



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR COTTAGE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled for 1:30 p.m. on November 16, 2016, via teleconference call, to deal with cross applications. The tenant applied for return of her security deposit. The landlord applied for compensation for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The landlord's agent appeared at the hearing; however, the tenant did not.

The landlord named in this proceeding is a corporation. The corporation and the person appearing on behalf of the corporation are collectively referred to as "the landlord" in this decision.

The landlord confirmed that the tenant served him with notification of her claim via registered mail and he was prepared to respond to her claim. Since the tenant did not appear at the hearing and the landlord was prepared to deal with her claims I dismissed the tenant's application without leave to reapply.

As for the landlord's application, the landlord testified that he sent the hearing package, including the landlord's evidence, to the tenant via registered mail on October 24, 2016. The landlord orally provided a registered mail tracking number and testified that it was successfully delivered the following day, on October 25, 2016. I was satisfied the landlord served the tenant with the landlord's application in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

I noted that the landlord had requested a Monetary Order in the amount of \$2,000.00 with a notation of "est" beside the amount in filing the Application; however, the Monetary Order Worksheet that was included in a second evidence package submitted by the landlord is for the sum of \$2,390.00. The landlord explained that when he completed the Application he did not have the evidence with him and he could not recall the exact figure so he used an estimate. I note that the Monetary Order Worksheet is dated October 26, 2016; yet, the package sent to the tenant was mailed on October 24, 2016. I find I am uncertain as to whether the tenant received the Monetary Order Worksheet dated October 26, 2016 and I decline to amend the landlord's application. Accordingly, I proceed to consider whether the landlord has established an

entitlement to compensation in the amount of \$2,000.00 – the amount that appears on the application that was served upon the tenant.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant in the amount claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

On July 1, 2010 a tenancy commenced with the former landlord of the property. The landlord appearing before me purchased the property in 2015 and inherited the tenancy. The tenant had paid a security deposit of \$487.50 when the tenancy started and was required to pay rent of \$1,145.00 on the first day of every month.

On February 19, 2016 the parties participated in a dispute resolution proceeding. The tenant had applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 23, 2015. The Arbitrator hearing that matter recorded in the decision that the landlord wanted the rental unit for his personal use as an office and storage area for business records. The parties reached a settlement agreement during the hearing that was recorded as follows:

1. The parties mutually agree to end the tenancy on June 1, 2016.
2. The tenant is entitled to one month free rent in compensation for her rights under section 51(1) of the Act as the landlord served a two month Notice to End Tenancy on her.
3. The tenant retains the right end the tenancy prior to June 1, 2016 upon giving the landlord two weeks written notice.

[Reproduced as written]

The landlord submitted to me that the tenant moved out at the end of April 2016 or May 1, 2016 and she did not give him written notice as required. Rather, he received a voice mail from her a few days prior to the end of April 2016.

When the tenant vacated the landlord inspected the unit and took photographs. The parties did not inspect the unit together. The landlord explained the reason for this was that he and the tenant were playing "telephone tag".

The landlord testified that he found the rental unit had been cleaned, except for the carpets, but there was damage to the walls, window frame, and a broken toilet seat. The landlord proceeded to renovate the unit, including installation of new floors, new light fixtures, wall and window frame repairs and painting, and then cleaned the unit after the renovations were

completed. The landlord submitted that he renovated the rental unit because of a bad pet odour which he rectified by repainting and removing the carpeting.

The landlord stated that he did not receive a forwarding address from the tenant prior to receiving her Application for Dispute Resolution.

Below, I have summarized the landlord's claims against the tenant:

Loss of rent - \$1,100.00

The landlord explained that he seeks one month of loss of rent because the tenant did not give him the notice that he was entitled to receive.

Carpet cleaning - \$200.00

The landlord submitted that the tenant did not clean the carpets. The landlord obtained an estimate of \$200.00 to clean the carpets but he did not have the carpets cleaned. Rather, he removed the carpeting to eliminate the pet odour.

Broken toilet seat -- \$90.00

The landlord testified that the clips holding the toilet seat on were broken and he paid a plumber to install a new seat at a cost of \$90.00. The landlord suspects the clips were broken by the tenant sitting on the toilet seat. The landlord did not know the age of the toilet seat.

Wall repairs and painting -- \$500.00

The landlord submitted that there were holes in the walls at the end of the tenancy. The landlord paid a painter to sand, fill the holes and then repaint the affected areas.

Window frame damage -- \$400.00

The landlord submitted that the window frames were damaged and they needed to be sanded multiple times before repainting.

Cleaning -- \$100.00

After the renovations were completed the landlord hired a cleaning lady. The landlord seeks to hold the tenant responsible for 1/3 of the cleaning lady's bill since some of the renovation was done to repair damage caused by the tenant.

