Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF – Landlords' application
MNSD FF – Tenants' application

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlords and the Tenants.

The Landlords filed on September 15, 2015 seeking a $9,763.75 Monetary Order for: damage to the unit, site, or property; to keep all or part of the pet and or security deposits; for money owed or compensation for damage or loss under the *Act,* regulation, or tenancy agreement; and to recover the cost of the filing fee.

On September 24, 2015 the Landlords filed an amended application for Dispute Resolution correcting the Respondents' address and postal code.

On September 18, 2015, the male Tenant filed an application for Dispute Resolution listing only himself as applicant. The Tenant filed seeking a Monetary Order for the return of $2,600.00 security and pet deposits and to recover the cost of the filing fee.

Notwithstanding the Tenant's application for Dispute Resolution naming only the male Tenant as applicant, the tenancy agreement named both Tenants and the Landlords application for Dispute Resolution listed both Tenants as respondents. Accordingly, as these matters were heard as cross applications, the style of cause of this Decision will list both Tenants as applicants / respondents, pursuant to section 64(3)(c) of the Act.

The hearing commenced via teleconference on April 11, 2015 and continued for 54 minutes. The following were in attendance on April 11, 2015: both Landlords; the Landlords' Agent (the Landlord's son, hereinafter referred to as Landlord); the Landlords' legal counsel (hereinafter referred to as Landlords' Counsel); both Tenants; and the Tenants' legal counsel (hereinafter referred to as Tenants' Counsel).

The hearing reconvened on June 21, 2016 for 159 minutes during which the following were in attendance: the Landlords' Agent (hereinafter referred to as Landlord); Landlords' Counsel; both Tenants; an interpreter for the female Tenant; and Tenants' Counsel.

The Landlords stated they had hired property managers who managed this property for the duration of the tenancy. The Landlords stated they no longer had a contract with the property managers so the property managers would not be in attendance at this proceeding.

Evidence on behalf of the Landlords was submitted entirely by the Landlords' Agent (the Landlord) and the evidence on behalf of the Tenants was submitted primarily by the female Tenant. Therefore, for the remainder of this decision, terms or references to the Landlords or the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

Each party confirmed receipt of the evidence and application for Dispute Resolution from the other party. The Tenants indicated they initially received the Landlords' submissions via email. The Tenants stated they were prepared to proceed with the hearing, despite their receipt of the Landlords' volume of evidence a week late. The Landlords raised no issues regarding the receipt of the Tenants' submissions. As such, I considered the Landlords' and Tenants' submissions as evidence for this proceeding.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although I have considered the volumes of documentary evidence received from both parties not all that was considered is referenced in this Decision.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to monetary compensation for damages to the rental property?
2. Are the Tenants entitled to the return of their security and pet deposits?

Background and Evidence

On August 15, 2014 the parties entered into a written fixed term tenancy agreement that was scheduled to begin on September 1, 2014. The tenancy agreement indicated the tenancy would end on August 31, 2015 at which time the Tenants were required to vacate the rental unit. Rent of $3,000.00 was payable on or before the first of each month and on August 15, 2014 the Tenants paid $1,500.00 as the security deposit plus $1,500.00 as the pet deposit.

The rental unit was described as a 3 level single detached home which was built in 2011. There were two kitchens in this house, one in the basement level and one on the middle level of the house. The owners occupied the house from 2011. There was no evidence presented of the exact date when the owners vacated the rental unit. These Tenants were the first to rent the house as tenants and occupied the property on or around August 16, 2014.

Each party was represented at the move in and move out inspection. The move in condition inspection report (CIR) was completed and signed by the male Tenant and the Landlord's property manager on August 16, 2014. The move out CIR was completed on August 31, 2015 and signed by the female Tenant and the Landlords' property manager. The Tenants provided their forwarding address to the Landlord on August 31, 2015 as listed on the move out CIR.

The parties mutually agreed the Landlords would arrange to have the rental unit cleaned at the end of the tenancy and the Landlord would retain money from the security deposit as payment for the cleaning. The cleaning cost $400.00, as per the receipt submitted into evidence dated September 2, 2015. The Landlords continue to hold the Tenants' $1,100.00 ($1,500.00 - $400.) security deposit plus the $1,500.00 pet deposit.

The Landlords now seek to recover $6,127.00 for the cost to replace laminate flooring and baseboards which they asserted were damaged by the Tenants during this tenancy. In support of their application, the Landlords relied upon photographs; various emails; receipts; and the CIR. The Landlords stated they were not aware of the exact date the photographs were taken as they had been taken by their property manager.

The Landlord pointed to the CIR submitted into evidence which states there were bubbles at the seams on the laminate flooring in several different locations/rooms that were identified on the CIR. The bubbles at the seams were listed under the column recording the condition at the move out inspection. The Landlord asserted there was no record of bubbles on the laminate flooring recorded in the move in section of the CIR.

