Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on December 10, 2015. The Landlords filed seeking an Order of Possession for landlord's use and a $5,322.09 Monetary Order for: damage to the unit site or property; to keep all or part of the security and pet 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 December 17, 2015 the Landlords submitted an amended application removing their request for an Order of Possession and increasing their Monetary Order request to $5,422.09.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

The hearing was conducted via teleconference and was attended by both Landlords; the Landlords' Agent; the Tenant, and the Tenant's witnesses. Each person gave affirmed testimony. The Landlords requested that their Agent speak on their behalf. There was evidence before me that the Agent acted as a landlord, pursuant to section 1 of the *Act.* As such, for the remainder of this decision the Agent's submissions will be referred to as submissions from the Landlord, unless specified otherwise. Furthermore, as there were two Landlords plus their Agent, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party confirmed their receipt of evidence submitted by the other. Each person affirmed they served the Residential Tenancy Branch (RTB) with copies of the same evidence they served the other party. Neither party raised issues regarding receipt or

service of that evidence. Accordingly, I considered the relevant submissions from both parties as evidence for this proceeding.

Res judicata is a doctrine that prevents rehearing of claims and issues, arising from the same cause of action between the same parties after a final judgment was previously issued on the merits of the case.

As indicated above, the Landlords filed their application seeking to retain the security and pet deposits. The Landlords submitted evidence of a Decision issued in response to the Tenant's application for Dispute Resolution which was heard on October 28, 2014. The file number of the aforementioned Decision is listed on the front page of this Decision. The Arbitrator who conducted the October 28, 2014 hearing issued a legally binding Decision indicating both parties were represented at the October 28, 2014 hearing. That Arbitrator found in favour of the Tenant's application and awarded the Tenant the return of double her security and pet deposits in the amount of $1,740.00.

Upon review of the foregoing, I find there is no provision under the *Residential Tenancy Act* (the *Act)* which would allow the matter of the disbursement of the security and pet deposits to be reconvened and reheard in this hearing; as to do so would constitute res judicata. Accordingly, I declined to hear the Landlords' request for the return of the $1,740.00 which they paid the Tenant as return of double the security and pet deposits, in compliance with the October 28, 2014 Monetary Order.

I continued this proceeding to hear the Landlords' evidence regarding their application for damage to the unit site or property; 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.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Although all relevant submissions have been considered, they are not all listed in this Decision.

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 December 1, 2012. The Tenant was given possession of the rental unit on November 30, 2012. Rent of $850.00 was payable on or before the first of each month. On December 1, 2012 the Tenant paid $425.00 as the security deposit plus $425.00 as the pet deposit.

Both parties were represented at the move in inspection and completed the condition inspection report form on November 30, 2012. Both parties were represented at the

move out inspection and completed the condition inspection report form on May 31, 2014.

The Tenant provided the Landlords her forwarding address on May 31, 2014. As indicated above, both parties were represented at the October 28, 2014 hearing which resulted in Orders regarding the disbursement of the security and pet deposits.

The rental unit was described as being a basement suite located in a house that was approximately 35 years old. The Landlords have owned the house for approximately 20 years. The Landlords conducted some renovations in the basement suite and installed the carpet in approximately 1995.

The Landlords now seek monetary compensation as follows:

1) $1,700.00 for loss of rent (2 x $850.00) for May 2014 and June 2014;
2) $633.24 for the living room and dining room carpet replacement;
3) $576.63 kitchen carpet and floor replacement – they had to remove the linoleum as the indoor/outdoor carpet had been glued to it;
4) $615.94 carpet replacement in the second bedroom;
5) $50.00 to clean the master bedroom;
6) $125.00 carpet cleaning to try and remove the pet odours and stains;
7) $303.18 garburator replacement;
8) 128.10 Dryer repair – due to improper use as the lint trap was never cleaned out;
9) $300.00 cleaning and garbage removal of carpets and underlay (dump run; kitchen floor glue removal; and cleaning of the patio door).

The Landlord argued the rental unit was left at the end of this tenancy, requiring some cleaning and repairs which prevented anyone from immediately occupying the unit. The Landlord submitted the Tenant's tenancy ended after she was served a 2 Month Notice to end tenancy for the purpose that the Landlord (the Landlords' daughter) had planned to move into the basement suite to provide care for her elderly parents, the Landlords.

The Landlord asserted that her parents' financial situation was such that she was still required to pay rent while occupying the basement suite, albeit a reduced rent. However, due to condition the unit was left in, she did not occupy the unit for two months during the repairs, so they should be entitled to recover that cost of lost rent for those two months.

