Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a monetary order for $1780.00 and recovery of the filing fee.

The landlord's application is a request for a monetary order for $2661.98 which includes recovery of the filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All parties were affirmed

Issue(s) to be Decided

The issues are whether or not the landlord or the tenant has established monetary claim against the other, and if so in what amount.

Tenants Application

Background and Evidence

The parties agree that a tenancy agreement was signed on June 10, 2013 with the start of tenancy date for June 1, 2013.

The tenant testified that at the beginning of the tenancy she paid a security deposit to the previous tenant whom she had rented from as the subtenant.

The tenant further testified that the landlord had told her he would simply keep the previous tenants security deposit in place, and credit it to the applicant, since she had paid her security deposit to the previous tenant.

The tenant further testified that, at the beginning of the tenancy, the landlord did not do a move-in inspection report, and therefore he did not have the right to claim against the security deposit for damages, and therefore she is requesting an order for return of double the security deposit, as required under section 38 of the Residential Tenancy Act.

In response to the tenant's testimony the landlord testified that he never received the security deposit from the applicant, and he never told the applicant to pay her deposit to the previous tenant, nor did he ever say he would keep the previous tenants deposit as the applicant's deposit.

The further landlord testified that he did fill out an inspection report, and he put a copy in the tenants mailbox for her to sign and return to him, however it was never returned.

In response to the landlord's testimony the tenant testified that she never found a move-in inspection report in her mailbox.

Analysis

I do not accept the landlords claim that he never received a security deposit from the tenant. The tenant may have paid a security deposit to the previous tenant, however it's obvious that the landlord had agreed to continue using the previous tenants security deposit as this tenant security deposit as he makes mention of a security deposit in much of his correspondence, and he even attempted to e-transfer $690.00 of the deposit to the tenant stating he was keeping $200.00 of the deposit for damages.

If, as stated by the landlord, he did not agree to transfer the previous tenants deposit, why would he informed this tenant that he was keeping $200.00 of the deposit and attempt to return $690.00 to her.

It is my finding therefore that, at this time there is still a deposit of $890.00 in place.

It is also my finding that the landlord has not met the burden of proving that he ever produced a move-in inspection report at the beginning of this tenancy. The landlord has provided a copy of a report, which has not been signed by the tenant, which he claims was put in the tenants mailbox, however the tenant denies ever receiving a copy of a move-in inspection report in her mailbox.

It is the landlord's responsibility to ensure that a move in inspection report is completed, and in the absence of any proof that he ever provided a copy of a move-in inspection report to the tenant, is my finding that the landlord has not complied with the requirements of the Residential Tenancy Act.

Section 24(2) of the Residential Tenancy Act states:

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

It is my finding therefore that the landlords right to claim against the security deposit has been extinguished.

The tenant has applied for the return of double the security deposit; the tenant however has provided no proof that a forwarding address in writing has ever been given to the landlord, as required by section 39 of the Residential Tenancy Act which states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

At the hearing the tenant confirmed that the address on the application for dispute resolution is her present mailing address; therefore the landlord is now considered to have received the forwarding address, in writing, as of today May 15, 2017.

Pursuant to section 62 of the Residential Tenancy Act, I therefore dismiss this claim with leave to re-apply, if the landlord does not return the deposit within 15 days of receiving this decision.

<u>Landlords Application</u>

Background and Evidence

The landlord testified that tenant had painted one of the rooms during the tenancy with a red ceiling, and with Leopard print walls and although he gave her an opportunity to return the room to the original condition, the tenant did not do a reasonable job of repainting the room, and, as a result, the room will have to be professionally restored at a quoted price of $1125.00.

The landlord also testified that there was a great deal of furniture in the rental unit that belong to the landlord, that the tenants disposed of at the end of the tenancy without permission to do so.

