



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The landlords applied for a Monetary Order for damage to the rental unit and unpaid utilities; and, authorization to retain the security deposit. The tenant applied for return of 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 Issue

The landlords had indicated a claim of \$2,215.56 in filing their Application for Dispute Resolution on October 14, 2016. The landlords subsequently submitted a Monetary Order Worksheet dated October 19, 2016 that included a listing of various damage and unpaid utilities that totalled \$2,326.96. However, at the hearing, the landlord stated that he wanted to amend the claim again. Since the landlord was seeking to reduce the claim, I found the landlord's request for amendment non-prejudicial to the tenant and I permitted the landlord to amend the claim. Working from the listing dated October 19, 2016 the landlord went down each line item and provided a new amount, which was lower in many instances, or withdrew the item altogether. The landlord's amended claim totals \$1,302.04.

The tenant did not specifically seek return of double the security deposit in filing her application; however, it was raised as an issue during the hearing. I have considered whether the tenant is entitled to return of double the security deposit in making this decision since the Act provides that a landlord must repay double the security deposit in certain circumstances.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation for the amounts claimed for damage and unpaid utilities?
2. Is the tenant entitled to return of double the security deposit?
3. Disposition of the security deposit.

Background and Evidence

The parties executed a written tenancy agreement on August 30, 2015 for a one-year fixed term tenancy set to commence on October 1, 2015 and expire on September 30, 2016. The tenant gave advance notice to end the tenancy on September 30, 2016. The monthly rent was set at \$1,000.00 due on the first

day of every month. Rent did not include utilities. The landlords required and the tenant paid a security deposit of \$1,000.00.

At the start of the tenancy the landlords did not prepare a move-in inspection report or otherwise take notes or photographs to show the condition of the property. The parties were in dispute as to the condition of the property at the start of the tenancy.

According to the landlord's written submissions, the landlord did a move-out inspection of the property starting at 9:45 a.m. on October 1, 2016 and the tenant arrived at the property at approximately 11:00 a.m. It was undisputed that the landlord and the tenant did not participate in a move-out inspection together. As to whether a move-out inspection was scheduled with the tenant was also under dispute.

The landlord testified that he told the tenant he would be at the property in the morning of October 1, 2016 but the landlord acknowledged he did not set a specific time to do an inspection with her. When the tenant also arrived at the property she loaded up a canopy that had been left behind the day before and then left.

According to the tenant, when she returned to the property on October 1, 2016 she entered the rental unit and the landlord was in the unit busily measuring for carpeting. She enquired with the landlord about the security deposit and there was no response from him and it did not appear to the tenant that the landlord intended to inspect the unit with her that morning so she left.

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

Damage:

The landlords seek to recover \$1,012.22 from the tenant for repairs that were determined necessary by the landlords after the end of the tenancy. The landlord submitted that the tenant should pay for the repairs because the repairs are necessary to rectify damage was caused by the tenant or her pets or the item broke during her tenancy. In support of the landlord's claims the landlord provided several photographs of the rental unit after the tenant vacated. The landlord did not provide any receipts, invoices or estimates to support the amounts claimed. In exploring the amounts claimed the landlord explained that the amounts represented materials, or his labour, or a combination of both in some instances.

The tenant did not deny that the landlord's photographs fairly depict the condition of the rental unit at the end of the tenancy but took the position that many of the deficiencies were pre-existing at the start of the tenancy or constituted wear and tear. The tenant did acknowledge breaking a tile near the fireplace in the rental unit when she dropped a piece of firewood on it during her tenancy. The tenant described the rental unit as being in need of repairs and junk removal when the tenancy began. The tenant stated that the rental unit had been occupied by the landlords, whom she described as hoarders, prior to the tenancy and that she could barely see the house for all the clutter when she initially viewed the rental unit; however, she was desperate for a rental unit so she entered into the tenancy agreement anyways. The tenant noted that several face plates were already missing and the carpeting for the rental unit had been ordered but never installed during the tenant so she should not have to pay for these things. Further, the

tenant noted that a number of items on the landlords' list of repair items were at the end of their useful life in any event; such as the raised garden beds that were rotten.

The landlord acknowledged that he has claimed for the full replacement cost and did not take into account the depreciation of the items replaced.

In reviewing the landlord's submissions, I also noted that the landlord was claiming for replacement of stove elements, among other things. I explored this further with the landlord with a view to determining the merit and reasonableness of their claim for damage. The landlord explained that the basis for this claim was that the stove elements had burned out during the tenancy and the tenant did not report that to him so the tenant should pay for new ones. When I pointed out that stove elements are prone to burning out due to wear and tear and age, the landlord acknowledged that he had reimbursed the tenant for previous elements that had burnt out but again returned to the argument that the tenant did not notify him of the burned out elements as a basis for his claim.

Considering the tenant acknowledged breaking a tile in the rental unit, I explored an appropriate award for this damage. The landlord had claimed a \$100.00 for four broken tiles, including materials and his labour. The tenant was reluctantly agreeable to authorizing a deduction of \$25.00 from the security deposit for the broken tile.

Unpaid utilities:

The landlords seek to recover \$178.42 for water and sewer charges for the months of July, August and September 2016 based on a meter reading and a calculation. The landlord did not provide a copy of the water/sewer bill as evidence for this proceeding or otherwise describe the charges on the bill and the meter reading.

