Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, OLC, FF

Introduction

This hearing dealt with monetary cross applications. The landlord applied for monetary compensation for damage to the rental unit or property; damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the tenants' security deposit and pet damage deposit. The tenants applied for return of double the security deposit and return of the pet damage deposit. 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 Matters

At the outset of the hearing, I noted that the landlord had not prepared a Monetary Order worksheet or other detailed calculation with his Application for Dispute Resolution, as required under the Rules of Procedure. The landlord explained that the amount claimed is the sum of the security deposit and pet damage deposit. The landlord stated that his losses exceeded the sum of the deposits but that he had limited his claim for compensation to the sum of the deposits. The tenants stated that they had not been entirely certain as to how the landlord calculated the amount claimed but had assumed the landlord was seeking to retain the deposits. The tenants indicated that they were prepared to respond to the landlord's request to retain the deposits. Accordingly, I satisfied the tenants were not prejudiced by an absence of a detailed monetary calculation.

The tenants stated that they did not have all of the same evidence that had been submitted to the Residential Tenancy Branch by the landlord. The landlord was adamant that he had served the tenants with copies of the same packages that he had served the Branch. The landlord had submitted 94 pages of evidence to the Branch but had not numbered the pages. As it was nearly impossible for me to determine what had or had not been served upon the tenants, I explored options to provide the landlord the

opportunity to (re)serve evidence upon the tenants and adjourn the hearing for another date. The tenants responded by stating that they had both taken time off work to participate in this proceeding and did not want to adjourn the proceeding. The tenants; however, indicated that they were comfortable if I were to describe to them any evidence I had that they did not. Accordingly, I continued to hear the landlord's claims and I noted that there were a few documents that I had that the tenants said they did not have, including: the tenancy agreement, the carpet cleaning invoice, one of the painting estimates, a June 30, 2016 letter from the strata to the landlord, and a Statement of account issued to the landlord by the strata. I described these documents for the tenants during the hearing and they responded to the evidence.

I also noted that the tenants had not provided a Monetary Order worksheet or detailed calculation along with their Application for Dispute Resolution, as required under the Rules of Procedure. The tenants explained their calculation as being double the security deposit and the single amount of the pet damage deposit. The tenants also explained that they were uncertain as to the amounts they had paid for their deposits at the time of filing. The landlord confirmed that he understood the tenants were seeking return of the security deposit and pet damage deposit and I was satisfied the landlord was not prejudiced by the absence of a detailed monetary calculation, or the error in the amounts used by the tenants in their calculation. The landlord had provided a copy of the tenancy agreement and confirmed the amounts appearing in the tenancy agreement are the amounts the tenants paid for the security deposit and pet damage deposit. The tenants did not dispute the amounts of the deposits put forth by the landlord and as seen in the tenancy agreement before me. Accordingly, I amended the tenant's application to reflect amounts that appear in the tenancy agreement.

The tenants had also requested orders for compliance; however, both parties confirmed that the tenancy had already ended when the tenants had filed their Application for Dispute Resolution. Accordingly, I found it unnecessary to consider their request for orders for compliance.

Issue(s) to be Decided

1. Has the landlord established that he suffered damages or losses equal to or greater than the sum of the security deposit and pet damage deposit?
2. Are the tenants entitled to return of double the security deposit and pet damage deposit?

Background and Evidence

The fixed term tenancy started on October 1, 2014 and was set to expire on September 30, 2016. The tenants were required to pay rent of $1,580.00 on the first day of every month. The tenants paid a security deposit of $790.00 and a pet damage deposit of $790.00. The parties signed a Mutual Agreement to End a Tenancy on June 24, 2016 agreeing to end the tenancy as of June 30, 2016. On June 27, 2016 the parties met at the property, both parties signed a move-out condition inspection report, and possession of the rental unit was returned to the landlord.

As for a move-in inspection report, the landlord stated that one was not done. The tenants stated that they recalled a move-in inspection report but stated they had not been provided a copy of it.

