Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This reconvened hearing was scheduled to address the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for: a monetary order for damage to the unit and loss as a result of this tenancy pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the first scheduled hearing on April 20, 2017. At that time, the hearing was adjourned in order to allow the landlords to serve the tenant with the evidence package prior to the hearing. The parties were both given instructions limiting what further evidence they were permitted to submit for the reconvened hearing date. With respect to the service of documents, as stated in the interim decision, the tenant confirmed receipt of the landlords' Application for Dispute Resolution ("ADR") on October 21, 2016 by registered mail. The landlords confirmed receipt of the tenant's evidentiary materials in response on April 2, 2016. The tenant confirmed receipt of further evidence that the tenant had not received as of the prior hearing date.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the unit and loss?
Are the landlords entitled to retain all or a portion of the tenant's security deposit?
Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on October 1, 2015 and ended on October 1, 2016. During the course of the tenancy, the tenant paid $1975.00 monthly in rent. The landlords continues to hold a $987.50 security deposit and a $200.00 pet damage deposit paid by

the tenant at the outset of the tenancy (October 2015). The landlords sought to retain the tenant's security deposit towards damage, repairs and cleaning at the end of the tenancy.

Landlord MF testified that, at the end of the tenancy, the carpets were cleaned at a cost of $117.80. Landlord MF referred to the residential tenancy agreement and the Act to show that the carpets should be cleaned after a one year term of a tenancy. The landlords submitted a receipt to show the date and cost of the carpet cleaning.

The landlords testified that the tenant agreed, at the outset of the tenancy that her $100.00 move-in fee would be reconciled at the end of the tenancy and deducted from her security deposit if she had an amount owing to the landlords.

Landlord MF testified that she had to clean the entire rental unit at the end of the tenancy because it was left in very poor conditions. She sought to recover her own costs for cleaning. She suggested that $30.00 per hour at 5 hours was an appropriate estimate and cost for her time.

Landlord MF testified that a handyman was hired to do repairs after the tenant's move-out. She submitted an invoice dated October 10, 2016 describing work completed in the rental unit on October 4, 5, and 6, 2016. Landlord MF testified that she had to replace all lightbulbs in the kitchen and bathroom at the end of this tenancy.

A witness (Witness LD) testified on behalf of the landlords. She is the tenant who was next to move in to the unit after the tenant vacated. She testified that she was planning to move in on October 1, 2016 but that the unit was "not ready" on that date. She testified that the unit was very dirty with wall and carpet damage. She testified that she asked the landlords to clean and make repairs. She testified that she moved in on October 7, 2016 but that she paid rent for October 2016 but that she was refunded $575.00 by the landlords for the issues at move-in.

The tenant testified that the rental unit was not in great condition at the outset of the tenancy. She testified that the unit had not been painted during hers or the previous tenant's tenancy. The tenant testified that, at that time, the condition was described by the agent as similar to move in except for some holes in the wall. The tenant provided undisputed testimony that they had attended the move-out condition inspection with an agent of the landlords. She testified that the landlords' agent did not indicate the need for any deductions to her deposit.

The tenant argued that items were not significantly changed from their original condition in the move-in report. She testified that any notes regarding damage or cleaning were added after the tenant had signed the condition inspection report, given the keys to the landlords' agent and left the premises. She testified that she was very surprised at the changes of the report when she received a copy of the report. She noted that there are two different pens that appear to have been used in making comments versus checking off at the move-out condition inspection. She noted that she had not signed the report.

Landlord MF acknowledged that the move-out condition inspection was done by an agent at move-out and at move-in, they were unable to conduct a condition inspection. Landlord MF testified that they were out of the country and that, when they returned, they conducted a move-in inspection with the tenant already residing in the rental unit. Landlord MF testified that the tenant was responsible to make comment on any unit condition issues at move-in. Landlord MF acknowledged that she had altered the move-out condition inspection report that was initially completed by her agent.

Landlord MF testified that, without consulting the tenant, she conducted her own walk through after the tenant vacated the rental unit. She also testified that, after conducting her own walk through without the tenant, she made alterations to the condition inspection report based on her observations.

Photographic evidence of the rental unit purported to represent the condition of the move out on the day of the condition inspection included; slightly unclean kitchen walls; 4 removed light-switch face plates; some nail holes from hung pictures; and relatively clean floors with some dirt in the grout.

Analysis

In the original application, the landlords sought to recover $670.00 from the tenant however she testified that she made a mistake in entering the amount she sought. She testified that the amount she sought was actually $1302.44, stating that she had a variety of out of pocket expenses including but not limited to loss of rental income, cleaning and repairs as well as a move in fee. No monetary worksheet was completed – a blank worksheet was included in the landlords' application – and therefore I am restricted to my interpretation of the landlords' monetary claim.

With respect to the evidentiary submissions of both parties, I have considered all of the materials submitted. In this decision, I will refer to the evidence that I have determined is both relevant and admissible as evidence in this hearing. I will also give more weight to some evidence and less weight to other evidence submitted in my role as decision

maker. Based on all of the evidence at this hearing, I find that the landlords acted outside of the bounds of the Act by editing the condition inspection report after it was completed in the presence of the tenant. Therefore, I cannot rely on the accuracy of that document (condition inspection report).