The CIR that was submitted into evidence was a standard form which listed sections for common rooms found in a single house such as a kitchen, living room, bedrooms, and a bathroom. The person who completed the CIR identified several of the rooms that were located in the basement; however, the CIR did not list two separate kitchens and did not clearly identify the condition of each and every room located on each of the separate 3 levels in the house.

The Landlords pointed to their photographic evidence and asserted there had been water damage caused to the laminate flooring in the main floor and basements; and damaged caused to the baseboards in the basement as well as damage caused to the lower portion of some of the walls. The Landlords clarified that their photographs had been taken by their property manager on August 31, 2015 after the Tenants move out and before the repairs were completed.

The Tenants disputed the Landlords' claim and put forth the following three arguments: (1) there had been pre-existing water damage in the basement which was not disclosed to the Tenants prior to the start of the tenancy; (2) the Landlords requested their property manager arrange "deep-seam" cleaning be performed on the laminate flooring, which was also referred to as deep steam cleaning; and (3) the floor replacement and repairs were upgrades to the house for the purpose of reselling the house.

Regarding the pre-existing water damage, the Tenants submitted evidence of emails from the Landlords' property manager between August 25, 2014 and September 1, 2014. Those emails spoke to previous water damage in the basement which had caused damage to the flooring; the sheetrock; the sheetrock tape; and caused the smell of mold. The Tenants asserted the Landlords had not disclosed there was pre-existing water damage in the basement prior to the onset of their tenancy.

The Landlord confirmed neither him nor his property manager had disclosed the pre-existing water damage to the Tenants. The Landlord submitted his father had known about the previous water damage, prior to his departure from the country, and his father did not disclose it because it was in one room that they had intended on keeping for storage of the Landlords' possessions. They asserted the damaged was caused by a leaky washing machine.

During the submissions relating to the pre-existing water damage in the basement the Landlords' Counsel interjected and stated "I wanted to make it clear that water damage is being referred to and not wording like flooding".

The Tenants pointed to the Landlords' submissions pg 7-2 and 7-3 which included an email from the Landlord to their property manager dated September 10, 2015. The Landlord wrote the following in that email:

> *I was inside the house in July with another gentleman. At that time, the flooring did not have the bubbles, which were caused by the deep-seam cleaning that was done after I requested it to [name] (our property manager who replaced [name of former property manager]. I told her that our tenant breached our initial contract by having 3 dogs at the property (which can be verified by the neighbours) and there was a disgusting odour coming out of the flooring. Therefore [name of property manager] asked out tenants to do the deep-seam cleaning. Hope this clarifies what have taken place.*
>
> [Reproduced as written excluding proper names]

The Tenants argued the Landlord instructed that the flooring be "deep steam cleaned" not deep "seam" cleaned. The Tenants asserted the Landlords' property manager agreed to conduct the cleaning at the end of the tenancy.

The Tenants questioned the Landlord regarding the table of contents titled "Evidence" found at page 3-6 of the Landlords' evidence. The Tenants noted that the aforementioned table of contents included "*Receipt for deep steam clean the laminate floor ….F".* The Tenants requested why there was not a receipt for deep steam clean included at section F as stated.

Landlords' Counsel responded there had been a typing error made on the table of contents on page 3-6 and that they had fired their employee due to that typing error. Counsel asserted they

had intended on referencing the August 29, 2015 receipt from the carpet cleaning company submitted by the Tenants.

The Landlord asserted the Tenants had breached their contract by having too many dogs and the inside of the rental unit smelled like dog urine. The Landlord confirmed he had requested deep “seam” cleaning and not deep “steam” cleaning be conducted on the flooring to remove the odour. No evidence was submitted outlining the process of or differences of a deep seam clean vs. a deep steam cleaning.

The Tenants argued the property manager did not take photographs during their move out walk through. They asserted the photographs showing the damaged floor were taken after the Landlords; property managers had cleaned the rental unit. The Tenants pointed to their own photographs at tab 2 of their submissions, stated they had been taken on August 31, 2015, and do not show bubbling on the laminate.

The female Tenant stated she signed the move out CIR, in absence of her husband. She said she requested that her husband have a chance to review it and sign it because she did not understand English that well. She said the CIR was delivered to her new house either the day after they moved out or a few days after they moved out when the property manager came to pick up the last key.

The Landlord argued the female Tenant understood English more than what she was appearing to at the hearing. The Landlord pointed to a September 1, 2014 email submitted at tab 1 of the Tenants’ evidence where the male Tenant stated “I am at work and not sure what is happening yet, you might want to contact my wife [name] at the house”, the female Tenant. The Landlord argued that the male Tenant would not have suggested that they speak with his wife if she did not understand English.

In support of their third argument, that the floor replacement and repairs were upgrades to the house for the purpose of selling the house, the Tenants referenced the receipt submitted by the Landlords at their page 5-4. The Tenants asserted the receipt indicated upgrades were made by having the stairs removed and replaced and by removing the carpet in the middle level living room and replacing it with laminate flooring.

