



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant applied for return of double the security deposit. The landlord applied for compensation for damage to the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matter

The landlord's evidence included a USB stick. The landlord had described the content of the USB stick as being digital photographs. The landlord acknowledged that he did not confirm with the tenant prior to the hearing whether she could view the photographs as is required under the Rules of Procedure. During the hearing the hearing the tenant confirmed that she was able to view the photographs and was prepared to provide her response to them during the hearing. Accordingly, I was willing to permit the digital photographs to be considered as evidence; however, upon my attempts to view the photographs I was presented with an error messages for each photograph. Therefore, I was not able to view the photographs and have made this decision based upon the other evidence before me.

Issue(s) to be Decided

1. Has the tenant established an entitlement to return of double the security deposit?
2. Has the landlord established an entitlement to compensation from the tenant for damage to the rental unit in the amounts claimed?

Background and Evidence

The tenancy commenced November 15, 2011. The monthly rent of \$1,350.00 was due on the 15th day of every month. The tenant paid a security deposit of \$675.00. The tenancy ended November 14, 2015.

The landlord did not prepare a move-in inspection report. Rather, the tenant was asked to email the landlord any deficiencies that she noticed, which she did. The tenant had emailed the landlord with respect to the kitchen faucet and a wall required needing repair.

At the end of the tenancy an inspection took place while both parties were present; however, a move-out inspection report was not prepared by the landlord. The tenant took the position that the landlord found the rental unit to be in good condition and informed the tenant that he would be sending her a full refund of her security deposit. The landlord acknowledged that he did not raise issues concerning damage during the move out inspection because he did not see any at the time. The landlord explained that the tenant was trying to leave the lights off, was trying to rush through the inspection and was being very animated. The tenant denied interfering with the inspection in any way and pointed out that she accommodated the landlord's schedule when it came time to participate in the move-out inspection.

Tenant's claim for return of double the security deposit

I heard consistent submissions that the tenant did not authorize the landlord to make any deductions from the security deposit. The tenant sent an email to the landlord on November 15, 2015 with her forwarding address. The tenant provided her forwarding address again when she served the landlord with her Application for Dispute Resolution that was filed on December 15, 2015.

The parties provided consistent testimony that in the days before December 2, 2015 the landlord had sent the tenant an e-transfer for \$399.00 as a partial refund of her security deposit and the tenant declined to accept the payment. On December 2, 2015 the landlord sent the tenant an e-transfer in the amount of \$699.92, calculated as the security deposit plus interest. The tenant declined to accept this payment as well.

The tenant explained that she did not accept the e-transfer of December 2, 2015 because there was a letter that was sent by the landlord at the same time that she saw as threatening since the landlord indicated that he may pursue the tenant for damages. The landlord denied that it was threatening but that it merely outlined the landlord's right

to pursue the tenant for damages despite the refund of the security deposit. The tenant also explained that despite the landlord's attempt to refund the security deposit she filed her Application in an attempt to get resolution to whether she would be responsible for damage. The tenant was also of the position that the December 2, 2015 e-transfer was late and should have been made by November 29, 2015 based upon the end of tenancy date plus 15 days the landlord has to refund the security deposit.

Landlord's claim for compensation for damage to the rental unit

The landlord's damage claim consisted of five components. Below, I have summarized the parties' respective positions on these matters.

1. Carpet replacement -- \$5,756.20

The landlord submitted that the carpeting was in pristine condition at the start of the tenancy and the tenant is responsible for numerous stains in the carpeting at the end of the tenancy. The landlord submitted that there were more than two stains such as black staining in the hallway, wax in the second bedroom and a brown stain in the bedroom. The landlord testified that he tried cleaning the stains without much improvement. The landlord claims to have investigated patching the carpeting but determined that it would be more economical to replace all of the carpeting in the rental unit. The landlord stated that after the tenancy ended the unit was re-rented and is only now in the process of having the flooring replaced with laminate flooring. Although the landlord chose to replace the flooring with laminate the landlord also obtained a quote for carpeting replacement, which is less than the laminate flooring chosen. The landlord seeks to recover from the tenant the lower amount for new carpeting. The landlord testified that the damaged carpeting was installed in the rental unit in December 2010

The tenant testified that the carpeting was already showing signs of wear and tear when her tenancy started and that it had been tenanted before she moved in. The tenant claims she saw some stains surface shortly after she moved in but that she did not raise the issue with the landlord as she had accepted the rental unit as is. The tenant acknowledged that she is responsible for two stains in the carpeting at the end of the tenancy: a juice stain in the loft area that she did not have cleaned at the end of the tenancy; and, a very faint red/blue stain in the living room most likely from an area rug placed over the carpeting. The tenant was of the position that she is not liable to compensate the landlord for the cost to install new flooring in the entire rental unit considering a tenant is not liable for wear and tear and the stains were very faint.