The Landlord testified the carpet in the rental unit had been left soaking wet during the move out inspection. It was not until after the carpet dried that they saw the numerous amount of pet urine stains and could smell the odor from the pet urine. She asserted the Tenant left her pets in one of the bedrooms in which the urine odors were more prevalent. This was also the room in which the blinds had been cut to provide space to allow the Tenant's cat to go in and out of the window. The Landlord submitted a receipt from a carpet cleaning company which listed the presence of pet stains and odors.

The Landlord stated the Tenant failed to inform the Landlords when anything broke or required maintenance. As a result, when the tenancy ended they found out the dryer and garburator were no longer working.

The Tenant disputed all items claimed and all the submissions made by the Landlord. The Tenant argued she had left the rental unit clean and with clean carpets that were not stained and did not have pet odors.

The Tenant's first witness testified that she assisted the Tenant when they did a thorough cleaning of the rental unit. She noted that there had been an old frayed indoor/outdoor carpet installed in the kitchen. The witness stated they cleaned up to six hours, pulling out appliances, while her husband cleaned the carpets. She stated they had rented a rug cleaner from the local grocery store and made sure they cleaned the carpets the best they could. The witness confirmed the Landlord requested that they re-clean the patio door.

The Tenant's second witness testified he dealt with the carpet cleaning. He asserted the kitchen carpet was an old indoor outdoor carpet and the remaining carpet was an older berber carpet that showed signs of wear. The witness testified he did not see any stains on any of the carpet and he could not detect any pet odours or urine odours. He asserted he was very familiar with the operation of rug cleaners and he spent the time to go over the carpet several times with the suction in order to remove any excess water.

The Tenant argued that her pets were mature and trained. She said she never left them in the one room in questions. She asserted the stains and pet odours could have been the result of previous tenants.

The Tenant did not dispute that she did not tell the Landlords that the dryer was not working or that the garburator was not working. She stated that she never used the garburator and simply had the water drain down the sink. She argued there was an obvious problem with the plumbing because when they dumped the large amount of water from the rug cleaning machine into the sink, the contents of the machine (water and everything sucked up by the machine) backed up into the dishwasher and over the top of the sink onto the carpet. The Tenant stated her father re-cleaned the kitchen carpet after the sink overflowed.

The Tenant confirmed the dryer broke during her last few days of her tenancy. She stated she did not tell the Landlords as she thought she would mention it to them at the move out inspection.

The Landlord stated that her father had asked the Tenant on several occasions if everything was okay inside the rental unit and each time the Tenant would tell him yes; which she argued was not the truth. The Landlord submitted evidence of an event when the Tenant was out of the rental unit and the Tenant's guest asked the Landlord to fix the toilet. When the Landlord attended he found the Tenant had wrapped her bra

around it to keep it together so it would work. She also asserted the Tenant purposely cut the blind to make space for her cat; as the photographs clearly showed a straight cut.

The Landlord pointed to the Tenant's written submission and noted that the Tenant had stated they used excessive amounts of soap and water to try to get the carpets cleaned. The Landlord argued in doing that they soaked the carpet and underlay to the point that ruined them both and activated the pet odours to the point they could not be treated or removed.

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 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*.

Regarding the Landlords' claim of $1,700.00 for loss of rent (2 x $850.00) for May 2014 and June 2014, I find the Landlords submitted insufficient evidence to prove this claim. I make this finding in part due to the undisputed evidence the Landlords ended this tenancy after serving the Tenant a 2 Month Notice for landlord's use. As such, notwithstanding the Landlord's submission she would be paying rent, this unit was no longer on the rental market. As such I find the Landlords would not be entitled to a claim for loss of rent. Accordingly, I dismiss the $1,700.00 claim for loss of rent, without leave to reapply.

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.

It was undisputed that both parties were represented at the move-in inspection and the move-out inspection. I accept the Landlord's submission that the Tenant initialed the condition inspection report form acknowledging the information that was written on the form; regardless of whether the Tenant agreed or did not agree with the content of that form. In addition, I find, pursuant to section 62 of the *Act,* the Landlords submitted sufficient supporting evidence that proved the condition of the rental unit at the end of the tenancy, which included, among other things, photographs, repair receipts, and a carpet cleaning invoice.

