Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "Act").

The Tenants filed their Application on May 24, 2015, and requested a monetary order for return of double the security deposit under section 38 of the Act, for an order for the Landlords to comply with the Act, and to recover the filing fee for the Application.

The Landlords filed their Application on October 5, 2015, requesting a monetary order for unpaid rent, for money owed or compensation under the Act or tenancy agreement, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

As the tenancy has ended it was unnecessary for the parties to deal with the request of the Tenants for an order to compel the Landlord to comply with the tenancy agreement, Act, or regulations.

Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Are the Landlords entitled to monetary compensation?

Background and Evidence

This tenancy began on October 15, 2014, with the parties entering into a written tenancy agreement with an initial fixed term of six and a half months. The Tenants paid a security deposit of $500.00 on or about October 11, 2014, and the monthly rent was $1,000.00 payable on the first day of each month.

The Tenants' Claims

The parties agreed that no incoming or outgoing condition inspection reports were performed which complied with the Act. The parties had planned a "walk through" of the rental unit at the end of the tenancy; however, the Landlords were unable to attend.

The Tenants vacated the rental unit on May 2, 2015. They provided their forwarding address in writing to the Landlords that day by leaving it on a counter in the rental unit and the Landlords agreed they received the Tenants' forwarding address on May 3, 2015.

After the end of the tenancy the Landlords informed the Tenants they were withholding $47.00 from the deposit held to pay for a missing coat rack ($20.00), to repaint a wall upon which the Tenants had used spackle to fill holes from pictures ($15.00) and to replace a burnt out light bulb in the kitchen ($12.00).

The Tenants did not agree to these deductions being made. The Tenants acknowledged they received a cheque from the Landlords for $453.00, which they have cashed.

The Tenants claim for return of double the security deposit and the filing fee for the Application.

The Landlords' Claims

The Landlords claim the Tenants removed a coat rack from the rental unit and claim **$20.00** for the coat rack.

The Tenants testified that when they moved in the coat rack was broken and held together with tape. It collapsed when they were using it and they put it in the garbage.

The Landlords claim the Tenants used a different colour of spackle to fill in picture holes in the guest bedroom. The Landlords submitted that the rental unit had been painted just before the Tenants moved in. The Landlords had to repaint this wall and purchased paint in the amount of **$15.00**. The Landlords claim this amount from the Tenants.

The Tenants testified that they used a drywall filler to fill in the picture holes in the wall. They did not fill in every hole in the rental unit as not all the holes were put there by them. They submitted this was reasonable wear and tear as they know they are allowed to put up pictures in the rental unit according to the policy guidelines to the Act.

The Landlords claim the Tenants were required under the tenancy agreement to replace the light bulbs that burnt out. Clause 1 of the tenancy agreement sets this out. The Landlords testified the Tenants failed to replace the low energy bulb and it cost **$12.00** to replace, which they claim from the Tenants.

The Tenants agreed that the Landlords had pointed out this bulb needed to be replaced; however, the Tenants forgot to do this, although they did agree to do it.

The Landlords claim they allowed the Tenants to move in early. They claim the Tenants owe them **$161.00** in rent for this. The Landlords testified that at no time did they undertake that this was free rent. The Landlords also testified that they did not tell the Tenants they would have to pay rent for these days.

The Tenants argued that they had a verbal agreement with the Landlords to move in early and at no time was it ever discussed that they would pay extra rent for this.

The Landlords claim **$55.00** to sand and repaint the top of a hobby work bench which they claim the Tenants damaged with oil.

The Tenants claim they used the work table for their hobbies and some reasonable wear and tear should be expected when using a work bench.

The Landlords claim **$297.16** for carpet cleaning. The Landlords submitted that the tenancy agreement requires the Tenants to have the carpets professionally cleaned when they moved out. The Landlords claimed that the last time they had the carpets

professionally cleaned it cost them $297.16 for the carpet cleaning so they are using that for a comparison, although no receipt was provided in evidence.

The Tenants submitted that when the parties did an initial “walk through” of the rental unit prior to moving out the carpets were covered with boxes. It was agreed with the Landlords that they would inspect the carpets the day after the boxes were moved out. This did not occur as the Landlords could not attend.

The Tenants further testified that at one point at the end of the tenancy that all four of the parties agreed the Tenants would receive their entire security deposit back.

The Landlords replied they agreed to this but only if the carpets were clean.

The Tenants agreed they did not have the carpets cleaned. The Tenants argued that the Policy Guideline to the Act suggests that they would only have to clean the carpets after a tenancy of one year. They testified they were non-smokers and had no pets.

Analysis

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 sections 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.

