Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNDC, MNSD, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by both landlords; the tenant and her advocate. Both the tenant and her advocate provided oral submissions.

During the hearing I requested that the parties not interrupt when someone was speaking and that I would go back and forth between the parties to ensure that each party could respond. Despite repeating this request several times the tenant's advocate continued to interrupt the landlord's testimony. As a result, I ordered that the advocate could no longer speak in the hearing. I found there would be no disadvantage to the tenant to speak on her own behalf.

I note that on January 18, 2016 the parties participated in a hearing convened based on the tenant's Application for Dispute Resolution where she sought return of rent for the month of July 2015 and double the amount of her security and pet damage deposit.

In the Decision dated January 18, 2016 the Arbitrator dismissed the tenant's claim for the return of rent for the month of July 2015 without leave to reapply. The Arbitrator found the tenant had failed to provide her forwarding address to the landlord until the date of the hearing and ordered that the landlord had 15 days from the date of the hearing to either return the deposits or file an Application for Dispute Resolution seeking to retain the deposits.

Res judicata is the legal doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

I find that the January 18, 2016 Decision provided a final decision on the issue of the tenant's entitlement to the return of rent for the month of July 2015. As a result, I find

the doctrine of *res judicata* applies and I dismiss this portion of the tenant's current Application.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for compensation for damage or losses; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled to a monetary order double the amount of the security and pet damage deposits held by the landlord and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The parties agreed the tenancy agreement was to begin July 1, 2015 on a month to month basis for a monthly rent of $1,250.00 due on the 1st of each month with a security deposit of $625.00 and a pet damage deposit of $75.00 paid. The parties agreed the tenant had also paid rent for the month of July 2015 but that she never moved into the rental unit.

The landlords submitted that on the day the tenant viewed the rental unit; agreed to the tenancy and paid the landlords the deposits and July 2015 rent she asked the landlord's handyman to make some "cosmetic" changes to and additional cleaning of the property.

The landlords submitted that they agreed to have the changes and cleaning done. The landlords submitted that because they were so close to the start date of the tenancy that they contracted their handyman to work over the weekend to complete the work.

The landlord provided a list, from her handyman, of the additional work that includes:

- Painting of the living room, kitchen, and hallways;
- Changing the faucets in the bathroom for the sink and bathtub;
- Repair of all kitchen cupboard and drawers;
- Repair of entrance way railing;
- Repair to the back deck;
- All garbage removal from the backyard and the side entrances.

The landlords stated that the additional cleaning was required because of the additional work that was completed and it would not have been required if the additional work was not done.

The landlords acknowledged that there was already some garbage that did need to be removed that they had intended to move within the first week of the tenancy but that they removed as part of the tenant's request.

The landlords also stated that while the power washing was not a part of the tenant's request they were getting the other part of the building power washed so they had this unit done as well.

The landlord claims the following compensation:

Description	Amount
Garbage Bin Removal	$350.00
Labour for repairs – 2 people for 16 hours at $25.00 per hour	$800.00
Cleaning – 2 people for 5 hours at $70.00 per hour	$350.00
Pressure washing of the building	$200.00
Total	$1,700.00

In support of this claim the landlord has submitted the following documentary evidence:

- A copy of a letter from the garbage bin supplier stating the landlord paid $350.00 for this service and an invoice from the bin supplier stating the charge for the bin was $414.40 and that bin was required for the period of June 24 to June 28;
- A copy of a letter from the handyman outlining the "additional" work he completed. The letter specifies that work was undertaken between June 23, 2015 and July 15, 2013;
- A copy of an invoice for cleaning dated June 26, 2015; and
- A copy of an invoice for power washing ½ of the residential property dated June 28, 2016.

The tenant submitted that when she viewed the property she really did not want to rent it in the condition it was in. She provided in her written submission that "initially I caved and gave a damage deposit." She further wrote that male landlord was not happy with this and wanted the 1st month's rent and that he would "totally" fix up the property.

The tenant stated that she did tell the landlord all the reasons she felt the property was not suitable for her but she never provided a list of things that, if completed, she would move in.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 32(1) of the *Act* requires the landlord must provide and 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 make it suitable for occupation by a tenant.

While there is no evidence before me that the condition of the rental unit failed to meet the requirements set out in Section 32 of the *Act* I note that it is the landlord's obligation to ensure the property does meet the standards required by law and not the tenants.

I find the landlords have provided no evidence to confirm that the tenant insisted on any changes prior to entering into the tenancy agreement. In fact, I find, from the landlord's submissions and testimony that the parties entered into the verbal tenancy agreement and then the issue of the additional work was raised.

In addition, I note that even if the tenant asked the landlords to make repairs the landlord is not necessarily obligated to make them if they do not, themselves, believe they have any impact on the landlord's obligations under Section 32, unless ordered to by an Arbitrator.

I find the landlords took it upon themselves to make authorize some additional work to the property. Furthermore, I find that some of the costs claimed by the landlord includes reimbursement for cost related to things the landlord identified were not at the request of the tenant such as power washing of the rental unit and the existing garbage in the yard that had to be removed.

While I accept that the January 18, 2016 decision confirmed that the tenant had breached the *Act* by failing to give adequate notice to end the tenancy, the landlord received compensation by being able to retain the rent amount from the tenant.

However, I find that the tenant's failure to provide adequate notice to end the tenancy was the only breach of the *Act* on the part of the tenant. I find the landlords have failed to provide any evidence to establish the tenant has violated any other part of the *Act*, regulation or tenancy agreement or that the costs incurred by the landlord are the result of any such violation.

As a result, I landlords are not entitled to any of the compensation sought and order the landlords must return both deposits to the tenant.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In the January 18, 2016 decision the Arbitrator found that the day of the hearing was the date the landlords received the tenant's forwarding address and ordered that the landlords had until February 3, 2016 to either return the deposits or file a claim against the deposits. I note the landlords' Application for Dispute Resolution was received by the Residential Tenancy Branch on February 2, 2016.

As a result, I find the landlords have complied with the Arbitrator's order and have therefore met their obligations under Section 38(1) and the tenant is not entitled to double the amounts of either deposit.

Conclusion

Based on the above, I dismiss the landlords' Application for Dispute Resolution in its entirety, without leave to reapply.

In addition, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant the tenant a monetary order in the amount of **$800.00** comprised of $625.00 security deposit; $75.00 pet damage deposit; and the $100.00 fee paid by the tenant for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 22, 2016

Residential Tenancy Branch