



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing convened on November 24, 2015 for 45 minutes and reconvened on January 29, 2016 to hear matters pertaining to the Landlord's application for monetary compensation. An Interim Decision was issued on November 24, 2015. Accordingly, this Decision must be read in conjunction with the November 24, 2015 Interim Decision.

The Landlords' June 19, 2015 evidence submission had not been placed on the Residential Tenancy Branch (RTB) file at the time of November 24, 2015 hearing. The Landlords were granted leave to resubmit their documentary and photographic evidence no later than December 3, 2015. The Landlords' original evidence submission had been located and placed on the file by December 1, 2015. The Landlords were contacted via telephone and advised that they were not required to submit a second package of evidence as their June 19, 2015 submission had been located.

The Landlords' original evidence submission consisted of 24 photographs and 25 pages of documents; not 16 pages of documents as stated by the Landlords in the November 24, 2015 hearing. Upon further review it was noted that the additional number of documents were in fact the RTB application and hearing documents. I was satisfied that the RTB was served copies of the same documentary evidence and photographs as was served upon the Tenant. Accordingly, I considered all documentary and photographic evidence that was received on file by the Landlords and the Tenant.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

The parties entered into a written month to month tenancy agreement which began on February 13, 2013. Rent of \$725.00 was payable on the first of each month and on February 2, 2013 the Tenant paid \$365.00 as the security deposit.

No move in or move out condition inspection reports were completed by the Landlords.

On or before April 30, 2015 the Tenant personally served the Landlord, D.M. written notice to end her tenancy effective May 31, 2015. That notice to end tenancy included the Tenant's forwarding address. The Tenant had vacated the rental unit by May 31, 2015.

The rental unit was located in the lower level of a house which was described as a two level single detached home which was built in approximately 1981. The Landlords purchased the property in 2003 and occupied the entire house until 2013 when this tenancy began. The Landlords continued to reside in the upper level of the house during the tenancy. The rental unit was described as a one bedroom self-contained suite which was heated by a wood stove. There were no built-in baseboard heaters or any other installed or permanent forms of heat. The Tenant had a portable electric heater.

The Landlords submitted that the tenancy agreement included an "informal" agreement that the Tenant was required to repair all damages and clean the rental unit at the end of the tenancy. The aforementioned agreement was not submitted into evidence.

The Landlords listed a claim of \$2,107.19 for monetary compensation on their application for Dispute Resolution. The monetary order worksheet submitted into evidence listed items totalling \$2,122.78 for repairs, cleaning costs, loss of rent, and legal fees. The Landlords' oral submissions included as follows:

- 1) \$181.28 for drywall spackle, trim paint, and miscellaneous supplies used to repair the rental unit. The Landlords submitted that the rental unit had been painted in January 2013 just before the Tenant occupied the rental unit.
- 2) \$367.14 comprised of a new fluorescent light fixture; light bulbs and supplies. The Landlords argued that the kitchen fluorescent light no longer worked and several light bulbs needed to be replaced. All light fixtures were original from 1981.
- 3) \$88.75 for pot light covers. The Landlords submitted that the pot light covers were rusted and needed to be replaced as they could not be cleaned. The pot lights were original from 1981.
- 4) \$483.93 to replace the bedroom carpet with laminate flooring. The amount claimed was for the cost of the laminate and the underlay. The Landlords asserted that the carpet had been installed in approximately 1995. No documentary evidence was provided to prove the age of the carpet. The Landlords argued that a professional maid service advised them that the carpets smelled of pet urine and they could not reasonably remove the stains or the pet smells from the carpet.
- 5) \$280.00 for labour costs to install the laminate flooring in the bedroom.
- 6) \$255.00 for cleaning costs which was based on an estimated amount obtained from a professional maid service. The Landlords submitted that they did not hire the professional maid service to conduct the cleaning; rather they did the cleaning themselves. They asserted that it took ten days to clean and repair the rental unit which included approximately 15 hours of cleaning.

- 7) \$236.68 for the front door replacement which was based on an estimate submitted into evidence. The Landlords did not purchase a new door; rather, they purchased a used door. The Landlords did not know the exact price or date of when they purchased the used door. They estimated that it cost them approximately \$150.00 to purchase the used door.
- 8) \$25.00 for legal costs incurred when the Landlords sought advice on how to proceed with their application. The Landlords argued that they were not previously aware of the Residential Tenancy process and needed to gain legal advice before proceeding.
- 9) \$150.00 for loss of rent incurred between June 1, 2015 and June 5th, 2015 based on a daily rate of \$25.00. The Landlords submitted that they were not able to re-rent the unit until June 6, 2015 due to the condition the rental unit had been left in.
- 10) \$55.00 based on an estimated cost to dispose of the carpet which was removed from the bedroom. The Landlords testified that they had taken a full load of waste to the transfer station so did not know the exact cost for the carpet disposal alone. No receipts for waste disposal were submitted into evidence.

The Tenant disputed all ten items sought by the Landlords. The Tenant pointed to her documentary evidence which included witness statements that proved that she, her sister, and her friend cleaned the rental unit fully, from top to bottom, on May 21, 2015. The rental unit keys were returned to the Landlords on May 31, 2015.

The Tenant confirmed that she had 3 cats and 2 small older dogs when she first moved into the rental unit. The two older dogs passed away during the tenancy and in August 2014 she took in an 8 month old Shepherd Malamute cross puppy.

