Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord applied for monetary compensation for damage to the rental unit or property; and damage or loss under the Act, regulations or tenancy agreement; and, for authorization to retain the security deposit. The tenant applied for return of the security deposit. The landlord and the male tenant appeared at the hearing. I heard from the landlord that she had sent her hearing documents to each tenant separately via registered mail. The male tenant confirmed that he was representing both tenants. The landlord also confirmed receipt of the tenant's hearing documents. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants in the amounts claimed for damage to the rental unit or property?
2. Disposition of the security deposit.

Background and Evidence

The tenancy commenced on November 1, 2014 and ended on March 31, 2015. The monthly rent was $1,500.00 and the landlord collected a security deposit of $1,000.00. Both parties participated in a move-in inspection together and the landlord prepared a move-in inspection report.

The landlord inspected the rental unit on April 1, 2015 without the tenants present and completed the move-out inspection report. The landlord then served the tenants with a Notice of Final Opportunity to Schedule a Condition Inspection by posting it on the door of their new residence on April 10, 2015. The inspection was scheduled for April 14, 2015 and the tenants attended the property as scheduled. The landlord pointed out areas that were seen as damaged by her. The landlord re-dated the move-out

inspection report for April 14, 2015 and presented it to the tenants for signature; however they would not sign it. The landlord sent a copy of the move-out inspection report to the tenants with the landlord's evidence package.

Below, I have summarized the parties' respective positions regarding the landlord's claims against the tenants.

Oil stains on driveway -- $2,000.00

The landlord seeks compensation of $2,000.00 for oil stains on the driveway. The landlord submitted that the tenants were required to park off the property under the terms of tenancy; however, she was advised by a neighbour that when she left the country the tenants were parking on the driveway. The landlord stated that the tenant also admitted to her that he had been parking on the driveway while she was out of the country. The landlord submitted that oil stains became visible in February 2015 after the snow and ice melted and she attributes this to the tenants parking on the driveway.

The landlord submitted that the driveway had been re-sealed in June 2014 and was devoid of oil stains before the tenants parked on the driveway. The landlord stated that she parks in the garage and her spouse parks off the property but that her guests are permitted to park on the property from time to time.

The landlord's spouse testified as a witness that he had re-sealed the driveway in June 2014 and that when he re-sealed the driveway it was free of oil stains. The landlord's spouse testified that he is not experienced in removing oil stains and would leave this to the professionals to rectify.

The landlord presented a quote for $2,000.00 to clean and re-seal the driveway which amounted to $2,541.00 after the contractor's overhead, profit and taxes were added. The quote was accompanied by a written explanation from the contractor.

The tenant acknowledged that the tenants parked on the driveway for a brief period of time while the landlord was out of the country but claimed that it was only two weeks approximately before it was not possible to park on the sloping driveway because of snow and ice.

The tenant pointed out that the landlord did not raise the issue of oil stains on the driveway during the tenancy and waited until the day of the move-out inspection.

The tenant submitted that the oil stains are not even visible but in any event he contends that his truck does not leak oil and he presented photographs of his truck and pavement devoid of oil stains where his truck was parked.

The tenant also pointed out that the driveway was re-sealed in June 2014 but the tenancy did not commence until November 2014.

The landlord responded by stating that although she first saw the oil stains in February 2015 she did not raise the issue with the tenant as she found the tenant to be contentious and dismissive at other times.

Both parties provided photographs of the driveway for my consideration.

Stains on headboard - $1,785.00

The landlord submitted that there are oil stains on the fabric headboard and that the entire headboard and attached bedframe must be replaced because the upholstery cleaners would not attempt to clean the stain and because the custom made headboard and bedframe are one unit. The landlord provided a copy of the upholstery cleaner's work order that indicates that stains on a headboard are not cleanable as the fabric may shrink, the stains may spread, and that they refused the job. The landlord obtained and provided a copy of a quote of $1,785.00 plus tax to replace the bed frame and headboard.

The tenant was of the position that the landlord is overly nit-picky in her expectations as to how a tenant is to live and use the furnishings in the furnished rental unit. The landlord acknowledged that she maintains a high standard for the rental unit.

The tenant submitted that the "smudge" is barely visible and that he never noticed it during the tenancy. The tenant was of the position that any smudge would be wear and tear from using the bed and that they are not liable for $1,785.00 in damage.

The landlord had provided photographs of the headboard. The tenant pointed out that a stain is not visible in the photographs.

Natural gas - $400.00

The landlord requested that the tenants compensate her one-half of the natural gas bills for the period of December 10, 2014 through March 10, 2015. Although the tenancy agreement provides that rent includes utilities, the landlord submitted that the tenants were using the gas fireplace during their tenancy and that they were not supposed to. The landlord pointed to the move-in inspection report in support of her position that the

tenants were not to use the gas fireplace and acknowledged that there is no such term in the tenancy agreement. The landlord acknowledged that gas is used to fuel the fireplace, hot water, heat and range in the rental unit and the other living unit in the building.