The landlord pointed out that the tenant did not have the carpet cleaners clean the loft area, the stairs leading to the loft, or the bedroom closets. The tenant responded by stating that the loft, and the stairs leading to the loft, were barely used as the loft was used for storage; and, the bedroom closet carpeting was not stained as it was covered by boxes and stored items during the tenancy.

Evidence provided to me included documentation as to replacement cost of the carpeting; the carpet cleaning receipt of November 12, 2015; and, copies of text messages and emails exchanged between the parties shortly after the tenancy ended.

2. Faucet replacement -- \$111.98

The landlord submitted that a new kitchen faucet was installed shortly after the tenancy commenced and that it had to be replaced again after the tenancy ended. The reason for replacing the faucet at the end of the tenancy was that the hose that services the pull-out head of the faucet was severely frayed. The landlord seeks to recover the cost of a new faucet from the tenant.

The tenant was in agreement that the hose was frayed but denies that it was frayed from anything she did except for use of the faucet. The tenant also pointed out that the faucet installed at the start of the tenancy was not installed by professionals; the hose did not have a lot of protection; and, the tenant suggested that it was an inexpensive faucet.

The landlord subsequently described the damage as the hose being severed, not just frayed.

3. Carpet cleaning solution -- \$11.19

The landlord seeks to recover the cost to purchase carpet cleaning solution in an attempt to deal with the stains in the carpeting at the end of the tenancy.

The tenant submitted that the carpets had already been cleaned professionally with the exception of the loft.

4. Drain auger -- \$15.40

The landlord seeks to recover the cost of a drain auger from the tenant. The landlord submitted that he purchased the auger because he found the sink drains to be draining slowly after the tenancy ended.

The tenant was of the position that as a tenant she is not responsible for this expenditure and claimed that she cleaned the sinks at the end of the tenancy.

5. Coax cable wall plate replacement -- \$33.12

The landlord submitted that the coax cable wall plate in the second bedroom appeared to be melted at the end of tenancy. The landlord was unable to find the exact match to the damaged plate and purchased all new wall plates for the rental unit. The landlord seeks to recover the cost to replace all of the wall plates from the tenant.

The tenant responded by stating that she does not recall seeing a melted wall plate in the second bedroom as she did not use the connection in that room.

The landlord pointed out the tenant did not raise other issues to the landlord's attention, such as the carpet staining, implying the tenant would not have raised this issue either.

Landlord's other claims

Aside from the damage claim described above, the landlord requested recovery of the time spent preparing for this proceeding and the cost to provide a Money Order for payment of the filing fee. Section 72 of the Act provides that a filing fee may be recovered from the other party; however, other costs associated with preparing for and participating in a dispute resolution proceeding are not recoverable. Accordingly, I dismissed these other claims summarily without further consideration.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each application before me.

Tenant's claim for double security deposit

Unless a landlord has a legal right to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

I was not provided any information to suggest the tenant extinguished her right to return of the security deposit; however, the landlord extinguished his right to make a claim against the security deposit for damage to the property by failing to prepare a move-in and move-out inspection report in accordance with the Residential Tenancy Regulations. Accordingly, I find the landlord was required to refund the security deposit within 15 days of the tenancy ending or upon receiving the tenant's forwarding address in writing, whichever day is later.

The tenant is of the position the landlord's deadline for returning the security deposit was November 29, 2015 as this is 15 days after the tenancy ended. However, this position is not correct since the landlord was not in possession of the tenant's forwarding address as of November 14, 2015.

In order for the landlord to receive the tenant's forwarding address in writing, it follows that it must first be given to the landlord in writing. When one party is required to give the other party a document, the document must be given in a manner that complies with section 88 of the Act. Section 88 of the Act does not recognize the giving of a document by electronic transmission as sufficient service. Therefore, I find the email of November 15, 2015 did not fulfill the tenant's requirement to give the landlord a forwarding address in writing.

The tenant did provide the landlord with her forwarding address in writing by way of the Application for Dispute Resolution she filed on December 15, 2015. However, her request for doubling of the deposit at that time was pre-mature as she was not entitled to return of the security deposit at that time. Also of consideration is that the tenant explained that she filed her application in an attempt to resolve the parties' dispute concerning the condition of the rental unit. Claims for damage to a rental unit are to be made by the landlord, not the tenant and it was unnecessary for her to file.

Where a tenant provides the landlord with their forwarding address in writing for the first time by way of their Application for dispute Resolution, at the hearing the tenant's application is typically dismissed with leave and the landlord is put on notice that the landlord is now considered to be in receipt of the tenant's forwarding address so as to provide the landlord the opportunity to take the appropriate action with respect to the security deposit. However, in this case, the landlord has already filed a cross application set to be heard at the same time as the tenant's application. Since the landlord's claim is for damage only and the landlord extinguished his right to claim against the security deposit for damage, I award the tenant return of the single amount of the security deposit, or \$675.00.

I make no award to the tenant for recovery of the filing fee as I have found her application to be pre-mature with respect to the security deposit and unnecessary with respect to the landlord's anticipated damage claim.

