Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, MND, FF

Introduction

In the first application the tenants seek return of a $497.50 security deposit and a $497.50 pet damage deposit, double pursuant to s.38 of the *Residential Tenancy Act* (the "*Act*").

In the second application the landlord applies for a monetary award for drywall repair, general cleaning and carpet cleaning after the tenants vacated the premises.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either party is entitled to the relief requested?

Background and Evidence

The rental unit is a two bedroom townhouse. The tenancy started in March 2013 and ended February 28, 2015. The monthly rent was $995.00. The landlord holds a $497.50 security deposit and a $497.50 pet damage deposit.

The landlord refers to the condition inspection report prepared at move in and at move out. The report has been endorsed by the tenants at move in and move out as being an accurate representation of the state of the premises. The comments section at move out notes "clean carpets" and "clean unit to make tenant ready."

The move out report shows that virtually every room was noted as "dirty." The report notes a "urine odor [*sic*] from red bedroom balcony" and "mold on wall" in the storage area.

After the tenants left, the landlord had the storage room wall repaired at a cost of $200.00.

The landlord testifies that she did not have time to arrange for general house cleaning and so the newly arriving tenant agreed to clean. She charged the landlord $150.00 for the cleaning. It would appear the new tenant and the landlord fell into dispute about the cleaning. The new tenant brought an application for the cleaning cost but failed to attend the hearing. The new tenant's application for cleaning costs was dismissed without leave to reapply. The Residential Tenancy Branch file number for that application is shown on the cover page of this decision.

The landlord obtained a quote of $200.00 for carpet cleaning. That work has not been done. The landlord says the new tenant is refusing to allow her to enter to conduct the cleaning.

The tenants say that they did not have time to clean. They deny the mould in the storage area was their fault. They say they kept items there but all were stored in plastic containers. There was nothing moist to cause the mould.

In regard to the deposit money, the landlord says that she did not repay it in a timely fashion because she was busy trying to co-ordinate the repairs and dealing with a non-cooperative new tenant.

Analysis

The condition inspection and report at move in and move out are mandatory steps imposed on a landlord. Their purpose is to verify the agreement or disagreement of the parties as to the state of the premises. A completed inspection report endorsed by the parties is very persuasive evidence of the facts it asserts.

In this case it is obvious from the report and the testimony that the premises required a thorough cleaning after the tenants left. The amount of $150.00 is a reasonable amount for cleaning premises of this size. However, the landlord has not suffered any loss by the tenants' failure to return the premises in a clean state. She did not clean the premises herself and has not had to pay for anyone else to clean the premises. Though the new tenant cleaned and then charged the landlord $150.00, the landlord will not have to pay that amount because the new tenant's claim for it has been dismissed without leave to re-apply. The new tenant can never make that claim again. The landlord has had the rental unit cleaned at no cost to her.

In these very unusual circumstances I find that the landlord has not suffered any loss by the fact that these tenants did not clean the premises before leaving. I dismiss this item of the claim.

The landlord was entitled to have the carpets professionally cleaned. Even despite the move-out report, the tenants had a cat and dog and lived there for two years. In those circumstances they were obliged to have the carpets shampooed before they left (See Residential Tenancy Guideline 1 "Landlord and Tenant – Responsibility for Residential Premises")

The fact that the landlord has not yet had the carpet cleaners there to work is not particularly germane. She is entitled to have the carpets cleaned or to the cost for doing so, whether that happens in the near future or later. I consider the estimate of $200.00 for the job to be reasonable and I award that amount to the landlord.

The mould in the storage area was shown to be present at move out but not to be present at move in. Without an explanation of how it could have arisen in the absence of some other cause, I conclude that it was most likely caused by the tenants' storage of goods against it, despite their evidence to the contrary. I award the landlord the $200.00 cost of repair.

The landlord indicated at hearing that she was required to replace the washer and dryer a few days after these tenants left. That claim has not been properly raised in the landlord's application. The tenants have not had an opportunity to prepare to consider it or prepare to defend themselves against it. I therefore decline to deal with the washer and dryer claim. The landlord is free to bring another application in that regard.

In regard to the tenants' claim for double the deposit money, s.38 of the *Act* provides:

> **38** (1) **Except as provided in subsection (3) or (4) (a), within 15 days after the later of**
> **(a) the date the tenancy ends, and**
> **(b) the date the landlord receives the tenant's forwarding address in writing,**
> **the landlord must do one of the following:**
> **(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**
> **(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that
(a) the director has previously ordered the tenant to pay to the landlord, and
(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

(*emphasis added*)

The tenancy ended on February 28, 2015. On that day the tenants provided their forwarding address in writing to the landlord on the move out inspection report. The landlord had the next fifteen days to either repay the deposit money or to make an application for dispute resolution to keep all or a portion of it. She failed to do either. Her application was not brought until August 4, 2015.

Section 38 requires strict observance. It does not provide for exceptions or allowances to be made for a landlord to repay a deposit or make application past the fifteen day period.

In these circumstances the landlord has run afoul of s.38 and must account to the tenants for double the amount of deposit money being held at the end of the tenancy.

The landlord is entitled to a monetary award totalling $400.00. Her application was proper and so I allow her recovery of the $50.00 filing fee.

The tenants are entitled to a deposit credit totalling $1990.00. Their application was a proper one and so I award them recovery of the $50.00 filing fee.

I authorize the landlord to retain $450.00 from the deposit money she holds. The tenants are entitled to a monetary order against the landlord for the remainder of $1590.00.

Conclusion

Both applications are allowed in part. The tenants will have a monetary order against the landlord in the amount of $1590.00.

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: September 01, 2015

Residential Tenancy Branch