In this instance, the burden of proof is on both of the Applicants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement by the other party. Once that has been established, the respective Applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the respective Applicant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Tenant's Claims

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlords extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The Tenants had not agreed that the Landlords could retain any portion of the security deposit.

The Landlords did not apply within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38, and in any event their right to claim against the deposit was extinguished as explained above. The Landlords should have returned the entire deposit. They could still have made a damages claim, but not against the security deposit.

Therefore, I find the Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the Tenants by the Landlords. At no time do the Landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The Landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or the written agreement of the Tenants. Here the Landlords did not have any authority under the Act to keep any portion of the security deposit.

Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit and I must order the return of double the security deposit, less the amount already returned. I note that the original security deposit amount is doubled, not the amount the Landlords' withheld, pursuant to the Act and Policy Guideline 17.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **$597.00**, comprised of double the security deposit (2 x $500.00 = $1,000.00) *less the $453.00 already returned to the Tenants* ($1,000.00 - $453.00 = $547.00) plus the $50.00 fee for filing this Application ($547.00 + $50.00 = $597.00), ***subject to any set off below in the Landlords' claims*****.**

Landlords' Claims

I allow the Landlords' claim of **$20.00** for the coat rack. The Tenants should have informed the Landlords that the coat rack was broken. As it did not belong to the Tenants they had no right to dispose of the coat rack. I accept the Landlords' testimony as to the nominal value of this item.

I do not allow the Landlords' claims to repaint a wall and the purchase of paint. There was no evidence that the Tenants created an excessive amount of nail holes or intentionally damaged the walls. In the normal course of a tenancy a tenant is allowed to hang pictures in the rental unit and the holes left behind, if reasonable and not contrary to the terms agreed to with the landlord, are considered reasonable wear and tear. In this case the Landlords provided no evidence that the Tenants had created an unreasonable amount of nail holes or that the walls were significantly defaced. This claim is dismissed without leave to reapply.

I allow the claim for the low energy bulb of **$12.00** as the Tenants acknowledged they forgot to replace this bulb.

I do not allow the claims of the Landlords for rent to move in early. The evidence was clear that the Landlords did not inform the Tenants they would have to pay rent for these days. At no time was it ever discussed that they would pay extra rent for these days. This claim is dismissed without leave to reapply.

I do not allow the Landlords' claim to sand and repaint the top of a hobby work bench. I find the Landlords have failed to prove this was not reasonable wear and tear. The Landlords have insufficient evidence that the Tenants used the hobby table for a purpose it was not meant to be used for. Hobby tables and workbenches are meant to be used for hobbies and doing work and a reasonable amount of wear and tear is expected. The Landlords had insufficient evidence this was unreasonable damage. This claim is dismissed without leave to reapply.

I allow the Landlords' claim for a portion of carpet cleaning; however, I find the amount claimed must be reduced. While the Policy Guideline suggests that carpet cleaning

should occur after one year or if the renters were smokers or had pets, I find the tenancy agreement required the Tenants to have the carpets professionally cleaned when they moved out. They did not do this. However, I find the Landlords had insufficient evidence to prove that it would cost $297.16 for the carpet cleaning due to the condition it was left in by these Tenants. They were in the rental unit for less than a year and had no pets and did not smoke. Furthermore, the Landlords used a previous cleaning bill for a comparison, although no receipt was provided in evidence and no evidence was led as to the condition of the carpets when they previous cleaning was performed. Therefore, I allow the Landlords a nominal amount for carpet cleaning, in the amount of **$100.00**.

As the Landlords have been only partially successful with their claims, I award only a portion of the filing fee for the Application to be returned, in the amount of **$25.00**.

Having made the above findings, I must Order, pursuant to section 67 of the Act, that the Tenants pay the Landlords the sum of **$157.00**, comprised of the above described amounts, plus the portion of the fee for filing this Application ($20.00 + $12.00 + $100.00 + $25.00 = $157.00).

Under section 72 of the Act I allow a set off of the amounts awarded to the parties. The Tenants were awarded $597.00 and the Landlords $157.00. $597.00 - $157.00 leaves a balance of **$440.00** due to the Tenants.

Therefore, pursuant to sections 38 and 67 of the Act, I order the Landlords to pay the Tenants the sum of **$440.00**, and I grant the Tenants a formal order in this amount.

The order must be served on the Landlords and may be enforced in the Provincial Courts.

Conclusion

The Landlords breached the Act by failing to deal with the security deposit in accordance with the Act.

The Tenants breached the tenancy agreement as described above.

Both parties were awarded monetary amounts and these were set off.

As a result of the set off, the Landlords must pay the Tenants the balance due of **$440.00.**

The Tenants are granted a formal order in the above terms which must be served on the Landlords, and may be enforced in Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 05, 2015

Residential Tenancy Branch