As for the move-out inspection report, the section that provides for damage for which the tenants are responsible was left blank. The space that provides for a tenant to authorize the landlord to retain the security deposit and/or pet damage deposit was left blank. The parties provided consistent testimony that the tenants did not authorize the landlord to make deductions or retain their deposits in writing. The landlord testified that the tenants had given him verbal consent to retain their deposits. The tenants denied giving the landlord verbal consent to retain the deposits. I did not permit further submissions concerning verbal consent to retain the deposits as the Act requires that a landlord must obtain a tenant's written consent to make deductions or retain a security deposit and/or pet damage deposit.

The tenants requested return of their deposits and provided a forwarding address to the landlord in writing by way of a letter dated July 20, 2016. The landlord filed his Application seeking to retain the deposits on July 29, 2016.

Landlord's claims

The landlord claims that he suffered losses of $230.00 plus tax for carpet cleaning; $2,500.00 plus tax for wall repairs and repainting the unit; and, $1,476.06 in strata fines as a result of this tenancy but his claims are limited to $1,580.00 – the sum of the security deposit and pet damage deposit. Below, I have summarized each party's respective position regarding these three items.

Carpet cleaning

The landlord submitted that the carpets were dirty and he had the carpets cleaned for a cost of $230.00 plus tax. The landlord submitted a copy of a carpet cleaning receipt showing he had the carpets cleaned on June 24, 2016 at a cost of $230.00 plus tax of $11.50.

The tenants stated that the landlord had requested consent for carpet cleaners to come into the unit when their tenancy was still in effect and they gave him consent; however, the landlord did not inform them that he would be charging them for the cost of his carpet cleaners. The tenants stated that they had access to a carpet cleaning machine and would have cleaned the carpets themselves by the end of the tenancy but the landlord took it upon himself to hire cleaners shortly before the end of the tenancy. Accordingly, the tenants are of the position they should not be responsible to compensate the landlord for his decision to bring in carpet cleaners during the tenancy.

Painting and wall repairs

The landlord submitted that there was damage to the walls, especially in the stair way, that exceeded reasonable wear and tear. The landlord attributed much of the damage to scratching by the tenant's dog. The landlord obtained three estimates for patching and repainting the entire rental unit as follows: $2,500 plus tax; $4,500; and $4,300.00 plus tax. All of the estimates are dated June 24, 2016. The landlord testified that he had the unit painted near the end of June 2016 by the company that provided the lowest estimate of $2,500.00 plus tax. The landlord acknowledged that the last time the rental unit was painted was six years prior. The landlord stated that he expects to repaint approximately every 10 years but that the tenants' actions or neglect caused the landlord to have to repaint prematurely.

The tenants acknowledge that there were some areas of damage that had exceeded wear and tear and they are agreeable to paying a reasonable amount for patching the wall. However, the tenants were of the position that it had been six years since the unit was last painted and that it is unreasonable to expect the tenants to pay for the landlord to repaint the entire rental unit. The tenants also submitted that they had commenced efforts to start patching wall damage but that the landlord told them to stop as he had arranged for painters to come in. The tenants stated that they did not receive a copy of the estimate for $2,500.00 but they did receive the other estimates. The tenants pointed out that the estimate for $4,500.00 indicates that one hour of patching would be required and the tenants were agreeable to paying for that.

Both parties provided photographs for my consideration. The tenants questioned when the landlord's "before" photographs were taken since the photographs show furniture that was not there when they viewed the rental unit in 2014. The tenants also pointed out that the landlord's photographs showing damage were taken during the tenancy and without their consent.

Stata fines

The landlord submitted that the tenants' actions resulted in the strata corporation levying fines against him in the sum of $1,476.06. In support of that amount the landlord provided a copy of a Statement issued to the landlord by the strata corporation. The statement shows a "balance forward" of $1,376.06 prior to April 1, 2016 plus two "late payment penalties" of $50.00 each to arrive at the balance of $1,476.06 as of June 1, 2016.

The landlord also provided a letter from the strata corporation dated June 30, 2016 showing the strata corporation fined the landlord $200.00 due to a breach of a strata bylaw that deals with cleanliness. The bylaw indicates that garbage containers and recycling containers must be stored in the garage or other inside location. Attached to the letter are photographs showing overflowing garbage containers and cardboard boxes located outside of the garage. The letter indicates that a warning letter had been issued previously but no indication of a previous fine.