In most circumstances, the condition inspection report is the best evidence of the condition of the rental unit at the start and the end of tenancy. However, at the start of the tenancy, the landlords conducted an inspection after the tenant had moved in giving that portion of the report less evidentiary weight. At the end of the tenancy, the condition inspection report was altered by the landlords and therefore, I find that the move-out report, Landlord MF's wavering and changing testimony as well as her written witness statements are examples of unreliable evidence. Therefore, I will rely mainly on the testimony of the parties at this hearing, my assessment of their credibility as well as any other useful documentary evidence that I determine is admissible.

Section 38 of the Act provides further information with respect to security deposits and any rights the landlords or tenant have to the security deposit.

> **38** (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

Section 14 of the Regulation states that a condition inspection must be completed when the rental unit is empty unless the parties agree differently. I accept the tenant's testimony that she did not agree to any alternative to the required condition inspection report at the outset of the tenancy. Therefore, the landlords have failed to comply with section 14 of the Regulation with respect to the conditions and timing of a condition inspection.

Section 21 of the Regulation reads,

> **21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In these circumstances where the landlords has acknowledged that she was not present at the move-in condition inspection and conducted an inspection after the tenant had moved in as well as acknowledged that she made changes to the condition inspection report after it had been reviewed by the tenant and completed, I find that the condition inspection report has very little weight in these circumstances.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant – in this case the landlord - must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlords relied on their witness, the new tenant in the rental unit to provide testimony regarding her refund of $575.00 by the landlords because her move in was delayed until October 7, 2016. She testified that, when she viewed the rental unit vacant, she requested the landlords clean the carpets and do further cleaning and repairs prior to her move-in. The witness testified that the condition of the unit did not suit her but she did not give extensive testimony on the exact condition of the unit. The witness testified that the unit was not sufficiently clean. I find that the landlords are entitled to recover a portion of the amount refunded to the new tenant.

I find that some of the work required by the new tenant and the standard she imposed on the landlords may be above and beyond the expectations for the former tenant to meet at the end of tenancy. Pursuant to section 37 of the Act a “tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” I find, based on the photographic evidence submitted by the landlords that the tenant met the requirements of the Act. I find that the landlords have not proved that the tenant is solely responsible for the delay in the new tenant moving in. The landlords took time to create additional comments on the condition inspection report and complete other tasks before the next tenant moved in. I find that the landlords are entitled to **$150.00** - a nominal amount to represent that the tenant’s action contributed to the circumstances that led to the refund to the new tenant.

Landlord MF testified that she had to clean the entire rental unit at the end of the tenancy because it was left in very poor conditions. She sought to recover her own costs for cleaning. I am unable to rely entirely on the evidence of the landlords in that she has made admissions that raise questions about her credibility. Therefore, I rely solely on the witness testimony of the new tenant and I find that the landlords is entitled

to some amount for cleaning I assess that amount as the equivalent of 2.5 hours cleaning at $30.00 per hour totaling **$75.00**.

The landlords testified that the carpets were cleaned at the end of tenancy at a cost of $117.80. The landlords claim they are entitled to recover the cost of carpet cleaning under the Act. The landlords are correct that Residential Tenancy Policy Guideline No. 1 provides, with respect to carpet care states that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness and generally, responsible to shampoo the carpets at the end of a tenancy of one year or more. However, the tenant submitted an invoice showing that they had the carpets cleaned just prior to vacating the rental unit. In these *specific* circumstances with conflicting evidence, I rely on my credibility determination and accept the tenant's evidence as proof that they met their obligation at the end of the tenancy. I find that the landlords are not entitled to recover a cost for additional carpet cleaning.

The landlords testified that a handyman was hired to do repairs after the tenant's move-out. The landlord did not provide an invoice for the handyman services. Given the lack of proof that the landlords incurred this cost related to a handyman, pursuant to section 67, I find that the landlords are not entitled to recover the handyman costs.

The landlords provided some evidence to show that the tenant had been charged a move in fee however she did not provide any document to show that the tenant agreed to pay a move-in fee. The evidence submitted showed an invoice dated September 2016 – at the end of the tenancy. I find that it is illogical that this fee would be due upon move-out from the rental unit. I accept the testimony of the tenant that she believed the fee had been waived given that she continued to live in the unit for a year without receiving a request to pay the move-in fee. Again, an important consideration here is the credibility of both parties and I generally prefer the evidence of the tenant in that she was candid and consistent in her testimony whereas the landlords provided some inconsistent testimony and admitted to making changes to a document for this proceeding after initially denying that she did so. I find the landlords are not entitled to recover the move in fee.

I find that the landlords are entitled to recover the filing fee as they have been partially successful in her application. I find that the tenant is entitled to the return of $862.50 – the remainder of the security and pet damage deposits after the landlord recovers $325.00 from the tenant's deposits as follows,

Tenant's Deposits	**Amts**
Tenant's Security Deposit	$987.50
Tenant's Pet Damage Deposit	200.00
Landlord's monetary amount from tenant	**Amts**
Refund to new tenant for move in delay	-$150.00
Landlord cleaning of unit	-75.00
Recovery of Filing Fee for this Application	-100.00
Total Monetary Order	**$862.50**

Conclusion

I issue a monetary order in the amount of $862.50 to the tenant.

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 23, 2017

Residential Tenancy Branch