Landlord's claim for damage to the rental unit

A party that makes an application for monetary compensation against the another party has the burden to prove their claim. Awards for compensation are provided in section 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.

The burden of proof is based on the balance of probabilities. It is important to note that 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.

Section 21 of the Residential Tenancy Regulation provides:

21 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.

In this case, the landlord did not prepare condition inspection reports at the beginning or end of the tenancy. Accordingly, I am left to rely upon communication between the parties by text and email exchanges; and, largely disputed oral testimony in determining whether the tenant is responsible for causing damage to the rental unit.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean and undamaged. The Act further provides that wear and tear is not damage and a tenant is not responsible for repairing wear and tear.

Awards for damages are intended to be restorative. Where an item is so damaged it requires replacement, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

In keeping with the above, I provide the following findings and reasons with respect to the landlord's damage claim.

1. Carpet replacement

The parties were in dispute as to the condition of the carpeting at the start of the tenancy. The landlord did not have a condition inspection report or photographs to offer as evidence that it was in pristine condition as he described. Since it was nearly a year old and the unit had been tenanted before this tenancy started, I am inclined to accept the tenant's position that it had signs of wear and tear at the start of the tenancy as being more probable. Considering the carpeting was showing signs of wear and tear, I accept that it was reasonable that the tenant did not raise it as a repair issue at the start of the tenancy like she did with the kitchen faucet and the damaged wall.

The tenant acknowledged that at the end of the tenancy there was a juice stain in the loft area and this area was not cleaned by her or her carpet cleaners. The landlord purchased carpet cleaning solution and claims to have tried to clean the stain without much improvement; however, I find there to be a lack of corroborating evidence to show the condition of the carpeting in the loft area after the landlord tried cleaning the stain.

The tenant also acknowledged that there was a red/blue stain on the living room carpet, as seen on her carpet cleaner's invoice; however, I note the landlord did not make mention of the red/blue stain in particular in the text and email communication that ensued shortly after the tenancy ended. Accordingly, I am inclined to accept that the stain was very faint as described by the tenant.

Considering the carpeting was nearly five years old at the end of the tenancy, a tenant is not responsible for signs of wear and tear on carpeting; the only stain brought to the tenant's attention after the tenancy ended was the juice stain in the loft; and, I was not presented photographic evidence to see the stain after it was cleaned, I find the landlord has not established to my satisfaction that the tenant should be held responsible for the replacement cost of the carpeting in the entire rental unit. Therefore, I find the landlord's claim unreasonable and I dismiss this portion of the landlord's claim.

2. Faucet replacement

Both parties had described fraying on the hose portion of the faucet. Although the landlord subsequently described the damage as being a severed hose I do not have sufficient evidence to support that allegation and I proceed on the basis it was frayed. The landlord alleged that it was damage caused by the tenant. The landlord was of the position it was wear and tear from use and perhaps an inexpensive faucet that was not professionally installed.

The faucet was nearly four years old at the end of the tenancy and I accept that over four years the head of the kitchen faucet would be pulled out and pushed in countless times during the tenancy while using the faucet as intended. If the area where the hose retracts is not sufficiently protected I accept that the hose would be subject to premature fraying. Unfortunately, I have no photographs of the faucet or sink to refer to in making this decision. Also of consideration is that the landlord does not raise the issue in the text and email communications between the parties shortly after the tenancy ended. Therefore, I find I am not satisfied that the fraying is the result of damage caused by the tenant rather than wear and tear from frequent use of the faucet and I dismiss this portion of the landlord's claim.

3. Carpet cleaning solution

Having heard the tenant left a juice stain in the loft area without cleaning it, I find the landlord's request to recover the carpet cleaning solution cost from the tenant to be reasonable. Therefore, I award the landlord \$11.19 as requested.

4. Drain auger

I find the disputed verbal testimony that the drains required cleaning due to damage or negligence on part of the tenant as opposed to wear and tear to be insufficient to establish the tenant is liable to pay for the cost of a drain auger. Therefore, I dismiss this portion of the landlord's claim.

5. Coax cable wall plates

In the absence of other corroborating evidence, I find the disputed verbal testimony is insufficient to establish that the tenant was responsible for damaging one coax wall plate in the rental unit. In any case, I find the tenant would not be liable to pay for replacement of all coax cable wall plates in the entire unit and this claim is

unreasonable. Therefore, I dismiss this portion of the landlord's claim against the tenant.

Given the landlord's very limited success with his claims against the tenant I make no award for recovery of the filing fee.

Monetary Order

The tenant is awarded return of her security deposit. The landlord is awarded \$11.19 for carpet cleaning solution. The two awards are offset in accordance with section 72 and I provide the tenant with a Monetary Order for the net amount of \$663.81.

Conclusion

Both parties had limited or partial success in their respective claims. The tenant has been provided a Monetary Order in the net amount of \$663.81 to serve upon the landlord.

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: August 16, 2016

Residential Tenancy Branch