Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with monetary cross applications. The landlord applied for compensation for damage to the rental unit and authorization to retain the security deposit. The tenant applied for return of double 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.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit in the amounts claimed?
2. Is the tenant entitled to doubling of the security deposit?

Background and Evidence

The tenancy started February 15, 2016 for a fixed term of six months. The tenant was required to pay rent of $900.00 on the first day of every month; however, the landlord accepted semi-monthly rent payments of $450.00. The tenant paid a security deposit of $450.00. The tenancy agreement indicates the tenancy was set to end on August 31, 2016; however, both parties provided consistent testimony that August 31, 2016 was stated incorrectly and that the tenancy was to end on August 15, 2016.

The tenant mailed her forwarding address to the landlord on September 6, 2016 and the landlord filed his Application for Dispute Resolution on September 8, 2016.

It was undisputed that the parties did not inspect the unit together at the start of the tenancy. The parties were in disagreement as to whether a move-in inspection was scheduled. According to the landlord he informed the tenant as to when he would be at the rental unit, on weekends leading up to the start of the tenancy since he resides in another town; however the tenant was not available on the weekends. The landlord explained that he gave the tenant possession of the rental unit by leaving the key for her. The landlord testified that he did a move-in inspection report by himself and emailed it to the tenant but that she did not sign and return it to him. The landlord provided a copy of a move-in inspection report that appears to be completed by him. The tenant testified that the landlord did not set up a date and time for the move-in inspection or otherwise indicate he wanted to do one together. Rather, the landlord sent her a blank condition inspection report by email on February 9, 2016. The tenant was

uncertain as to what she was to do with a blank report. The tenant provided a copy of a condition inspection report that has the identification section filled out in type but the columns for indicating the condition of the unit are left blank.

It was undisputed that the parties did not inspect the unit together at the end of the tenancy. The landlord testified that he told the tenant he would be in town the weekend leading up to the end of the tenancy (August 13 and 14, 2016) and that he wanted to do the move-out inspection on the weekend but that the tenant was away camping. The landlord went ahead and inspected the unit on the weekend of August 13 and 14, 2016 without the tenant present. The landlord also stated that gave the tenant the contact information for his father so that she could schedule the move-out inspection with his father but she did not contact his father. The landlord provided a copy of the move-out inspection report the landlord prepared and it indicates he did the move-out inspection on August 16, 2016.

The tenant testified that on August 6, 2016 she informed the landlord that she would be away camping on the weekend of August 13 and 14, 2016 and that he did not propose a different time for them to do the move-out inspection. The tenant pointed out that she was still entitled to possession of the unit on the weekend of August 13 and 14, 2016 but that the landlord was in her unit before her tenancy was over as seen in the text messages he provided as evidence. The tenant acknowledged that the landlord gave her his father's telephone number. The tenant stated that she called the number she was given but there was no answer.

I asked the landlord multiple times to provide me the specific date and time he had scheduled the move-out inspection. He was unable to do so but was adamant it was on the weekend of August 13 and14, 2016 and that when he showed up the tenant was not there. The tenant stated that there was no specific date and time scheduled for that weekend.

The landlord had provided a reproduction of a number of text messages exchanged between the parties, including several sent on August 13, 2016. From the messages left it is apparent that the landlord entered the rental unit; the landlord starts enquiring about the possessions left in the unit and damage. In response the tenant points out that she has until August 15, 2016 to vacate. The messages do not indicate the tenant missed a scheduled move out inspection. Rather, the landlord tells the tenant to have a good time camping. There is no mention of setting up a move-out inspection for August 15, 2016 or later.

Landlord's application

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

The landlord asserted that the tenant caused damage to the flooring, baseboard heater, wall and door. The landlord requested compensation totalling $550.00 but did not provide a detailed breakdown as to how he calculated this sum with his Application. During the hearing the landlord stated that the floor repair cost $250.00; a new baseboard heater cost $150.00 plus

$100.00 for a contractor to install it; and $50.00 was spent on materials to fill and patch the holes in the wall and door. I noted that the landlord did not provide copies of receipts or invoices in his evidence. The landlord stated he could get receipts and invoices and provide them.

The tenant took responsibility for denting the baseboard heater in two places, which she explained was the result of a picture falling from the wall and denting the heater. The tenant stated the heater was still working. As for the other portions of the landlord's damage claim, the tenant attributed the deficiencies as being pre-existing or wear and tear. The tenant stated she did not know how the landlord had arrived at his claim for $550.00 but after hearing the landlord explain the individual amounts she questioned the veracity of the amounts claimed. The tenant pointed out that the landlord is an electrician and would presumably install a new baseboard heater himself rather than pay a contractor $100.00 to do it.