Landlord further testified that in a series of e-mails he had made it clear to the tenant what furniture was to stay in the rental unit, and yet the tenant still disposed of furniture that was to stay. The landlord further stated that he has found replacement items of furniture at IKEA at a total replacement cost of $1436.98. He further states that the furniture in the rental property was only six or seven years old.

The landlord is therefore requesting a total monetary order for $2561.98 and for recovery of his $100.00 filing fee.

The tenant testified that the room which was painted with a red ceiling and Leopard print walls was painted during the previous tenancy, when she was just subletting a room from the previous tenant, and therefore she should not be held liable for that damage, as it did not occur during her tenancy.

The tenant further testified that, when she moved into the rental unit there was a lot of furniture in the unit, and she did not know which of that furniture belong to the landlord or which belong to the previous tenants, and therefore it was unclear to her at the end of the tenancy, which furniture was to stay in which was to be disposed of.

The tenant further testified that, since it was not clear which furniture was to stay, she specifically sent an e-mail to the landlord in which she state *"I know you mentioned to René what was in the house originally, but what furniture should remain? I believe C. said the couch, coffee table, bookcase, lamps and plant pots downstairs were yours. Are the barstools and barbecue is well? I checked the lease, but furniture is checked off without a detailed list".* In response to that e-mail the landlord sent her an e-mail back which stated *"yes the barbecue and barstools were included as well as the leather chair in the master bedroom, everything else can go."*

The tenant testified that, since the landlord said everything else could go, she left the barbecue, barstools, and leather chair and disposed of as much of the remainder of the furniture that she could. The tenant therefore does not believe that she should be charged anything for missing furniture.

In response to the tenant's testimony the landlord testified that it is quite possible that the room with the red ceiling and Leopard print walls was painted during the previous tenancy, however it was this tenant who did the painting.

The landlord further testified that when he got the e-mail from the tenant asking what furniture should remain, since he had already made it very clear in a previous e-mail what furniture was to remain, he only mentioned the barbecue, barstool, and leather chair to clarify that they too were included in the items that were to remain. When he stated that everything else could go, he meant everything other than these items he clarified now, and the other items he had previously clarified.

The landlord further stated that it's ridiculous to think that he would at one point state which items were to stay, and then at another point tell the tenant they were all to go.

Analysis

It is my decision that I will not allow the landlords claim for repairing the room that was painted with a red ceiling and Leopard print walls, as this painting was not done during this tenancy. This tenant has no obligation to return the room to its original state, as this is the state that the room was in at the beginning of her tenancy. The landlord may have a claim against the previous tenant; however this damage cannot be claimed against this tenant.

I will however allow a portion of the landlords claim for replacing the furniture that was taken at the end of the tenancy. After reviewing the e-mails provided by the landlord, it is my finding that the landlord did make it clear what furniture was to be left in the rental unit at the end of the tenancy, and I accept the landlords testimony that the e-mail that mentions the barbecue, barstools, and leather chair was just further clarification as to the items that were to be left behind.

I will not allow the full amount claimed by the landlord however, because awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

In the Residential Tenancy Policy Guidelines, guideline number 40 lists the useful life of building elements, and the useful life of furniture is listed as 10 years. Therefore, since the landlord has testified that the age of the furniture in the rental unit was approximately 6 years old I will only allow 40% of the replacement cost of the furniture.

The amount claimed for the missing furniture is $1436.98, and therefore I will allow 40% of that, which comes to $574.79.

Having allowed a portion of the landlords claim, I also allow the landlords request for recovery of the $100.00 filing fee.

Pursuant to section 62, 67, and 72 of the Residential Tenancy Act I have allowed a total claim $674.79.

I will not allow the landlords request to retain a portion of the security deposit towards this claim however, because, as stated above, the landlord's right to claim against the security deposit for damages has been extinguished.

Conclusion

The tenant's application has been dismissed in full with leave to reapply.

I have allowed $674.79 of the landlords claim, and have issued an order for the tenant to pay that amount to 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: May 24, 2017

Residential Tenancy Branch