The landlord submitted that the strata corporation had been levying fines against him for quite some time and the tenants were not giving him the mail that had been sent to him by the strata corporation at the rental unit address.

The tenants stated they were not provided copies of the June 30, 2016 letter or the Statement of account. The evidence was described to them during the hearing. The tenants acknowledged that the garbage and cardboard boxes may have been left outside when they were moving out. The tenants stated that they were unaware of the strata by-laws as the landlord did not give them a copy of the by-laws. Accordingly, they were unaware that they had breached any by-laws.

I noted that all of the correspondence addressed to the landlord by the strata corporation has the landlord's address as being the rental unit address. The landlord acknowledged that he had not completed a Form K under the *Strata Property Act* or provided the tenants with a copy of the strata by-laws.

Tenants' claim

The tenants are of the position they are entitled to doubling of the security deposit and return of the pet damage deposit since the landlord did not return the deposits to them within 10 days of the tenancy ending.

I described the landlord's obligation to take action with respect to the security deposit and pet damage deposit within 15 days of the tenancy ending or the landlord receiving the tenant's forwarding address in writing, whichever date is later.

I noted that the tenants had provided their forwarding address to the landlord by way of a letter dated July 20, 2016 and the landlord had applied to retain the deposits on July 29, 2016 which is within the 15 day time limit he is permitted under the Act. The tenants indicated that they were satisfied that the landlord met his obligation by filing an Application for Dispute Resolution within 15 days and did not make any other arguments with respect to doubling of the deposits.

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 presented to me, I provide the following findings and reasons.

Landlord's claims

Carpet cleaning

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. The tenancy was set to end on June 30, 2016 although possession was returned to the landlord on June 27, 2016, bringing the tenancy to an end on that date. Accordingly, tenants are afforded to the end of the tenancy to have the rental unit in a reasonably clean condition, including any necessary carpet cleaning. Having heard the carpets had been cleaned on June 24, 2016 I am satisfied that the tenants returned possession of the rental unit to the landlord on June 27, 2016 with reasonably clean carpets.

The landlord seeks to hold the tenants responsible to pay for the carpet cleaning that was arranged by him and performed on June 24, 2016; however, I find the tenants are not obligated to do so. The landlord did not prove that he put the tenants on notice that he would be holding the tenants responsible to pay for the carpet cleaning cost when he sought their consent to bring in carpet cleaners or that the tenants had otherwise agreed to pay for the carpet cleaners he arranged. I have read the text messages submitted as evidence by the landlord and I find that they support the tenants' position which is that the landlord merely requested consent for "cleaners" to come into the rental unit before the end of the tenancy with no mention that the tenants would be charged for the cleaners.

In light of the above circumstances, I find the landlord took it upon himself to have the carpets cleaned during the tenancy and for that decision he must bear the cost. Therefore, I dismiss this portion of the landlord's claims against the tenants.

Painting and wall repairs

Section 32 of the Act requires a tenant to repair damage they cause by way of their actions or neglect. Section 37 of the Act requires that the tenant make repairs by the end of the tenancy. Section 32 and 37 provide that reasonable wear and tear is not damage and a tenant is not required to rectify wear and tear.

In this case, the landlord alleged wall damage beyond wear and tear and the tenants acknowledged that there was some damage to the walls beyond wear and tear. The primary issue is the amount of compensation the landlord is seeking since the tenants were agreeable to compensating the landlord a reasonable amount for patching the damage.

The landlord claims to have spent $2,500 plus tax on repairing and repainting the walls. Although he limited his total claim to $1,580.00 the landlord bears the burden to prove the tenants should be held accountable for $1,580.00.

It is important to keep in mind that awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is usually appropriate to reduce the replacement cost by the depreciation of the original item to reflect that most building components have a limited life. In order to estimate I refer to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements.*

Policy Guideline 40 provides that interior paint has an average useful life of four years. The rental unit was last painted six years prior. Accordingly, I accept that the walls and trim were likely suffering from wear and tear by the end of this tenancy for which the tenants would not be responsible and this unit was likely due for repainting in the near future due to normal aging, deterioration, and wear and tear.

