Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF
MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords.

Both landlords and one of the tenants attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to make submissions. All evidence provided by the parties has been exchanged and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlords be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit and pet damage deposit?

Background and Evidence

The first landlord (GT) testified that this fixed-term tenancy began on September 1, 2014 and expired on April 30, 2015, thereafter reverting to a month-to-month tenancy which ultimately ended on August 31, 2016. Rent in the amount of $1,900.00 per month was payable on the 1st day of each month at the beginning of the tenancy and raised to $1,955.00 during the tenancy, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of $950.00 as well as a pet damage deposit in the amount of $950.00, both of which are still held in trust by the landlords. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided for this hearing by the tenants.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy and a copy has been provided. However, due to poor property

management services obtained by the landlords, no move-out condition inspection was completed. The landlords had served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property, and the landlords moved in right after the tenants moved out. The landlords did not collect rent for the last month of the tenancy.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- $3,599.86 to replace carpets in 3 bedrooms and stairs;
- $1,533.00 to replace a garage door;
- $1,974.00 to replace a patio door;
- $4,242.27 for basement carpeting; and
- $286.00 to replace some siding on the rental home.

The landlord testified that the carpets in the basement have not yet been replaced, but an estimate has been provided, and an invoice has been provided for the bedrooms and stairs. The move-in condition inspection report shows stains at the beginning of the tenancy but they were minor. After the tenants moved out, the carpets were soaked in cat urine. The landlords purchased the home in May, 2014 but rented it right after purchasing, and the landlord does not know how old the carpets were.

The landlord also testified that both garage doors had to be replaced after this tenancy in order to have them match, but the landlords are only claiming for 1 door. It was operational at the beginning of the tenancy, but at the end of the tenancy was broken, split and ripped apart. A copy of an invoice has been provided by the landlords. Also provided is a string of emails between the landlord and the door company wherein the writer for the door company states the doors were wooden and old and it would have taken a lot to damage them the way they were when the writer replaced them.

The patio door was also damaged, seals ripped out and the frame was falling apart, but it was fine at the beginning of the tenancy. A copy of an invoice has been provided by the landlords.

The tenants had a barbeque on the upper deck which melted the siding, so some of it had to be replaced. A copy of an estimate dated January 27, 2017 for $286.00 has been provided by the landlords.

The landlords have also provided numerous photographs of the rental unit, and the landlord testified that some were taken when they purchased the home prior to the commencement of this tenancy and others were taken after the tenancy ended. Dates are written on the back of each photograph. The general condition of the home at the end of the tenancy was not adequate – bulbs were burned out, the central vacuum canister was full, fingerprints remained on doors, and garbage left in the yard, for which the landlords have not made a claim.

The landlords did not receive the tenants' forwarding address in writing until served with the Tenant's Application for Dispute Resolution which contains an address of the tenants.

A friend of the landlord's spouse was asked to take care of any issues at the end of the tenancy, specifically to pick up the keys from the tenants, and the landlords gave that person's contact information to the tenants, telling the tenants that the person was the landlord's agent. The landlords have provided an email from that person which states that when the walk-through was done at the end of the tenancy, the rental unit was unliveable due to the disgusting shape of the carpets.

The second landlord (CA) testified that the general condition of the rental home when the landlords purchased it was very clean. After the tenants moved out, the landlord spent hours and hours cleaning, which the landlords do not claim for.

When the landlords first entered the rental home at the end of the tenancy, the smell was absolutely overpowering from pets, which took a long time to remove.

The condition of the rental unit at the end of the tenancy was very disappointing, and the landlords had expected to receive it in the same condition as it was at the beginning of the tenancy.

The tenant testified that the tenants moved out of the rental unit on August 31, 2016 and he waited for the landlord's agent so that keys could be returned. The landlords had not scheduled a move-out condition inspection, and the tenant assumed it would happen when the landlord's agent arrived. However, when the agent arrived she left her car running and had a baby in the back seat, but agreed to do an inspection when the tenant asked. The agent said everything looked good but didn't have the move-in condition inspection report to compare to and didn't have a form to complete the move-out portion. The tenant had to explain how the process works. The tenant gave her a card with a forwarding address of the tenants written on it and told the agent that the deposits had to be returned within 15 days. The tenants didn't hear anything else from the landlords or the landlords' agent until 13 days later when the landlord sent an email to the tenants saying that the deposits would not be returned due to 8 points. A copy of the email has not been provided, however, the landlords have provided another document setting out the 8 points made by the landlord.

