Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, SS, FF; MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- an order to be allowed to serve documents or evidence in a different way than required by the *Act*, pursuant to section 71; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- authorization to obtain a return of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

The first hearing for the above applications was held on March 18, 2016. The two tenants and their advocate, LYL and the landlord attended the first hearing. The landlord's witness, AC was excluded from the first hearing. The first hearing was adjourned in order to ensure proper service of documents on all parties. No testimony was heard regarding the merits of both applications. The first hearing lasted 70 minutes. I issued an interim decision, dated March 18, 2016, to both parties following the first hearing, including the reason for adjourning the hearing and directions regarding service of evidence.

The two tenants and their advocate, LYL (collectively "tenants") and the landlord and her advocate, AC (collectively "landlord") attended the second hearing on June 1, 2016. The landlord's advocate confirmed that although he was intended to be a witness at the first hearing, he would not be providing testimony, only submissions on behalf of the landlord at the second hearing. All present were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The two tenants named in this application confirmed that they had authority to speak on behalf of "tenant CJC," the other tenant named in the landlord's application at this hearing (collectively "tenants"). The landlord confirmed that her advocate had authority to speak on her behalf at this hearing.

The second hearing lasted approximately 112 minutes in order to allow both parties to fully present their submissions.

The tenants confirmed receipt of the landlord's dispute resolution application, notice of hearing, written evidence package and photographs. After the first hearing, the landlord was required to re-serve her written evidence to the tenants, including labeling and numbering her photographs. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application, hearing notice, written evidence and photographs in accordance with my directions. I also received the landlord's re-served written evidence with the labelled photographs.

The landlord confirmed receipt of the tenants' dispute resolution application, notice of hearing, and written evidence packages, including additional responsive evidence that she received on May 24, 2016. After the first hearing, the tenants were required to serve any additional responsive evidence at least seven clear days before the second hearing. I received this evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application, hearing notice, and written evidence packages in accordance with my directions.

Preliminary Issue – Inappropriate Behaviour by the Landlord and her Advocate during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

> *Interruptions and inappropriate behaviour at the dispute resolution hearing*
>
> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

At the outset of the hearing, I advised both parties about the rules of the conference, to respect each other and myself, that one person was to speak at any given time, that parties were not to interrupt while others were talking, and that both parties would be given a chance to speak. Throughout the hearing, the landlord and her advocate repeatedly interrupted the tenants and me. The landlord and her advocate displayed disrespectful and inappropriate behaviour. I repeatedly warned the landlord and her advocate to stop their inappropriate behaviour but they continued. I notified them that they could be excluded from the hearing if they continued with their behaviour. However, I allowed them to attend the full hearing, despite their inappropriate behaviour, in order to provide them with an

opportunity to present their application and respond to the tenants' application. I caution the landlord and her advocate not to engage in the same behaviour at any future hearings at the Residential Tenancy Branch ("RTB"), as this behaviour will not be tolerated and they may be excluded from future hearings.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to obtain a return of their security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties and their advocates, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 16, 2012 and ended on August 31, 2015. Monthly rent in the amount of $1,400.00 was payable on the first day of each month. A security deposit of $675.00 was paid by the tenants and the landlord continues to retain this deposit. Move-in and move-out condition inspection reports were completed for this tenancy.

Both parties agreed that a written forwarding address was provided by the tenants to the landlord by way of email. The tenants said that it was provided on September 1, 2015, while the landlord said that it was around September 7, 2015. The landlord did not have written permission to keep any part of the tenants' security deposit. The landlord filed her application to retain the deposit on September 14, 2015.

The landlord seeks a monetary order of $5,850.66 plus interest including the $50.00 filing fee for her application. The tenants seek the return of their security deposit of $675.00 plus the $100.00 filing fee paid for their application.

Analysis

Landlord's Application

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord $204.19 for replacing the dryer door handle. The landlord provided photographs and an invoice for this cost. The tenants agreed that they broke this handle but disputed the cost saying it was reasonable wear and tear from using the dryer repeatedly. I find that the tenants caused this damage and it is not reasonable wear and tear because the dryer requires a handle in order to function properly, and this was removed by the tenants.

I award the landlord $39.19 to replace the broken kitchen hanger hooks. The landlord provided a receipt for this cost. The landlord provided photographs of these hooks both before and after the tenants moved in and out. The tenants agreed that they removed these hooks because they kept falling off. They disputed this cost, saying that they probably put it somewhere in the rental unit but they were unsure. I find that the tenants misplaced the hooks and are required to replace them.