I did not request a response from the tenant with respect to this claim as I dismissed it after considering the landlord's submissions. I have provided my reasons for dismissing the landlord's claim in the analysis section of this decision.

Tenant's application
The tenant filed his application on April 17, 2015 to have the security deposit returned. The landlord had filed her application seeking to retain the security deposit on April 15, 2015 and I was satisfied the landlord filed her Application within 15 days of the tenancy ending. Therefore, disposition of the security deposit shall be considered under the landlord's application.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under the Act, a tenant is required to leave the rental unit reasonably clean and the residential property free from damaged they may have caused by way of their actions or neglect. The Act provides that reasonable wear and tear is not damage.

Oil stains on driveway
I accept the landlord's position that the tenants were not to park in the driveway as the tenancy agreement provides that the tenants are provided parking "offsite"; which was

undisputed by the tenant and supported by the move-in inspection report which records in the space provided for garage or parking areas “no parking on driveway (visibility poor, slippery in winter mos.). I also accept that the tenants did park on the driveway for a period of time as the tenant acknowledged doing so and I find that doing so was a violation of the tenancy agreement. However, a breach of the tenancy agreement does not in itself warrant a monetary award. Rather, the landlord must demonstrate that she suffered a loss as a result of the tenants’ violation.

Both parties provided me with photographs of the driveway and I find that the photographs from both parties show that there are obvious oil stains on the driveway. The parties were in dispute as to whether the oil stains were caused by the tenants.

The move-in inspection report does not indicate oil stains on the driveway whereas the move-out inspection does. The landlord’s spouse testified that he had sealed the driveway in June 2014 and there were no stains when he did that. Also, it was undisputed that the landlord is very particular in the care of the property and the driveway is undisputedly very sloping leading me to find her testimony that she had not permitted previous tenants to park on the driveway to be reasonably likely. The tenant submitted photographs of his truck and pavement in an effort to demonstrate his truck does not leak oil; however, I find his evidence under-whelming considering his photographs were taken on level ground and not a steep slope such as the landlord’s driveway. Therefore, I find there is sufficient evidence to conclude that the oil stains likely occurred during the tenancy.

Upon consideration of the evidence as a whole, I find that on the balance of probabilities, that the tenants caused oil stains on the driveway by parking on the driveway while the landlord was out of the country. Accordingly, I find the landlord has established that the tenants are responsible for the loss associated to the oil stains.

I accept the quote provided by the landlord sufficiently supportive of her request to recover $2,000.00 from the tenants as the contractor’s email also explains the work involved.

Oil stains on headboard

The landlord submitted that there are oil stains on the fabric headboard that are not cleanable; however, I find the landlord’s claim to recover $1,785.00 from the tenants is weak considering the following factors:

- The move-in inspection report does not describe the condition of the headboard at the start of the tenancy;

- In one of the photographs of the headboard I cannot see any evidence of an oil stain and only in the other photograph that is an extreme close-up do I observe a very slight darker area near the mattress.
- The landlord has not replaced the headboard and in the advertisement of rental unit that was placed in September 2015 the same headboard is visible in the photographs, without visible stains, and the landlord did not demonstrate that the amount of rent she is able to garner for the property is any less.

The tenant testified that he had not even noticed any stains until pointed out by the landlord at the move-out inspection. Considering his testimony and the move-in inspection report is silent as the condition at the start of the tenancy I find there is question as to whether the oil stain was caused during the tenancy.

If the staining did occur during the tenancy I find the landlord's estimated loss is excessive considering she continues to use the same headboard in advertising the unit, the staining is almost non-detectible and there is no evidence the landlord garner's any less rent for the unit as a result..

In light of the above, I find I am unsatisfied that the tenants' actions or neglect caused the landlord to suffer a loss of $1,785.00 with respect to the headboard and I dismiss her request to recover that amount from the tenants.

Natural Gas
I dismissed the landlord's request to recover one-half of the natural gas bill from the tenants for the following reasons:

1. Utilities were included in the monthly rent.
2. The tenancy agreement did not preclude the tenants from using the fireplace.
3. Claiming one-half of the natural gas bill is out of proportion since the gas supply to the house provides fuel for multiple appliances in the house used in two living units.

Filing fee, Security Deposit and Monetary Order
Since the landlord was only partially successful in her application, I award the landlord recovery of one-half of the filing fee she paid, or $25.00.

The landlord is authorized to retain the security deposit in partial satisfaction of the amounts awarded to the landlord.

Considering the landlord filed a claim against the security deposit within the time limit for doing so and has been authorized to retain it by way of this decision, the tenant's application for return of the deposit is dismissed.

Based upon all of the above, I provide the landlord with a Monetary Order calculated as follows:

Oil stains on driveway	$2,000.00
Filing fee	25.00
Less: security deposit	(1,000.00)
Monetary Order for landlord	$1,025.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord was partially successful in her application. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of $1,025.00 to serve and enforce upon the tenants.

The tenant's application has been dismissed.

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: October 13, 2015

Residential Tenancy Branch