The Landlord submitted the wording listed on the invoice found at page 5-4 was a translation of the invoice found at page 5-5. They asserted the stairs were not completely removed and replaced; rather, the carpet was removed and replaced with carpet. Upon review of the photographs submitted displaying the completed work it was determined the carpet on the stairs had been replaced with laminate flooring as shown on page 6-4 of the Landlords’ evidence.

In summary, the Tenants submitted they had an agreement that the Landlord would look after the cleaning which was completed by September 2, 2015 and the bubbles on the floor appeared after they had moved out. The Tenants asserted the Landlords completed upgrades to the

house to take advantage of the current real estate market and the Tenants should not have to suffer the cost of those upgrades. The Tenants had agreed the Landlords could retain $400.00 from their security deposit for the cost of that cleaning so they are entitled to the return of the $2,600.00 balance of their security and pet deposits.

The Landlords' Counsel submitted this was a straight forward claim as the Tenants were required to pay for damage to the rental unit which was above normal wear and tear which was recorded in the move out CIR as of August 31, 2015. They confirm the management company was asked to tell the Tenants to remove the dog odour with "steam" cleaning. The evidence supports the property manager's pictures had been taken before the September 2, 2015 cleaning. Therefore, the Landlord has a valid claim against the security and pet deposits.

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 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 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

I accept the Landlords' submissions that the laminate flooring had suffered damage.
The Landlords' submissions focused primarily on the bubbling of the laminate floor in most of the lower level of the house and later included the middle level kitchen. That being said, the Landlords submitted an invoice which included charges for painting of two rooms; replacement of moldings in two basement rooms; and the "demolishment" and installment of 7 stairs (which was clarified as removal of carpet and installation of laminate on the stairs); which was for the entire amount of the Landlords' claim.

The undisputed evidence was there had been pre-existing and unrepaired water damage in the lowest level of the rental house which was brought to the property manager's attention shortly after the Tenants moved into the house. The Landlords asserted that the water damage was located in only one bedroom in the lower level of the house and was allegedly caused by a leaky washing machine. From the Landlords' evidence that damage involved, among other things, the drywall, drywall taping, and the smell of mold in at least one room in the lower level.

From the Landlords' submissions there was evidence of water stains upwards of six inches up the walls and damage to the baseboards in the lower level rooms; which could not have been caused simply by steam or seam cleaning of the floor. I found Landlords' Counsel's clarification that the damage was being referred to as water damage and not flooding to be presumptuously suspicious that there may have been a flood in the lower level of the house, prior to the start of this tenancy; which may have caused the aforementioned damage to the walls and the baseboards.

Based on the above, I conclude the Landlords breached the *Act* first. Specifically, I find the Landlords breached section 32 of the *Act,* as the Landlords had not maintained the residential property in a state of repair that complied with the health, safety and housing standards required by law, and had not made it suitable for occupation by the Tenants; prior to the start of the tenancy; as supported by the emails between the property manager and the Tenants.

Notwithstanding the Landlords' submissions that there was a foul animal urine odor in the house, I accept the Tenants assertions that the Landlords had included some upgrades when completing the renovations prior to selling the rental house. I accept their assertions as the undisputed evidence was the Landlords removed the carpet from the middle level living room and replaced it with laminate flooring; and the Landlords had the carpet from the 7 stairs leading into the lower level replaced with laminate flooring.

I do not accept the Landlords' submission that the carpet cleaning receipt submitted by the Tenants dated August 29, 2015 was proof the Tenants had the laminate flooring steam cleaned. Although the writing is hard to interpret, the description written on the carpet cleaning receipt appears to me to state: "liv, eantry, hole upstairs $295 – 15% off".

After consideration of: the totality of the evidence before me; the fact that English was a second language for both the Landlords and the female Tenant; the spoken language of the property managers was not submitted into evidence; and the fact the Landlord specifically requested the property manager to arrange to have a deep "steam" or deep "seam" cleaning completed to the laminate flooring; I find, pursuant to section 62 of the *Act,* the Landlords provided insufficient evidence to prove the Tenants breached the *Act.* Accordingly, I dismiss the Landlords' application in its entirety, without leave to reapply.

As the Landlords' application has been dismissed, the Landlords have no legal entitlement to retain the Tenants' security and pet deposits. The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $1,100.00 security deposit or the $1,500.00 pet deposit since August 15, 2014. Accordingly, I grant the Tenants' application and order the Landlords return to the Tenants their $1,100.00 security deposit plus the $1,500.00 pet deposit forthwith, pursuant to section 67 of the *Act.*

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 Tenants have succeeded with their application; therefore, I order the Landlords' to pay the Tenants the **$100.00** as compensation for their filing fee, pursuant to section 72(1) of the Act.

In the event the Landlords do not comply with the above Order, the Tenants have been issued a Monetary Order for **$2,700.00** ($1,100.00 $1,500.00 +$100.00)**.** This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Landlords were not successful with their application for Dispute Resolution. The Tenants were successful with their application for Dispute Resolution and were awarded monetary compensation of $2,700.00.

This decision is final, legally binding, 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: June 27, 2016

Residential Tenancy Branch