The tenant stated that she was agreeable to paying for her share of the water and sewer bill but that she has not been provided a copy of the bill or the calculations that support the amount claimed.

Tenant's claim for return of the security deposit

The tenant pointed out that the landlord required a security deposit that exceeded the maximum payable under the Act. I confirmed for the parties that the tenant was correct and that a landlord must not charge more than one-half of the monthly rent for a security deposit.

The tenant raised the issue of doubling the security deposit during the hearing. I noted that the landlords' claim against the security deposit was filed on October 14, 2016 for damage and unpaid utilities.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each application.

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. 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. The landlords bear the burden to prove their claims against the tenant.

In this case, it was largely undisputed as to the condition of the rental unit at the end of the tenancy. Rather, the dispute revolved, in part, around the condition of the rental unit at the start of the tenancy. Both parties provided opposing versions of its condition at the start of the tenancy and in the absence of a move-in inspection report, photographs taken at the start of the tenancy or other documentation to establish its condition at the start of the tenancy I find I am unable to make a determination as to the condition at the start of the tenancy. Since the landlords bear the burden to prove the condition at the start of the tenancy, I find the disputed verbal testimony is insufficient for me to accept the landlord's version over the tenants. Therefore, I accept that many of the items that the landlords seek to be compensated for were pre-existing deficiencies as argued by the tenant.

Also of consideration is that the landlords did not produce any receipts, invoices or written estimates to support the amounts claimed against the tenant. Therefore, I find the landlords failed to establish the value of losses claimed.

Further, the landlords' damage claim against the tenant does not take into account any depreciation or wear and tear for the items replaced. Awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is most often appropriate to reduce the replacement cost by the depreciation of the original item.

With respect to the landlord's argument that the tenant failed to report repair issues, I accept that a tenant should take reasonable action, such as notifying the landlord, to ensure further damage, or potential for damage, does not result from an item the tenant is aware needs repair. However, in this case, I am unsatisfied that the failure to report repair issues resulted in any additional losses to the landlord. For instance, had the tenant reported two burned out stove elements during the tenancy the landlord would have been responsible to replace them at his expense. Having to replace them after the tenancy ended did not result in a greater loss than the cost he would have incurred during the tenancy. As described above, an applicant must demonstrate that a loss resulted from a violation on part of the other party. Therefore, I find the landlord's argument that the tenant failed to repair a repair issue is not in itself a basis for compensation.

In light of all of the above factors, I find the landlords failed to meet their burden of proof that the tenant is responsible to compensate the landlords \$1,012.22 for damage to the residential property. The only damage that I am satisfied is the responsibility of the tenant is the broken tile by the fireplace that she

acknowledged. I award the landlord compensation of \$25.00 for the broken tile the tenant agreed to during the hearing.

With respect to the landlords' claim for unpaid utilities, the tenant acknowledged and I accept that the tenant is required to pay for water and sewer charges incurred during the tenancy. However the amount claimed by the landlords is not supported by any evidence and I dismiss this portion of the claim. The tenant stated she was willing to pay the landlords for the unpaid water and sewer charges incurred at the end of her tenancy provided she receives a copy of the bill and calculations showing how the landlords arrived at the amount sought. I leave it to the parties to resolve this matter between themselves. I suggest the landlords send a copy of the water/sewer bill to the tenant, along with any relevant calculations, and request payment of her.

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

Tenant's application

I proceed to consider whether the tenant is entitled to doubling of the security deposit. I find that she is not entitled to doubling for the reasons provided below.

Under section 38 of the Act, a landlord has 15 days after a tenancy ends or after receiving the tenant's forwarding address in writing, whichever date is later, to make a claim against the security deposit, or refund the deposit to the tenant. The tenancy ended September 30, 2016 and the landlord filed a claim against the security deposit on October 14, 2016. The landlord met this obligation by filing an Application for Dispute Resolution within 15 days of the tenancy ending.

Although the landlords extinguished the right to make a claim against the security deposit for damage to the property in failing to prepare a move-in inspection report, the landlords retained the right to make a claim against the deposit for amounts other than damage. The landlords' claim against the deposit included a claim for unpaid utilities. Despite dismissing the landlords' claim for unpaid utilities, I was satisfied that the claim had merit but the amount requested was unsupported. Accordingly, I am satisfied that making the claim against the deposit was not frivolous or an abuse of process.

In light of the above, I do not double the security deposit. Rather, I find the tenant remains entitled to recover the security deposit, in the single amount of \$1,000.00, as she requested in her application.

Monetary Order

In accordance with section 72 of the Act, I offset the landlords' award against the tenant's award and I order the landlords to pay to the tenant the net amount of \$975.00 without further delay. Provided to the tenant with this decision is a Monetary Order in the amount of \$975.00 to serve and enforce upon the landlords if necessary.

Conclusion

The landlords are awarded \$25.00 and the balance of the landlords' claims against the tenant is dismissed. The tenant has been awarded return of the security deposit in the single amount of \$1,000.00.

The landlords' award has been offset against the tenant's security deposit and the landlords are ordered to return the net balance of \$975.00 to the tenant without further delay. The tenant is provided a Monetary Order in the amount of \$975.00 to serve and enforce upon the landlords 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: May 04, 2017

Residential Tenancy Branch