Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, MNSD, FF
Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was originally conducted via teleconference on March 27, 2017 and reconvened on May 3, 2017. These hearings were presided over by the original arbitrator. That arbitrator wrote interim decisions after each of those hearings in which she made findings and issued orders, to facilitate her ability to adjudicate the claims in each of the respective Applications.

By the time the hearing was reconvened on June 19, 2017 the original arbitrator was no longer able to hear the matters raised in these Applications. As a result, the parties were advised, prior to the hearing that the matter would be heard by a new arbitrator and it would be conducted as a completely brand new hearing. I order the interim decisions of March 28, 2017 and May 5, 2017 are set aside.

At the outset of the June 19, 2017 hearing I noted that the tenants had filed their Application for Dispute Resolution naming the landlord's former property manager and her company as the respondents. I also note the landlords named themselves and not their former property manager as the applicants in their own Application.

I confirmed with all parties present, including the tenants; the landlord; and the landlords' former property manager that the correct parties to be named were the tenants (DW & DW) and the landlords (TF & DF). All parties also agreed the former property manager and her company should not be named as a party to the dispute.

Based on the above, I amend the tenants' Application for Dispute Resolution to remove the names of the former property manager and her company and include both landlords as named in the landlord's Application as applicant.

Also at the outset of the June 19, 2017 hearing I clarified with the tenants that while they indicated in their written submissions dated February 28, 2017 that they were seeking return of their security deposit of $625.00; recovery of their filing fee of $100.00; the cost of registered mail ($27.00); return or compensation for ceiling fans ($100.00); and return or compensation for curtains ($275.00) their Application for Dispute Resolution only indicated they were seeking return of their security deposit and filing fee.

Residential Tenancy Branch Rule of Procedure #4 outlines the requirements for seeking to amend a claim which includes submitting an Amendment to an Application for Dispute Resolution form outlining the changes they wish to add to their original claims. As the tenants failed to do so I decline to accept any amendments to their original Application, other than the

one noted above to name the correct respondent. I note the tenants remain at liberty to file a claim for any other losses they feel they have suffered as a result of this tenancy, in accordance with any relevant provisions in the *Residential Tenancy Act (Act).*

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for compensation for damage to the rental unit;; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act.*

It must also be decided if the tenants are entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 3, 2016 for a 6 ½ month fixed term tenancy beginning on July 1, 2016 for a monthly rent of $1,300.00 due on the 1st of each month. The agreement states that a security deposit of $625.00 was paid on February 6, 2015. The tenants submitted the moved out of the rental unit in November 2016 but continued to pay rent until the end of the fixed term.

The landlord submitted that the tenants had install two ceiling fans during the tenancy and that when the moved out of the unit they removed the ceiling fans at the end of the tenancy. The landlord submitted that as a result, there are two locations in the hallway ceiling that have discolored. The landlord also submitted that there were some walls that had been marked up pretty badly and they had to repaint some walls. The landlord testified the entire rental unit had been painted in March 2014 and that the upper area was painted in April 2015.

The landlord also provided that the kitchen sink spray nozzle did not work at the end of the tenancy and it had to be replaced. The landlord submitted the tenants removed curtains that had been provided at the start of the tenancy when they vacated the unit.

The landlords seek compensation for painting ($595.00); the replacement of a kitchen sink spray nozzle ($37.99) and replacement black out curtains ($153.98).

In support of these claims the landlords have provided several photographs; a Condition Inspection completed at the start and end of the tenancy; an Inspection Report from a previous tenancy and one completed with these tenants in November 2016; and estimates.

I note that in the Condition Inspection Report the following relevant notations were made for each of the walls and trim in the entry; the kitchen; living room; dining room; stairwell and hall – indicating damage (discoloration); ceiling in the stairwell and hall discoloration and fair recording of the condition of the lighting-fan/fixtures/bulbs in the stairwell and hall.

The tenants submitted that when they moved into the rental unit they purchased a number of items from the previous occupants including curtains which they took with them when they moved out and two ceiling fans which they left installed when they moved out. While the

landlord submitted that the fans had been in the hallway and stairwell, the tenants testified that they were in the stairwell and in a downstairs bedroom.

I note two of the landlords' photographs show two spots in one ceiling where there are two covered junction boxes that show a circular discoloration around the boxes; one picture shows a ceiling fan and light fixture at the top of the stairs. Several other photograph the condition of the walls.