The Tenant argued that the Landlords posted a copy of the professional maid service quote to her door prior to the end of May 2015. She stated that the quote was simply a form that was printed off of the internet. She questioned if an employee of the maid service ever inspected the rental unit prior to providing the quote, as she was never informed of a planned entry or inspection.

The Tenant testified that she was told the front door would be replaced prior to the start of her tenancy as it was old and damaged. She pointed to the Landlords photographic evidence and argued that the picture showed an old door with previous damage.

The carpet was old and stained and in disrepair prior to her moving into the unit. She submitted that she had cleaned the carpet at the end of the tenancy and was able to get some of the pre-existing stains removed. She argued that they had cleaned the floor three times during her move out.

The Tenant asserted that the Landlords' photographs displayed window sills that were not painted properly. She stated the photographs show that the Landlords simply painted over top of existing chips and damage.

The Tenant stated that she had attempted to change some of the burnt out light bulbs. However, the light fixture(s) were rusted shut and she could not remove the covers in order to change the bulbs.

The Tenant testified that the photograph of the bathtub was evidence that there was hard water in the rental unit. She asserted that the hard water stains could not be removed by normal cleaning.

The Tenant submitted that she had left the rental unit in better condition than what it was when her tenancy first started. She stated that the Landlords failed to complete a move-in inspection and when she returned the keys on May 31, 2015 they never mentioned the need to conduct a move out inspection.

The Landlords submitted that they were aware that the Tenant and two other people were at the rental unit on May 21, 2015 cleaning. They asserted that they had the Tenant's permission to show the rental unit to prospective new tenants and thought that permission gave them the right to show the unit to the professional cleaning service in order to get the quote. They argued that they let the cleaning company into the unit after the Tenant had cleaned on May 21, 2015.

The Landlords confirmed that they had not submitted any documentary or photographic evidence to prove the condition of the rental unit at the start of the tenancy. They stated they totally disagreed with everything the Tenant had stated and argued there was no pre-existing damage to the front door or inside the rental unit.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 24(2) of the RTA provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 36(2) of the RTA stipulates that a landlord's right to claim against a security and pet deposit for damages is extinguished if they do not schedule a move out condition inspection with the tenant.

Section 38 of the Act provides a landlord with two options on how to deal with the disbursement of security deposits: (1) the landlord must file an application for Dispute Resolution to make a claim against the deposit or (2) the landlord must return the deposit to the tenant.

The undisputed evidence was the Landlords did not complete a condition inspection report form at move in or move out. As such the Landlords' right to claim damages against the security deposit has been extinguished, pursuant to sections 24 and 36 of the *Act* if their application for Dispute Resolution was filed only to seek compensation for damages to the rental property. In addition to a claim for compensation for damages the Landlords' application was filed to recover the costs for loss of rent and legal fees. Therefore, I find the extinguishment provision does not apply here.

The evidence before me supports that the tenancy ended May 31, 2015 and the Landlords were served the Tenant's forwarding address on April 30, 2015. The Landlords filed their application for dispute resolution on June 15, 2015.

Based on the above, I find that the Landlords complied with Section 38(1) of the *Act*, filing their application within the required 15 day period. Therefore, the Landlords are not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

In regards to the Landlords' claims to replace the carpet, kitchen light fixture, pot light covers; and the front door, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40* in order to estimate depreciation of those replaced items.

Residential Tenancy Policy Guideline 40 provides the estimated useful life of the items claimed by the Landlords were as follows: carpet is 10 years; light fixtures and pot light covers are 15 years; and a door has an estimated useful life of 20 years. The evidence from the Landlords indicated the carpet was installed in 1995 and was therefore 20 years old. The light fixture, pot light covers, and door were all said to be original from when the house was built in 1981 and were therefore, 34 years old when this tenancy ended. Accordingly, I find the carpet; light fixture, pot light covers, and the door had all surpassed their normal useful life and therefore, had a depreciated value of zero.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Regarding the claims for damages and cleaning I considered the Tenant's disputed verbal testimony and the Tenant's witness statements. In the absence of documentary evidence from the Landlords to prove the condition of the rental unit at the start of the tenancy, I find the Landlords submitted insufficient evidence to prove the rental unit had been left damaged and unclean at the end the tenancy. In response to the claim for light bulbs I accept the Tenant's submissions that many of the lights were rusted, as shown in the Landlords' photographic evidence. I further accept that the Tenant could not remove the light bulbs in order to change them due to that rust.

Based on the above, I find there to be insufficient evidence to prove the Tenant breached section 37 of the *Act*. Accordingly, I find the Landlords' application for repairs, cleaning, and loss of rent must fail due to insufficient evidence and the application is dismissed, without leave to reapply.

In response to legal fees claimed, I find that the Landlords have chosen to incur costs that cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act* not to educate a participant to a dispute of their rights and responsibilities stipulated by the *Act*. Accordingly, I dismiss the claim for legal fees, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords application was dismissed in its entirety; therefore, I declined to award recovery of the filing fee.

The Landlords have not been successful with their application and are therefore, not entitled to retain any portion of the Tenant's security deposit. The security deposit has been held in trust by the Landlords since February 2, 2013 and has accrued no interest based on the RTB interest calculator. Accordingly, I Order the Landlords to return the \$365.00 security deposit to the Tenant forthwith.

In the event the Landlords do not comply with the above Order, The Tenant has been issued a Monetary Order for **\$365.00**. This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Conclusion

The Landlords' application was dismissed, without leave to reapply. The Landlords were ordered to return the Tenant's \$365.00 security deposit forthwith.

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: January 29, 2016

Residential Tenancy Branch

