Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with monetary applications filed by each party. The tenant applied for return of double the security deposit. The landlord applied for compensation for cleaning the rental unit to be deducted from the security 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 Matter -- Naming of parties

The landlord had named four co-tenants on the landlord's application. The landlord testified that he served three hearing packages upon the male tenant and a fourth hearing package was given to the tenant's mother in person. The landlord was unable to identify which named tenant was the tenant's mother. The tenant identified his mother by a name that does not appear on the landlord's application. The landlord did not satisfy me that he duly served each tenant in a manner that complies with section 89 of the Act or correctly identified each tenant on his application, with the exception of the male tenant who was at the hearing. Therefore, I amended the landlord's application to name only the name tenant since I was satisfied he was properly identified and served.

Two co-tenants were named as applicants on the tenant's application. The tenant had named two landlords in filing the tenant's application but served the hearing packages upon only the male landlord that was at the hearing; however, the female landlord had signed a written response to the tenant's application. Therefore, I accepted that both named landlords were aware of the tenant's claims and I deemed the female landlord sufficiently served as permitted under section 71 of the Act.

In light of the above, this decision names the two co-tenants as named on the tenant's application and the two co-landlords but the other co-tenants have been excluded as named parties.

Preliminary and Procedural Matter – Amendment of tenant's claim

In filing the tenant's application, the tenants requested double the amount of the original security deposit. It was undisputed that the tenant has received a partial refund of $432.50 from the landlord. The tenant's monetary claim has been amended accordingly.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?
Has the landlord established an entitlement to compensation for cleaning the rental unit in the amounts claimed?

Background and Evidence

The tenancy started on March 8, 2016 on a month to month basis. The tenants paid a security deposit of $862.50 and were required to pay monthly rent of $1,725.00 on the first day of every month. The tenancy ended at the end of July 2016.

The tenancy came to an end after the tenant gave a written notice to end tenancy in June 2016 and the tenant included his forwarding address in the written notice. The landlord pointed out that only a forwarding address for the male tenant was included in the notice.

The parties inspected the rental unit at the start and end of the tenancy; however, the landlord did not prepare condition inspection reports.

The landlord sought to deduct $430.00 from the tenant's security deposit but the tenant did not agree with the deduction. The tenant did not give the landlord any written authorization to make deductions from the security deposit.

The landlord gave a cheque dated August 12, 2016 in the amount of $432.50 to the tenant after the tenancy ended. It is unclear as to the exact date the cheque was given as both parties used rough approximations as to when it was given. In the details of dispute written by the tenant he indicates the landlord gave him the cheque on August 12, 2016 but he gave it back to the landlord as he did not agree with the deductions made by the landlord. The tenant testified that he returned a few days later and took the cheque. The landlord testified that he gave the tenant the partial refund a few weeks after the tenancy ended. The back of the cheque is stamped by a credit union on August 19, 2016.

The tenant filed for doubling of the security deposit on August 17, 2016 and served the application upon the landlord on August 17, 2016. The landlord filed his application on August 24, 2016 seeking authorization to deduct $430.00 from the security deposit.

Below, I have summarized the landlord's claims for cleaning and the tenant's responses.

In the landlord's written submissions the landlord focused on the condition of the unit at the start of the tenancy, and in particular, its level of cleanliness. The landlord had also submitted that the tenants failed to leave the rental unit in the same condition as it was provided to them. The landlord sought to have the tenant's agents, who were present

for the move-in inspection, appear at the hearing. I informed the parties that the level of cleanliness at the start of the tenancy was not of utmost relevance as every tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy under the Act and this requirement is not dependent upon the level of cleanliness at the start of the tenancy. Accordingly, I found it unnecessary to summon or attempt to call the tenant's agents to the hearing. Rather, I requested that the parties focus their submissions on the condition of the rental unit at the end of the tenancy as that was the most relevant issue to resolve.

As to what was said during the move-out inspection, the landlord testified that the landlord pointed out the dirty areas to the tenant and the tenant's response was that he did not know the tenants were required to clean those areas and thought that was the landlord's responsibility. According to the landlord, the tenant got upset and left soon afterward. The tenant provided a very different version of events. The tenant testified that when the landlord inspected the unit with him the landlord told him the unit looked "o.k." except for a minor water spill in the fridge and that the landlord told him he would be returning the security deposit within 15 days.

As for the condition of the rental unit at the end of the tenancy, I was provided opposing evidence and testimony, as follows.

The landlord submitted that the rental unit was left with dirty window sills, stove top and oven, fridge and freezer, vinyl flooring and carpeting; and, there were scuffs on the walls. The landlord seeks to recover $180.00 from the tenant to have the carpets cleaned and $250.00 for his labour to clean the unit over two days. The landlord provided a copy of the carpet cleaning receipt and several photographs of dirty areas. The landlord testified that he took the photographs a few days after the tenancy ended.

As for the carpet cleaning, the landlord submitted that the carpets were cleaned just before the tenancy started and the landlord provided a copy of a carpet cleaning receipt from February 2016. The landlord acknowledged that the tenancy was short in duration but was of the position the tenants are obligated to pay for carpet cleaning because they left windows and doors open which permitted dust from nearby construction to enter the rental unit.

The tenant stated that the carpet was stained during the tenancy but a friend helped to remove them. The landlord acknowledged that he was not concerned about the stains the tenant referred to.