The tenants submit that the need for painting was just for regular wear and tear and that part of the need for painting is because of the amount of sunlight that comes in to the rental unit causing the paint to fade over time and show marks where items had been on the walls, such as pictures.

The tenants also testified that when the first moved into the unit they used the spray nozzle in the kitchen but that smell so bad that they never used it again and that they had had a similar problem in another unit the complex that they had rented previously.

The tenants submitted a copy of an Inventory List signed by one of them and the landlords' former property manager and dated May 1, 2015. The list does not include any mention of any window coverings provided at the start of the tenancy. However, I note the tenancy agreement states that "window coverings" are included in the rent with a bracketed notation saying "at time of move-in".

The witness AL testified that when the previous occupants had possession of the unit they had used their own curtains and that the landlords' had been put into storage but had subsequently been thrown away. The witness also, based on her 7 years as a property manager, that the condition of the walls was normal wear and tear.

The tenants submitted that they provided their forwarding address to the property manager when she asked for it on January 18, 2017 and that they later followed up by providing it by email. The landlord submitted into evidence a copy of an email from their former property manager dated January 30, 2017 in which she states: "We just received the forwarding address today. It is my understanding that we sent you and email on Jan. 13th and also told you via telephone that we had not yet received your tenants forwarding address" [reproduced as written]. I note the landlords submitted their Application for Dispute Resolution.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear

and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I am not satisfied the landlord has established that the tenants caused any damage to the ceiling by the placement of ceiling fans. I find the tenants' submissions of where the fans had been installed are significantly different than where the landlord states they were located. In addition, I note that one of the landlords' photographs shows a ceiling fan installed at the top of the stairway – the only location that both parties agreed that the tenants had installed a fan.

As a result, I find the landlords have failed to establish that the staining showed in the hallway is related to the tenants' installation of ceiling fans in the unit. I therefore dismiss this portion of the landlords' claim.

In regard to the landlords' claim for painting the walls I note that the landlord's estimate for painting submitted specifically states: "The wall has fading paint that is visible where the pictures were hung and is unavoidable."

When I consider this notation and the submission of the landlords' former property manager that in her opinion the condition of the walls was due to regular wear and tear, I am not persuaded the need for painting arises from any actions or neglect on the part of the tenants that caused damage to the property. Therefore, I dismiss this portion of the landlords' claim.

From the submissions of all parties, I accept that the tenants purchased some window coverings from the previous occupants. From the submissions of the landlords' former property manager the former occupants had removed the landlords' window coverings and installed their own. The former property manager also acknowledged that the landlords' window coverings had been put in storage and for some unknown reason they were thrown away.

In addition, I note that neither the tenancy agreement nor the Inventory List identified specifically what, if any window coverings had been provided at the start of the tenancy. From all of the above, I find the landlords have failed to establish the window coverings the tenants removed were provided to the tenants by the landlords at the start of the tenancy. Therefore, I dismiss this portion of the landlords' claim.

In regard to the landlords claim for a replacement of the kitchen spray nozzle, I am satisfied that at the start of the tenancy the spray nozzle was working and at the end it was not. Despite the tenants' submissions in regard to the spray nozzle, there is no indication that the tenants ever identified any problem with the water or the spray nozzle to the landlord or property manager during the tenancy.

As a result, I find the landlords have established that the damage to the nozzle, on a balance of probabilities, results from something other than regular wear and tear and the landlords are entitled to recover the cost to replace the nozzle.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the landlords' submissions that confirm the tenants had not provided their forwarding address in writing to the landlord until January 30, 2017 as such, I find the landlords had until February 14, 2017 to submit an Application for Dispute Resolution to claim against the deposit. As the landlords Application was submitted on February 10, 2017, I am satisfied the landlords have complied with the requirements set for in Section 38(1) and the tenants are not entitled to double the amount of the deposit.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **$37.99** comprised of the cost to replace the kitchen nozzle. I dismiss the landlords' claim to recover their filing fee of $100.00 as they were largely unsuccessful in their claim.

I order the landlords may deduct this amount from the security deposit held in the amount of $625.00 in satisfaction of this claim. I grant a monetary order to the tenants in the amount of **$687.01** for return of the balance of the deposit plus the $100.00 filing fee the tenants paid for their Application for Dispute Resolution. This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: June 26, 2017

Residential Tenancy Branch