Tenant's application

The tenant has applied for doubling of the security deposit. The tenant explained that it has been more than seven months since the tenancy ended and the landlord is still holding her deposit. On this basis the tenant seeks doubling of the deposit. I did not seek a response from the landlord as the above position is not a basis for seeking double the security deposit. The landlord had made an application seeking authorization to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing and the seven month wait time is attributable to the Residential Tenancy Branch hearing schedule.

Analysis

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

Landlord's application

A party that makes an application for monetary compensation against 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. Verification for 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.

Sections 32 and 37 of the Act require a tenant to repair damage caused by their actions or neglect by the end of the tenancy. Sections 32 and 37 also provide that reasonable wear and tear is not considered damage. Nor is a tenant required to repair pre-existing damage.

The Act requires a landlord and a tenant to participate in a move-in and move-out inspection together. The landlord is required to prepare a report at that time, present it to the tenant for signature and then give a copy of the duly completed inspection report to the tenant. These requirements are intended to document the condition of the rental unit at the start and end of the tenancy to avoid disputes such as this one.

The Residential Tenancy Regulations provide that the landlord is to propose a date and time to the tenant for the inspection. Despite my numerous enquires of the landlord during the hearing, he was unable to state the specific date and time proposed for the move-in and move-out inspection. It would appear he approached this obligation very casually and not sufficiently specific. Not surprising the parties did not meet at the rental unit to do the inspections together and now there is a dispute concerning the condition of the premises.

Both parties provided me with a copy of a move-in inspection report that is very different. I am not persuaded that the landlord completed the move-in inspection report and provided it the tenant fully completed since her copy is devoid of the details and the landlord's signature that appear on his copy. Although the landlord provided a completed move-in inspection report, since I am unsatisfied it was prepared at the start of the tenancy I do not give it much evidentiary weight.

As for the move-out inspection report, I do not give it much evidentiary weight as it was not prepared with the tenant present and the landlord did not satisfy me that he set up a specific date and time to do the move-out inspection with the tenant once it was vacant, which would have been August 15, 2016 or later.

The landlord provided photographs of the unit taken near the end of the tenancy and the tenant did not dispute that the photographs fairly represent the rental unit; however, the tenant was of the position that the deficiencies were either pre-existing or the result of wear and tear, except for the dents to the baseboard heater. The landlord had pointed to edges of the peel and stick vinyl floor tiles in his claims against the tenant; however, this appears to be wear and tear to me. Other than the move-in inspection report that I have rejected as being reliable the landlord did not produce any other documentary or photographic evidence to establish the rental unit condition at the start of the tenancy.

In addition to the disputed allegations that the tenant caused damage to the rental unit, I find the landlord's case is also weak in that he did not provide verification for the amounts claimed. I

noted that the amounts provided during the hearing were very rounded figures and the tenant questioned the veracity of the amounts.

Considering the above, I find the landlord did not satisfy me that he suffered losses of $550.00 due to damage caused by the tenant that was in excess of wear and tear. However, in recognition that the tenant readily admitted responsibility to denting the baseboard heater, I provide the landlord with a nominal award of $20.00 to reflect the diminished cosmetic appearance of the heater.

Tenant's Application

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, the tenancy ended on August 15, 2016 and the tenant provided her forwarding address to the landlord in writing by mail on September 6, 2016. The landlord had 15 days after receiving the forwarding address to file an Application for Dispute Resolution to seek authorization to retain all or part of the security deposit in order to comply with section 38(1). The landlord did so by way of his Application for Dispute Resolution filed on September 8, 2016. Therefore, I find the landlord is not obligated to pay the tenant double the security deposit and I dismiss her request for such.

Filing fee, security deposit and monetary order

Since neither party had much success with their respective applications, I make no award to either party for recovery of the filing fee from the other party.

I authorize the landlord to deduct $20.00 from the tenant's security deposit as compensation for the dented baseboard heater and I order the landlord to return the balance of $430.00 to the tenant without further delay. The tenant is provided a Monetary Order in the amount of $430.00 to ensure payment is made.

Conclusion

The landlord has been awarded compensation of $20.00 and the remainder of the landlord's claims have been dismissed. I have authorized the landlord to deduct $20.00 from the tenant's security deposit to satisfy this award. The landlord is ordered to return the balance of the tenant's security deposit in the net amount of $430.00 to the tenant without further delay. The tenant's application that the security deposit be doubled has been dismissed.

The tenant has been provided a Monetary Order in the amount of $430.00 to serve and enforce upon the landlord if necessary.

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: March 14, 2017

Residential Tenancy Branch