Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application for a Monetary Order for damage to the rental unit or property; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The landlords appeared at the hearing but the two named tenants did not.

Preliminary and Procedural Matters

The landlord testified that each of the named respondents had been served with the hearing documents by registered mail sent on September 23, 2016 but that the registered mail packages had been returned. The landlords provided the returned packages to the Residential Tenancy Branch as proof of service. The registered mail package addressed to the male respondent was returned for the reason "moved/unknown". The package addressed to the female respondent was returned due to an incomplete address. The landlord testified that they sent the registered mail packages to the named tenants at the forwarding address provided by the male tenant on March 15, 2016 as seen on the document entitled "End of Tenancy" that was initialled by the landlord and the tenant. The landlord was of the position the tenant did not give his real address and/or is avoiding service.

Section 89(1) provides for the ways an Application for Dispute Resolution is to be served on the other party. Where a landlord sends a tenant an Application for Dispute Resolution by way of registered mail the address to use is the tenant's address of residence or the forwarding address provided by the tenant. I accepted that the landlord sent the male respondent the hearing package using the forwarding address he had provided to the landlord. Section 90 of the Act deems a person to have received documents sent to them five days after mailing. Accordingly, I find the landlords met their obligation to send the hearing package to the male respondent in accordance with

the Act and I deemed the male respondent to have been served with the package sent to him on September 23, 2016.

As for service upon the female respondent, the landlord also stated that the female respondent was a roommate under the tenancy agreement with the male respondent and that the male respondent was the “main guy”. Since an occupant or a roommate is not liable to the landlord to fulfill the term of tenancy I excluded the female respondent as a named party to this dispute and amended the Application accordingly.

I noted that the landlords had provided 34 page of evidence to the Residential Tenancy Branch in the month preceding this hearing and several months after serving the tenant. The package sent to the tenant did not include many of the documents and photographs that were provided to the Residential Tenancy Branch several months later. It is procedurally unfair and in violation of the principles of natural justice to consider evidence that has not been served upon the other party. Therefore, in making this decision I have only considered the evidence that was included in the package sent to the tenant on September 23, 2016.

I informed the landlords that the evidence package that is before me for consideration appears to be lacking supporting evidence one would expect to see in a damage claim. The landlord responded by stating that he was of the belief that the tenant could be forced to attend this hearing somehow and that we would meet several times so that I could request and he could provide further evidence. I informed the landlord that is not how the dispute resolution process works and that the dispute resolution process is outlined on the Dispute Resolution Fact Sheet that they had been provided. I offered the landlords the opportunity to withdraw this application with liberty to reapply and serve all available evidence. The landlords indicated that they did not want to reapply. Accordingly, I have made a decision on this application based upon the evidence before me.

The landlord also stated that they had filed an Application for Dispute Resolution against the tenant previously but that application was dismissed due to improper service of the hearing package. Upon a search of the file number provided for the previous proceeding (as recorded on the cover page of this decision), I confirmed that the application was dismissed with leave due to service of that application well over three days after filing. The landlord was of the position that Arbitrator erred in finding service was insufficient; however, I informed the landlord that I could not change that decision.

Issue(s) to be Decided

Have the landlords established an entitlement to compensation from the tenant for damage or other damages or loss under the Act, regulations or tenancy agreement in the amounts claimed?

Background and Evidence

The tenancy started September 1, 2015 on a month to month basis. The tenant paid a security deposit of $950.00 and was required to pay rent of $1,900.00 on the first day of every month. On February 22, 2016 the landlord issued a *1 Month Notice to End Tenancy for Cause* to the tenant with an effective date of March 31, 2016. The tenant paid rent for March 2016 and notified the landlord that he would move out by March 15, 2016. After the tenancy ended the landlords proceeded to make repairs and renovations to the property and moved in the rental unit.