When considering all evidence before me I gave very minimal evidentiary weight to the Tenant's witness's statements. Those witnesses, the Tenant's parents, did not provide evidence as to the condition of the rental unit at the outset of the tenancy or prior to them cleaning the unit. Rather, the witnesses spoke to the amount of cleaning they did to assist their daughter in her move out cleaning process. Their submissions indicated they spent numerous hours cleaning the rental unit which is evidence in and of itself that the rental unit was in a condition that required a lot of cleaning.

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.

I favored the Landlord's submissions with regards to the condition the rental unit had been left in by the Tenant, at the end of the tenancy. I favored the Landlord's submissions over the Tenant's as the Landlord's submissions were forthwith and credible while the Tenant had changed some of her oral submissions as the hearing continued. In addition, the Tenant even denied irrefutable evidence. One example was when the Tenant denied allowing her cat in the one room and denied cutting the blinds. When the Landlord presented the irrefutable evidence to the contrary the Tenant simply replied saying her cat had damaged the blinds and the blinds were not a subject of this dispute. The Tenant then commented on how her cat was an indoor cat and then later changed her testimony to state her cat had damaged the blinds after coming in and out of the unit through that window.

I do not accept the Tenant's submissions that she was not aware there was a garburator attached to the sink nor do I accept that she was not aware of the normal operation of a dryer. Rather, I accept the evidence that the Tenant simply failed to, or refused to, maintain the rental unit in a clean and undamaged state during the tenancy; and the Tenant made a personal choice not to inform the Landlords when something broke or needed maintenance. The failure to inform a landlord when something is broken or in need of maintenance can lead to additional damages, as is evident here.

As such, and notwithstanding the Tenant's submission of how the dishwasher was plumbed, I find the Landlords submitted sufficient evidence to prove the Tenant was in breach of section 37(2) of the *Act,* as the rental unit was left requiring additional cleaning and repairs that would not be considered normal wear and tear. I further accept the Tenant failed to operate the dryer and garburator properly causing the required repairs to the dryer and the replacement of the garburator. Accordingly, I grant the Landlord's claim for **$303.18** for the garburator replacement plus **$128.10** for the dryer repair, pursuant to section 67 if the *Act.*

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 order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40. Residential Tenancy Policy Guideline 40* provides that the normal useful life of carpet is 10 years.

In response to the Landlords' claims for the living room, dining room, and kitchen carpet removal and replacement, I note that from the Landlord's submissions the carpets were installed in approximately 1995. Therefore, the carpets were 21 years old and had long surpassed their normal useful life of 10 years. That being said, simply because a carpet has surpassed its normal useful life does not mean it cannot continue to be useful or used if it was always well maintained and cared for during its usage.

I have also considered the fact that the rental unit had primarily been occupied by tenants. In addition, there was evidence that the kitchen carpet had been used prior to its installation in this rental unit. As stated above, these factors alone do not diminish the value of the carpet completely as it still may have been in good or reasonable condition had it been cared for properly.

After consideration of the totality of the evidence before me, I accept the Landlords' submissions that the carpets were excessively damaged during this tenancy with numerous pet urine stains. I further accept that it was the presence of those pet urine stains which caused the Tenant and her father to use excessive amounts of carpet cleaning soap and water in their attempts to clean the carpets.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

After consideration of the above, I conclude the Landlords submitted sufficient evidence to prove a loss for the carpets; however, given the circumstances there was not enough evidence to prove the actual depreciated value of the loss for the carpets. As such, I find that the Landlords are entitled to nominal damages which include the $125.00 carpet cleaning costs plus $300.00 for the labor to remove and replace the carpet in the

living room, dining room, and kitchen (3 x $100.00) for a total award amount of **$425.00**, pursuant to section 67 of the *Act.*

The remainder of the amounts claimed for flooring removal, flooring installation, trips to the dump and the kitchen floor glue removal are dismissed, without leave to reapply.

Regarding the claim of $50.00 for cleaning of the master bedroom and additional cleaning of the patio door; I accept the Landlords' submissions that both the master bedroom and patio door required additional cleaning. Accordingly, I grant the claim for cleaning in the amount of **$100.00** ($50.00 for master bedroom + $50.00 for patio door), pursuant to section 67 of the *Act.*

Although the Landlords claimed to recover the cost of the filing fee; the applicant was granted a fee waiver and no filing fee had been paid. Accordingly, I decline to award recovery of the filing fee.

As awarded above, the Tenant is hereby ordered to pay the Landlords the amount of **$956.28** forthwith ($303.18 + $128.10 +$425.00 + $100.00)

In the event the Tenant does not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **$956.28** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlords were partially successful with their application and were granted a monetary award of **$956.28**.

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: July 4, 2016

Residential Tenancy Branch