Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlords pursuant to the *Residential Tenancy Act* (the "Act").

The Landlords applied on November 12, 2014 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on January 29, 2015 for:

1. An Order for the return of double the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Landlords entitled to the monetary amounts claimed?

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on August 15, 2013 and ended on October 31, 2014. Rent of $3,800.00 was payable monthly. At the outset of the tenancy the Landlord collected $1,800.00 as a security deposit and $1,800.00 as a pet

deposit. The Parties mutually conducted a move-in inspection and completed a report. The Parties mutually conducted a move-out inspection however the Tenants did not agree to the conditions noted on the report. The Tenants were not provided a copy of either report until after the Tenants' application was made. The Tenants do not dispute the Landlords' claim for the **$22.95** cost of replacing the garage door opener.

The Landlord states that the Tenants left the unit with wall damage caused by the Tenants' moving company. The Landlord provided a quote for costs and states that the work has since been completed and that the amount quoted was the cost. The Landlord claims $446.25. The Tenant states that the moving company offered to inspect and repair the damage however the Landlord did not provide access to the unit and told the Tenant that the company would not be allowed to make repairs. The Landlord states that the Tenant asked on November 13, 2014 for the company to attend the next day however it could not be arranged with the existing tenants and the Landlord's contractor had already been booked. The Landlord states that they obtained estimates from two companies for all the repairs to the unit and that both were very close in the quoted costs.

The Landlord states that the Tenants left the floors of the unit with large scratches by the kitchen fridge, a large scratch in the hallway and scratches by the sliding door off the patio. The Landlord states that the scratches to the kitchen floor occurred when a leak was discovered and the Tenants moved the fridge. The Landlord does not know whether the fridge has wheels. The Landlord states that left over wood flooring was used to replace the damaged areas. The Landlord claims $2,714.25. For this claimed amount the Landlord provided an estimate of $1,428 for the combined cost to repair the kitchen and sliding door area and an estimate of $1,286.25 for the cost to repair the hallway floor. The Landlord provided unnumbered photos of the unit and none of the photos are labeled.

The Tenant states that the scratch in the hallway was caused by the moving company and the Landlord refused to allow the repairs as stated earlier.

The Tenant states that when the leak was discovered it was growing larger and the Tenants moved the fridge in order to turn off the water to save the floor from being damaged. The Tenant states that the fridge was on wheels but the floor was scratched.

The Tenant denies that the flooring by the patio door was damaged with scratches and states that no such scratches were noted on the move-out inspection. The Tenant provided a photo identified as #10 and the floor in front of the patio door.

The Parties agree that the ceiling was left with a mark caused by a Christmas tree. The Landlord states that the ceiling texture was scratched and that the area was discolored. The Landlord states that while the Landlord only wanted a patch of the area both companies who inspected the repairs told the Landlord that given the damage to the ceiling texture the area could not be patched as it would be obvious. As a result the whole ceiling required painting. The Landlord claims $1,764.00. The Tenant states that the ceiling mark was not dark or noticeable. The Tenant states that they emailed the Landlord on November 11, 2015 offering the Tenants' contractor for an inspection and repair of the ceiling and that the entire ceiling should not have required repair. The Tenant states that the Landlord subsequently informed the Tenants that the Landlord would only use their own contractors. The Landlord has no recollection of such an offer by the Tenants.

The Tenants state that at the time of move-out the Parties agreed that there was no pet damage and that the Landlord should have returned this deposit back to the Tenants. The Tenants also submit that the Landlord failed to provide copies of either of the condition reports. The Tenants claim return of double the combined pet and security deposit. The Landlord states that they believe the scratches to the patio area was caused by the Tenants' pets and that there was no agreement at move-out of no pet damage.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage the party claiming costs for the damage must prove, inter alia, that the damage claimed was caused by the actions or neglect of the responding party and that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed.

Based on the Landlord's evidence that the Tenants' moving company was not allowed to make repairs to the wall or the hallway floor scratch, I find that the Landlord failed to take reasonable steps to reduce or mitigate the costs claimed. I therefore dismiss the claim for costs to repair the wall and costs to repair the hallway floor.

Based on the undisputed evidence that the floor was scratched dude to the Tenants' action to reduce further harm to the Landlord's property from the leak, and considering that there is no evidence to suggest that the Tenants caused the leak, I find that the Landlord has failed to substantiate that the Tenants acted to cause the damage to the floor or were negligent in their actions. I therefore dismiss the claim for damages to the kitchen floor.

There is no way to discern which of the Landlord's photo of the wood flooring are photos of the flooring by the patio door. There is no context for any of the flooring close-ups and the photos are not otherwise identified. Given the move-out report and considering that the Tenants' photo does not show any visible damage, I find on a balance of probabilities therefore that the Landlord has failed to show this flooring area was damaged. Even if there were some damages that were not visible in the Tenants' photos, there is no way to determine the separate repair costs for this area as the

Landlord has not identified the separate costs for the kitchen floor and the sliding door area. I therefore dismiss the Landlord's claim in relation to the patio area flooring.

Based on the photos of both Parties, I find that the ceiling was marked. While the extent of the discoloration appears minor in both photos, given the texture of the ceiling I accept that a patch repair could be visible. However and although the Landlord does not recall the Tenants' offer, given the Landlord's evidence in relation to the moving company repairs, I accept the Tenant's evidence that the use of their own contractor for the repairs was rejected. This prejudiced the Tenants' opportunity to make repairs at a lower cost and is contrary to the Landlord's obligation to mitigate losses. Had the Tenants been given the opportunity and the repairs were not sufficient, the Landlord could then have pursued a claim. For these reasons I find that the Landlord has not substantiated its claim to costs for the ceiling and I dismiss this claim.

As the Landlord is only entitled to the undisputed amount of **$22.95**, I find that the Landlord is not entitled to the recovery of the filing fee and I dismiss this claim.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Section 24(2) of the Act provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against a security deposit for damage to the residential property is extinguished.

Based on the undisputed evidence that the Tenants did not receive a copy of the move-in report, I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at the start of the tenancy. Given this extinguished right the Landlord no longer had the option to make an application to claim against the security and pet deposit. Its only option under Section 38 was to return the security and pet

deposit within 15 days of the end of the tenancy. The Landlord still had the liberty to claim against the Tenants for damage to the unit. As the Landlord did not return the deposits, I find that the Landlord must now pay the Tenants double the combined pet and security deposit in the amount of **$7,200.00** plus zero interest. As the Tenants have been successful I find that the Tenants are also entitled to recovery of the **$100.00** filing fee for a total entitlement of **$7,300.00**.

Deducting the Landlords' entitlement of **$22.95** from the Tenants' entitlement of **$7,300.00** leaves **$7,277.05** owed by the Landlords to the Tenants.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **$7,277.05**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 3, 2015

Residential Tenancy Branch