The landlord testified multiple occasions that he had refunded the security deposit to the tenant in March 2016. I pointed out that the testimony is inconsistent with the landlords' request to retain the security deposit in filing this application and that his testimony appears to conflict with the document entitled "End of Tenancy" whereby the parties initialled the following statement: "The damage dep. 950$ held until artubation ½ month rent paid back March 15 2016 minus $150 for unpaid utilities". Eventually, the landlord conceded that the refund paid in March 2016 may have been for one-half of March 2016 rent since the tenant moved out half-way through the month but that it was so long ago he could not accurately recall.

Below, I have summarized the landlords' claims against the tenant.

Damage to laminate flooring -- $1,600.00

The landlord testified that the laminate flooring was damaged by water during the tenancy and that the laminate flooring was only 1.5 years old at the start of the tenancy. The landlord seeks $1,600.00 based on a quote he obtained to purchase laminate flooring from a flooring retailer, plus a charge for labour that the landlord estimated based on his experience as a contractor. The landlord did not provide the quote in the evidence sent to the tenant but sent a picture of the living/dining room with the flooring removed in the dining room area. I asked why the landlord did not supply a copy of the invoice for flooring replacement. The landlord testified that all of the flooring was replaced in the rental unit as the landlords renovated the rental unit before moving in and that they were not charging the tenant for all of the new flooring.

Painting -- $400.00

The landlord submitted that several rooms had to be repainted because the tenant had installed wallpaper and moulding on the walls and there were additional occupants living in the rental unit. I noted that the landlords did not provide a receipt for painting materials or labour. The landlord responded by stating that he is a contractor and that his staff did the work but that the amount he is claiming is reasonable for paint materials alone. The landlord then stated that the claim of $400.00 could be broken down as $200.00 for paint materials and $200.00 for labour. The landlord provided one photograph of the interior of the rental unit and there is no wallpaper, additional moulding or wall damage that is apparent.

Damage to drainage system -- $1,500.00

The landlord submitted that one of the occupants living in the rental unit was running an auto detailing business from the property, contrary to permitted residential use of the property. The landlord submitted that the auto detailing business resulted in the clogging the drainage system on the property. On May 10, 2016 a plumbing and drainage contractor attended the property and scrubbed and inspected the catch basis at a cost of $400.00. The drainage contractor determined that additional work on the drainage system was required as the system would eventually fill up with water. The drainage contractor provided an estimate to install a new drain to connect it to the perimeter drainage system and clean out the perimeter drains at a cost of $1,081.50.

The landlord testified that he paid the $400.00 invoice but did the rest of the required repair work himself, with the assistance of another contractor. The landlord testified that after opening up the driveway the sump was removed and dirt was removed from the drainage system.

In addition to the invoice and estimate from the drainage contractor who attended the property on May 10, 2016, the landlord provided a photograph depicting a portion of the driveway that is dug up where the catch basin is located.

I noted that the photograph of the driveway depicts a house that appears to be several years old. I asked the landlords when the last time the drainage system had been cleaned out. The landlord was unable to say when the last time the drainage system had been cleaned out since the landlords bought the property only 1.5 years before the tenancy started.

Garage door motor – $370.00

The landlord submitted that at the end of the tenancy he noticed the tenant was manually opening the garage door and that the garage door motor was not working. The landlord was of the position that the occupant's auto detailing business is the reason the motor stopped working as a motor used for residential purposes will last "forever". The landlords did not know the age of the motor that stopped working. The landlord provided a receipt dated April 7, 2016 showing a new opener cost $397.00 plus tax plus an additional $50.00 for a keyless system.

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.

Under sections 32 and 37 of the Act, a tenant is to repair damage caused by their actions or neglect, including damage caused by persons they permit on the property, such as additional occupants and roommates. Where a tenant does not repair damage for which they are responsible, the landlord may seek compensation from the tenant. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant is not required to compensate the landlord for reasonable wear and tear or pre-existing damage.

Awards for damages are intended to be restorative. Accordingly, where a building element is damaged and requires replacement it is often 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.*

Based upon the evidence before me, I provide the following findings and reasons.

