I find that the tenant must be held responsible for the cost of removing the hardwood floor and baseboards and painting primer on the subfloor to seal in the odour. I find that the landlord has not proven that the baseboards had to be replaced as she provided no evidence showing that the old baseboards could not have been painted with the same primer and reinstalled, so I dismiss the claim for the cost of the baseboards. The labour charges total $1,345.00 and the cost for materials totals $328.27, although the landlord is only claiming $260.00 of the materials cost. I find that the landlord is entitled to recover 80% of the cost of the labour and I award the landlord $1,076.00. I have discounted the labour to reflect the time it would have taken to repaint the walls as the walls would have required repainting in any event given that the useful life of the paint had expired some 5 years before the tenancy ended. I find that the landlord is entitled to recover the value of the sealant used for the walls and I award her $246.21. I dismiss the claim for the cost of wall paint as the landlord would have incurred that expense in any event. The total award for this head of damage is $1,322.21

Bathroom countertop replacement: The landlord testified that the bathroom countertop had pulled away from the wall as a result of having been exposed to cat urine and seeks to recover $180.00 of the cost of replacing the countertop. I find that the landlord has provided insufficient evidence to show that the cats urinated on the counter or that this is what caused the countertop to separate from the wall. I find it just as likely that as the cabinet and countertop seem to be original to the building, they separated as a function of their age. I dismiss this claim.

Oven replacement: The landlord seeks to recover $250.00 of the cost of replacing the oven at the end of the tenancy as she testified that it could not be cleaned. The landlord provided a photograph of the oven which shows that it had extreme, heavy soiling. The landlord testified that she paid $449.00 to replace the oven but seeks to recover just $250.00 of this from the tenant given that the oven was approximately 12 years old. The parties agreed that the oven was in working order at the end of the

tenancy. Residential Tenancy Policy Guideline #40 identifies the useful life of an oven as 15 years. I accept that the oven would have been almost impossible to clean given the buildup inside and I find that because the oven had 3 years of useful life left, the tenant deprived the landlord of those 3 years and must compensate the landlord for that loss. The cost of the new oven was $449.00 and I find the tenant must be held responsible for 3/15 of that cost. I award the landlord $89.80.

Closet door replacement: The landlord testified that as a result of having been urinated upon, the floor tracks on which the bedroom's sliding closet doors travelled were badly rusted and as a result, the closet doors had to be replaced. I am not satisfied that the cats caused the rusting on the tracks. The tenant testified that for 5 years the bathroom fan did not work and I find that it is just as likely that a high humidity level caused the rusting. I find that the landlord has not proven that the tenant is responsible for this damage or that it can be characterized as something other than reasonable wear and tear and I therefore dismiss the claim.

Blind replacement: The parties agreed that at the end of the tenancy, the blinds throughout the rental unit were in such poor condition they had to be replaced. They agreed that the blinds were inoperable and that vanes were missing. In order to be successful in their claim, the landlord must prove that the damage alleged is beyond what may be characterized as reasonable wear and tear. Residential Tenancy Policy Guideline #40 identifies the useful life of blinds as 10 years and although no testimony was offered as to the age of the blinds, I assume they were 12 years old and I find that the useful life of the blinds had expired. I further find that that there is insufficient evidence to show that the tenant abused the blinds in any way. The claim is dismissed.

Filing fee: As the landlord has been successful in much of the claim, I find she should recover the filing fee paid to bring her application and I award her $50.00.

In summary, the landlord has been successful as follows:

Parking fee	$ 20.00
Cleaning	$ 200.00
Odour containment	$1,322.21
Oven replacement	$ 89.80
Filing fee	$ 50.00
Total:	**$1,682.01**

The tenant argued that the landlord's right to claim against the deposit has been extinguished as the landlord did not offer 2 opportunities for her to inspect the unit at the end of the tenancy. I disagree. The parties agreed that the landlord arrived at the unit

at 12:00 noon on the last day of the tenancy and they agreed she should return at 6:00 for an inspection, but the tenant was not prepared at that time. I find that 6:00 was the time they had agreed to for an inspection and as an inspection had been scheduled for 6:00 and agreed to by the tenant, the landlord had met her obligation to schedule an inspection. However, even if I am incorrect and the landlord's right was extinguished, while the Act provides that the landlord's right to claim against the deposit is extinguished, the Act does not prohibit the landlord from making a monetary claim against the tenant and section 72(2)(b) of the Act permits me to apply the security deposit to a monetary award. The net result of the interaction of these sections is that the security deposit may be applied to any monetary award made to the landlord.

I order the landlord to retain the $400.00 security deposit in partial satisfaction of the claim and I grant her a monetary order under section 67 for the balance of $1,282.01. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for $1,282.01 and will retain the security deposit.

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: July 16, 2015

Residential Tenancy Branch