I award the landlord $383.43 to replace only the stove top. The tenants disputed this cost, claiming that the scratches to the stove top were reasonable wear and tear. However, the tenants claimed that if I were to find in favour of the landlord, that I consider only the replacement of the stove top, not the entire stove/oven appliance replacement. The tenants provided a printout of the above estimated cost to replace the stove top for $383.43 according to the model number provided by the landlord. The landlord did not provide any estimates for replacement of only the stove top. The landlord only provided the total cost for replacement of the entire stove/oven. The landlord said that the stove top could not be repaired, as advised to her by two different stores but she did not provide documentary evidence of this fact. I find that the landlord did not need to replace the entire stove and oven appliance because I believe the tenants' testimony that it was still in good, working order when they vacated the rental unit. However, I find that the excessive scratching to the stove top, as demonstrated in the landlord's photographs, is not reasonable wear and tear and warrants a replacement.

I dismiss the landlord's claims for replacing the stove/oven, microwave oven and refrigerator in the amount of $3,210.54. Residential Tenancy Policy Guideline 1 indicates that the landlord is responsible for repair to appliances unless the damage was caused by the deliberate actions or neglect of the tenants. I find that the scratches to the microwave oven and refrigerator, as demonstrated in the landlord's photographs, are reasonable wear and tear, not excessive scratching, and do not justify a replacement of these appliances, as the landlord did not dispute the tenants' evidence that they were not in good, working order.

I dismiss the landlord's claim of $157.50 for cleaning the rental unit. The landlord did not note that any cleaning was required in the move-out condition inspection report. The tenants testified that they cleaned the rental unit and provided a receipt for same. I find that the tenants abided by Residential Tenancy Policy Guideline 1 regarding their duty to clean the rental unit upon vacating. I find that the photographs submitted by the landlord do not show that cleaning was required and are zoomed-in photographs of microscopic dirt that is wear and tear, for which the tenants are not responsible.

I dismiss the landlord's claim of $600.00 for replacing the carpet due to one stain in the second bedroom of the rental unit. The landlord only provided an email quote for this cost, no invoice or receipt, as no replacement has been done. The tenants disputed this cost, saying that it was reasonable wear and tear. The landlord provided a photograph of one stain in the carpet, which I find is minor and constitutes reasonable wear and tear.
I dismiss the landlord's claim of $852.34 for general repairs, including to the drywall, paint touch-ups, caulking and other issues. The landlord did not note these issues in the move-out condition inspection report. The landlord provided an invoice for this cost. The tenants disputed this cost, stating that they repaired the drywall and did some painting and they provided an invoice for same. The tenants claimed that the landlord was claiming for reasonable wear and tear issues and the landlord wanted to return the unit back to the state of it being brand new before the tenants moved in. I find that the tenants performed any necessary repairs for damages to the walls and that the other issues raised by the landlord constitute reasonable wear and tear.

I dismiss the landlord's claim of $63.00 to clean the blinds in the rental unit. The landlord provided photographs and an invoice for this claim. The tenants disputed this cost, said they cleaned the blinds, replaced one blind and provided an invoice for same. I find that the tenants sufficiently cleaned the blinds as per Residential Tenancy Policy Guideline 1, replaced one blind that was damaged, and that the landlord's photographs do not show that the blinds were dirty beyond reasonable wear and rear.

I dismiss the landlord's claim for $71.02 in gas and $500.00 in labour for preparing for and repairing the rental unit after the tenants vacated. The landlord provided two receipts for gas. The landlord was unable to justify the labour rate of $500.00 for herself and her

advocate. The tenants disputed these costs. I find that having to maintain a rental unit is part of the business of being a landlord and the landlord is not entitled to reimbursement for these costs.

As noted to the landlord during the hearing, her application for registered mail costs of $36.80 and photograph printouts of $30.46 and $35.62, all related to her application, is dismissed without leave to reapply. The only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

As the landlord was mainly unsuccessful in this Application, I find that she is not entitled to recover the $50.00 filing fee from the tenants.

Tenant's Application

As noted to the tenants during the hearing, their application for registered mail costs of $11.34 related to their application is dismissed without leave to reapply. The only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on August 31, 2015. The tenants provided a written forwarding address to the landlord sometime between September 1 and 7, 2015 but they provided it by email which is not permitted under section 88 of the *Act*. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit but made an application for dispute resolution on September 14, 2015, which is within 15 days of the above dates. Accordingly, I find that the tenants are not entitled to recover double the value of their security deposit. I find that the tenants are only entitled to the return of their regular security deposit of $675.00 minus the monetary award issued to the landlord at this hearing.

As the tenants were mainly successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlord.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 72 of the *Act*, I allow the landlord to retain $526.81 from the tenants' security deposit in full satisfaction of the monetary award issued to them at this hearing. No other interest is payable on the landlord's claims for damages. I order the landlord to return the remainder of the security deposit in the amount of $148.19 to the tenants.

Conclusion

I issue a monetary order in the tenants' favour in the amount of $148.19 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for substituted service of documents and to recover the $50.00 filing fee is dismissed without leave to reapply.

The tenants' application to recover registered mail fees is dismissed without leave to reapply.

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: June 02, 2016

Residential Tenancy Branch