Flooring damage

As evidence in support of the landlords' claim for floor damage the landlords supplied one photograph of flooring in the living room/dining room showing the floor had been removed in the dining area.. I am unable to see any flooring damage in the photograph and I heard that the landlords had removed all flooring before they moved in. Also of consideration is that the amount claimed is not supported by evidence. Therefore, I find the landlords did not meet their burden to prove the tenant's actions or neglect caused the landlords to suffer a loss of $1,600.00 and I dismiss this portion of the landlords' claim against the tenant.

Painting

As evidence in support of the landlords' claim for repainting I was provided one photograph of the interior of the rental unit that does not depict any wallpaper, additional moulding or damage. Also of consideration is that the amount claimed is not supported by evidence. Therefore, I find the landlords did not satisfy me that the landlords suffered a loss of $400.00 due to actions or neglect of the tenant and I dismiss this portion of the landlords' claim.

Garage door motor

I accept that running an auto detailing business from the property may have resulted in more frequent use of the garage door and its opener. However, I reject the landlord's statement that garage door motors will last "forever" if used for residential purposes only. I am of the view that a garage door motor is like most other appliances and mechanical systems found in a residential property and that from time to time they will require maintenance or replacement due to wear and tear and age. Residential Tenancy Branch Policy Guideline 40 provides that the operating system for a garage door has an average useful life of 10 years.

Considering the landlords did not know the age of the garage door motor and the house depicted in the landlords' phonographs depicts a house that appears to be several years old, I am unsatisfied that the tenant is liable to pay the cost of a new motor.

Drainage system

I find it reasonable that washing cars as a business may introduce more water to the driveway and the drain in the driveway. However, upon closer review of the drainage contractor's invoice and estimate I am of the view that the landlords' claims include costs not associated to the extra water introduced to the driveway. To illustrate: the invoice states that the catch basis is compromised. The catch basis is described as having clay pipe that was full of drain rock but the catch basis was not connected to the perimeter drain. The drainage company recommended connecting the catch basis to the perimeter drain system and cleaning out the perimeter drain system at a cost of $1,081.50.

I fail to see how the tenant would be responsible to pay for the landlords to connect the catch basis to the perimeter drain. I did not hear any evidence to suggest that the tenant had somehow tampered with the catch basis and installed the clay tile and drain rock. Rather, it would appear that the catch basin's condition was inadequate and the remedy to was to redesign the system so that it was connected to the perimeter drain system. I also fail to see how the tenant would be responsible for cleaning out the perimeter drain system as the water from car washing would go into the catch basis that was not connected to the perimeter drain system. I find the landlords did not satisfy me that the tenant is responsible for paying for the landlord to connect the old clay pipe catch basin system to the perimeter drain and cleaning out of the perimeter drains. Therefore, I dismiss this portion of the landlords' claim against the tenant.

Filing fee, Security Deposit and Monetary Order

Given the landlords' lack of success in this application, I make no award for recovery of the filing fee.

In light of all of the above, I find the landlords' did not establish an entitlement to compensation from the tenant and I dismiss the landlords' application in its entirety.

Residential Tenancy Branch Policy Guideline 17: *Security Deposits and Set-off* provides that if a landlord makes a claim against a security deposit and the landlord's claims are dismissed the landlord will be ordered to return the security deposit to the tenant and provide the tenant with a Monetary Order. However, in this case, I decline to do so because the landlords provided conflicting evidence as to whether the security deposit had been returned to the tenant already and the tenant did not appear at the hearing to confirm whether the security deposit has already been returned to him. Therefore, I do not provide a Monetary Order to the landlords or the tenant in this case.

Conclusion

The landlords' claims against the tenant have been dismissed. I am left uncertain as to whether the security deposit has already been returned to the tenant given conflicting evidence and no appearance on part of the tenant. Therefore, I make no order for return of the security deposit.

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 31, 2017

Residential Tenancy Branch