As evidence for this proceeding, the landlord provided photographs taken at the end of the tenancy and after renovations were completed. The landlord also provided receipts and invoices in support of some of the amounts claimed; however, some parts of the invoices were obscured.

A move-in and move-out condition inspection report were not presented as evidence.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

Upon consideration of everything before, I provide the following findings and reasons.

Loss of Rent

Upon consideration of the previous dispute resolution decision, I note that the tenancy came to an end because the landlord sought to regain possession for his own use. As compensation, the tenant was entitled to a free month's rent as provided under section 51(1) of the Act and as stipulated in the settlement agreement. Section 51(1.1) provides that a tenant may withhold last month's rent to obtain the compensation.

In this case, the landlord regained possession of the rental unit and proceeded to renovate it and then use it for his own use, according to his testimony and submissions. The landlord did not indicate that the tenant received or withheld rent for any other month. As such, it would appear to me that the tenant received the compensation she was entitled to receive for the month of May 2016. Therefore, I find the landlord did not satisfy me that he was entitled to receive rent for May 2016 or otherwise suffered a loss of rent for the month of May 2016 and I dismiss this portion of his claim.

Carpet cleaning

The landlord did not have the carpets cleaned after the tenancy ended and I find the landlord did not establish that he incurred a loss for the item claimed. Therefore, I dismiss this portion of his claim against the tenant.

Although the landlord stated that he removed the carpeting due to pet odours the landlord did not seek compensation for carpet replacement.

Broken toilet seat

Under sections 32 and 37 of the Act, a tenant is required to repair damage they cause during the tenancy by way of their actions or neglect; however, sections 32 and 37 also provides that reasonable wear and tear is not damage. Accordingly, a tenant is not responsible to repair

items that deteriorate naturally through ordinary use and aging. Nor, is a tenant responsible for repairing damage that existed prior to their tenancy; which is one of the primary purposes of documenting the condition of the rental unit at the start of the tenancy by way of a move-in inspection report.

Awards for damages are intended to be restorative. Where an item has a limited useful life, 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*.

The landlord stated that he suspected the toilet seat broke when the tenant sat on it. However, I am of the view that toilet seats are meant to be sat upon. Also of consideration is that the landlord did not know the age of the toilet seat and I am of the view that landlords should expect to replace toilet seats from time to time due to age and use. I find the landlord did not satisfy me that the toilet seat broken due to negligence on part of the tenant or the value of the used toilet seat that is of an unknown age. Therefore, I dismiss this portion of the landlord's claim.

Wall repairs and painting

Residential Tenancy Branch Policy Guideline 1 provides that landlords should expect that there will be holes in the walls from tenants hanging artwork and the like. Such holes are considered wear and tear and only if the holes are very large or there is an excessive number is it considered damage. The landlord's photographs show some holes in the walls; however, the holes do not appear very large or that there is an excessive number. Also of consideration is that the landlord could not demonstrate the condition of the rental unit at the start of this tenancy given the absence of a move-in inspection report or other evidence. Therefore, I find the landlord did not satisfy me that the tenant damaged the walls and is responsible to pay for wall repairs and repainting and I dismiss this portion of the landlord's claim.

Window frame damage

The landlord asserted that there was damage to the window frame; however, the photograph depicted a rather old window sill with many layers of paint. I find the landlord did not satisfy me that it is the tenant that damaged the window frame since the landlord did not establish the condition of the rental unit at the start of the tenancy.

Cleaning

Having dismissed all of the landlord's claims for damage I find the landlord is not entitled to recover cleaning costs paid after the landlord renovated the unit.

In light of all of the above, I dismiss the landlord's application in its entirety, including the landlord's request to retain the tenant's security deposit.

Disposition of the security deposit

In recognition that I have dismissed the tenant's application for return of the security deposit and the landlord's request to retain the security deposit, I find it appropriate to issue an order so as to dispose of the security deposit as to do nothing would mean the landlord would retain the tenant's security deposit. Since security deposits are paid by tenants to be held in trust for the tenant, and in keeping with Residential Tenancy Branch Policy Guideline 17, I order the landlord to return the tenant's security deposit to her. Policy Guideline 17 provides, in part, that where a landlord makes a claim against a security deposit and the claim is dismissed, the Arbitrator will order return of the security deposit to the tenant. Therefore, I provide the tenant with a Monetary Order in the amount of \$487.50 to ensure the security deposit is returned to her.

Conclusion

The tenant's application and the landlord's application have been dismissed without leave.

In order to dispose of the security deposit I have ordered that it be returned to the tenant and I have provided the tenant with a Monetary Order in the sum of \$487.50 to ensure payment is made.

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: November 30, 2016

Residential Tenancy Branch