The tenant testified that the rental unit was left in a clean condition; although the acknowledged the landlord had pointed out a minor liquid spill in the fridge when they inspected the unit together. Upon review of the landlord's photographs, the tenant also acknowledged that the oven may not have been thoroughly cleaned as the tenants were unfamiliar with how the oven was constructed and did not want to risk damaging it. However, the tenant also pointed out that the landlord's pictures of the oven appear to depict rust stains which were not caused by the tenants.

The tenant also called into question when all of the landlord's photographs were taken since most of them were not shown to him until the landlord served him with his evidence package and when the tenant went to pick up the refund cheque the landlord only showed him approximately 10 photographs.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Tenant's application

Unless a landlord has a legal right to retain or make deductions from a 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.

In this case, I was not provided any information to suggest the tenant extinguished his right to return of the security deposit since the tenant participated or had an agent participate in a move-in and move-out inspection. The tenant did not authorize the landlord to make any deductions from the security deposit in writing. Accordingly, the landlords had to refund the security deposit in its entirety or file an Application for Dispute Resolution to avoid the doubling provision. The time limit for doing so was 15 days after the tenancy ended or the landlord received the tenant's forwarding address in writing, whichever day is later.

It was undisputed that the tenancy ended at the end of July 2016 and the tenant had provided a forwarding address in writing to the landlord in June 2016. It is irrelevant that a forwarding address for each co-tenant was not given to the landlord as co-tenants are jointly and severally liable under the Act. Accordingly, I find the landlords were obligated to return the security deposit, in full, or file an Application for Dispute Resolution by August 15, 2016. The landlords only returned a portion of the security deposit to the tenants and filed an Application for Dispute Resolution on August 24, 2016 which is after the deadline for doing so. Therefore, I find the landlords violated section 38(1) of the Act and must pay double the security deposit to the tenant, less the $432.50 was refunded.

I calculate the tenant's award to be $862.50 x 2 - $432.50 = $1,292.50.

Landlord's application

In failing to file a claim against the security deposit within 15 days of the tenancy ending, the landlords lost the right to make a claim against it, as provided under section 38(6) of the Act. However, the landlords retain the right to seek compensation from the tenant for any damages or loss that resulted from the tenants' violation of the Act, regulations or tenancy agreement. Accordingly, I proceed to consider whether the landlords have established an entitlement to receive compensation of $430.00 from the tenant.

The landlords seek compensation of $180.00 for carpet cleaning and $250.00 for general cleaning. As the applicant, the landlord bears the burden to prove their claims against the tenants. 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.

In the landlord's written submissions, I note the landlord described how the tenants did not leave the unit in the same manner in which they received it at the start of the tenancy. However, the tenants' obligations to leave a unit clean are provided in section 37 of the Act. Under section 37 of the Act, a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy. This standard is lesser than perfectly clean or impeccably clean and may even less than the level of cleanliness at the start of the tenancy. Where a landlord wants to bring a unit's cleanliness up from reasonably clean to perfectly clean, the landlord does so at the landlord's own expense.

In light of the above, I must be satisfied by the evidence that the tenants failed to leave the rental unit "reasonably clean" at the end of the tenancy in order for the landlords to succeed in their claims against the tenant.

As for carpet cleaning, Residential Tenancy Branch Policy Guideline 1 provides:

CARPETS

> At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
>
> The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
>
> The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

> The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

[My emphasis underlined]

This tenancy was much less than one year in duration and the landlord stated he was unconcerned about stains in the carpets. Rather, he is of the position the tenants are responsible for cleaning dust out of the carpets. The landlord attributed the dust to nearby construction activity and opening of windows and doors; however, I cannot hold the tenants liable for nearby construction activity and considering the tenancy ended in the summer months I find it reasonable to expect that the tenants would have had windows open from time to time. I find the landlord did not satisfy me that the tenants' actions were careless or negligent in the circumstances and that it was their negligence that created a need to have the carpets cleaned after a four month tenancy. Therefore, I dismiss the landlord's request for carpet cleaning costs from the tenant.

As for the general cleaning claimed by the landlord, I was provided opposing evidence from the parties as to the condition of the unit at the end of the tenancy. As the landlord was informed during the hearing, the Act requires all landlords to perform condition inspection reports at the start and end of the tenancy with a view to avoiding disputes as to what the condition was or whether it was acceptable at the time of the inspection. To illustrate this point: the landlord described the unit as being quite dirty at the end of the tenancy and that the tenant had said he thought the landlord had to clean the rental unit; yet, the tenant testified that the landlord had told him the unit looked "o.k." and the tenant would be getting the security deposit back. Had the move-out inspection report been prepared together the parties' respective positions could have been captured at that time and other evidence gathered at that time if the parties were in disagreement. Now, several months later, I am presented with mostly opposing verbal testimony as to what was said and how the unit appeared at the end of July 2016 and photographs that were taken without the tenant present on an uncertain date. I find I cannot make a determination as to which party is more credible and both parties were equally persuasive. Given the uncertainty, I find the landlord has not met his burden of proof and the claim for cleaning fails. However, given the tenant's acknowledgement that the stove/oven may not have been sufficiently cleaned, I award the landlord a nominal amount of $25.00.

In light of the above, and pursuant to section 72 of the Act, I offset the landlord's award of $25.00 against the tenant's award of $1,292.50 leaving a net amount payable to the tenants of $1,267.50. The tenants are provided a Monetary Order in the amount of $1,267.50 to ensure payment is made.

Conclusion

The tenants were largely successful in their claim against the landlords. The landlord had very limited success in his claims against the tenant. The tenants are provided a Monetary Order in the net amount of $1,267.50 to serve and enforce upon the landlords.

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 21, 2017

Residential Tenancy Branch