I also accept the tenants' submissions that the landlord's photographs of the damage were taken before their tenancy had ended because the landlord had included photographs of the inside of their fridge showing food was still in it and dirty carpeting when the carpeting had been cleaned on June 24, 2016. Accordingly, I find the tenants' submission that they had started patching efforts before the end of the tenancy but the landlord told them to stop because he had painters coming in to have merit, especially when I note that the painters' estimates were dated June 24, 2016, before the tenancy ended. As such, it would appear that the landlord interfered with the tenants' efforts to rectify damage for which they were willing to acknowledge, which is indicative of a failure to mitigate losses.

Considering all of the above, including the tenant's willingness to compensate the landlord for one hour of patching as indicated on one of the estimates they were provided, I find it appropriate to award the landlord a nominal award since the estimate did not provide a dollar figure associated to the patching. Therefore, I provide the landlord with a nominal award of $100.00 for the wall damage.

Strata fines

The landlord provided a copy of a "Statement" he received from the strata corporation to show he had a balance of $1,476.06 on his strata account as of June 1, 2016; however, I find the "balance forward" that appears on the Statement is insufficient evidence to

show the landlord was fined due to the actions of the tenants. Therefore, I do not consider this evidence further.

The letter of June 30, 2016 from the strata corporation; however, is specific in that it demonstrates that the landlord was fined $200.00 due to breach of the cleanliness bylaw. The letter does not indicate when the by-law was breached; however, the tenants did not deny that they left garbage and recycling bins outside. Rather, the tenants' pointed out that they were unaware of the strata by-law.

The landlord acknowledged that he did not provide the tenants with copies of the strata by-laws. Further, the landlord did not complete a Form K under the *Strata Property Act* so that the strata corporation would be informed that the rental unit was tenanted and where to send correspondence to the landlord. Had the landlord notified the strata corporation that he had moved from the rental unit and had a different address of residence I find it reasonable to expect that the landlord would have been notified by the strata of any breaches of by-laws by the tenants in a timely manner and the landlord could have taken appropriate action in a timely manner.

It is apparent to me that the landlord expected the tenants to comply with strata by-laws despite the fact that he did not provide the tenants with a copy of the by-laws and the landlord did not mitigate his losses in doing so, and by failing to complete the necessary documentation to notify the strata corporation of his new mailing address.

For the reasons described above, I find the landlord did not establish the tenants are entirely responsible for fines levied against the landlord by the strata corporation or that the landlord took reasonable steps to mitigated his losses. Therefore, I find the landlord is not entitlement to recover strata fines from the tenants.

Tenants' claim

Section 38(1) of the Act provides that a landlord must either return the security deposit and/or pet damage deposit to a 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, unless the landlord has the legal right to retain the deposits. 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.

A legal right to retain a security deposit or pet damage deposit is obtained by receiving the tenant's written consent to retain the deposit; the landlord obtains an Arbitrator's

authorization to retain the deposit; or, the tenants extinguish their right to its return by failing to participate in a move-I nor move-out inspection with the landlord despite two opportunities to participate.

In this case, the landlord did not have the written consent to retain the tenants' deposits or other legal right to retain the deposits; but, he did file an Application for Dispute Resolution to seek an Arbitrator's authorization to retain the deposits within 15 days of receiving the tenants' forwarding address in writing. Accordingly, I find the landlord met his obligation under section 38(1) of the Act and I do not double the deposits. Therefore, I deny the tenants' request for doubling of the deposits and I find them entitled to return of the single amount, less the deductions I authorize the landlord to make with this decision.

Filing fee, Security Deposit and Monetary Order

As the parties were largely unsuccessful or had very limited success in their respective applications, I make no award for recovery of the filing fee paid by either party.

The landlord is authorized to deduct $100.00 from the tenants' security deposit for wall damage and the landlord is ordered to return the balance of the security deposit and pet damage deposit to the tenants, in the net amount of $1,480.00, without further delay.

The tenants are provided a Monetary Order in the amount of $1,480.00 to ensure payment is made.

Conclusion

The landlord has been authorized to deduct $100.00 from the tenants' security deposit. The tenants are not entitled to doubling of their deposits. The landlord is ordered to return the balance of the deposits to the tenants, in the net amount of $1,480.00, without further delay. The tenants are provided a Monetary Order in the amount of $1,480.00 to serve and enforce 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: February 06, 2017

Residential Tenancy Branch