The tenant further testified that the carpets were not in good shape and definitely more than 10 years old. At move-in, the landlords had a different property manager who said the landlords were going to replace the carpets before they moved in. The tenant denies that the tenants' cat urinated on the carpets and it did not smell like urine during the tenancy, nor did the landlords' agent mention anything about a smell during the walk-through at move-out. The tenants had the carpets professionally cleaned and paid extra for pet stains.

During the tenancy, one of the garage doors crashed to the ground and the tenants notified the landlords' agent, who called a contractor. The contractor said the doors were very old and there was no point fixing them; they needed to be replaced. That was in June, 2016, nothing was

done about it, and the tenants had to do without that door from June until the end of the tenancy August 31, 2016.

The tenants rarely used the patio door; it was not a proper entry way. The move-in condition inspection report shows that it was an old door, and the tenant testified that any damage was not caused by the tenants. The tenant would have notified the landlords' agent about the required repair if it had been noticed, but it wasn't.

The tenant agrees to pay for the siding.

The tenant also testified that the landlords purchased the rental home and immediately rented it out. The landlords accused the tenants of cracking the crisper drawer in the fridge, and also accused the tenants of losing a remote control for the fireplace. However, the tenants never received a remote control for the fireplace and the landlords were planning to replace carpets right after the tenancy ended as well as appliances.
If the rental unit was in such poor shape, the tenant wouldn't have insisted on a walk-through with the landlords' agent, and nothing was mentioned even in emails about a bad smell or damages. Carpets, garage door and patio door were beyond their useful life.

Analysis

The *Residential Tenancy Act* places the onus on the landlords to ensure that move-in and move-out condition inspection reports are completed, and the regulations go into great detail of how that is to happen. The *Act* also states that if a landlord does not ensure the reports are completed in accordance with the regulations, the landlord's right to claim against the deposits for damages is extinguished. In this case, I am satisfied that the move-in condition inspection report was completed in accordance with the regulations, however the parties agree that didn't happen at the end of the tenancy. Therefore, I find that the landlords' right to claim against the deposits for damages is extinguished.

The tenant testified 3 times that he had given a card with his forwarding address written on it to the landlords' agent. I accept that, and where the landlords notify a tenant that an agent will be looking after things, the tenant has every right to provide the forwarding address to the agent. The *Act* defines a landlord as follows:

> **"landlord"**, in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(underlining added).

I find that the tenants provided the forwarding address in writing on August 31, 2016. The landlords did not return either deposit or make an application for dispute resolution claiming against them within 15 days, but filed the Landlord's Application for Dispute Resolution on January 30, 2017. Having found that the landlords' right to make a claim against the deposits for damages is extinguished, I find that the tenants have established a claim for double the amounts of the security deposit and pet damage deposit, or $3,800.00.

However, the landlords' right to make a claim for damages is not extinguished. Where a party makes a monetary claim against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate the damage or loss suffered.

The landlords did not know how old the carpets were at the beginning of the tenancy, having just purchased the rental home. The move-in condition inspection report shows some staining at the beginning of the tenancy, but the landlord testified it was minor. The report also shows that there was some staining on carpets.

The tenant testified that the carpets, patio door and garage door were all beyond their useful life, referring to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of carpets and garage doors at 10 years and doors at 20 years. The landlords did not dispute that, however there is no real evidence of the age of any of those items. Any financial award I grant, must not put the landlords in a better financial situation than they would be had no damage or loss existed. In other words, it would be unjust for the landlords to obtain new carpets, patio door and garage door at the expense of the tenants when they would not have had new ones if the tenants hadn't resided in the rental unit. I am satisfied that the carpets and garage door were beyond their useful life. With respect to the patio door, I have reviewed the move-in condition inspection report which states that it was an old door and that screens are old and bent on some windows. I am also satisfied that the patio door was beyond its useful life and that any damage beyond what is noted in the move-in condition inspection report is normal wear and tear.

The tenants do not deny the landlords' claim for siding, and I find that the landlords have established a claim in the amount of $286.00.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

Having found that the landlords have established a claim in the amount of $286.00 and the tenants have established a claim in the amount of $3,800.00, I set off those amounts and I grant a monetary order in favour of the tenants for the difference in the amount of $3,514.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $3,514.00.

This order is final and binding and may be enforced.

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 21, 2017

Residential Tenancy Branch