Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage to and cleaning of 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 32, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to a monetary order for double the amount 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 parties agreed the tenancy began in December 1, 2010 and continued as renewed consecutive 1 year fixed terms until it ended by mutual agreement on August 31, 2016. The parties also agreed the monthly rent by the end of the tenancy was $1,530.00 due on the 1st of each month and a security deposit of $775.00 had been paid.

The landlords seek compensation for ceiling repairs due to damage caused by toilets overflowing ($2773.05); painting ($241.50); carpet cleaning ($183.75) and general cleaning ($80.00).

The parties agreed that within the first year of the tenancy one toilet overflowed which caused damage to the ceiling of the floor below the bathroom. At the time it was agreed by both parties that this resulted from the actions of the tenants' son and that repairs to the ceiling would not be completed later in case it happened again.

The male tenant submitted that had the repairs been completed during the tenancy they could have accessed renter's insurance to help them pay for the repairs to the ceiling. The tenants also believe the damage would have been less had they completed the work right away and confirmed that they never had any other problems with this toilet.

The parties also agreed that a second toilet overflowed in the third year of the tenancy and caused damage to the ceiling of the garage. The tenants submitted that they repeatedly reported problems with this toilet constantly running to the landlords but that it was never replaced or fixed properly. The tenants provided that they changed the float system and replaced the fill line but the tank running never stopped.

Two months prior to their annual inspection (start of 4th fixed term) the tenants found that drywall tape was peeling on the garage ceiling just below where this toilet was located. The tenants reported this observation to the landlords at the annual inspection. The tenants did not provide any documentary evidence, such as handwritten notes; emails; or text messages to the landlords discussing any problems of this toilet continually running during the tenancy.

The landlords confirmed the parties did discuss the first flood and agreed to not complete the repairs at the time and that the tenants reported the second flood to the landlords sometime after it occurred and only at the annual inspection not when they first observed it. The landlords stated that they had never had a problem with the second toilet prior to this tenancy or since.

The tenants submit they now feel that they should not be held responsible for the charges of even the first toilet as they believe it was problem with the landlords' plumbing and not as a result of any action on the part of their son.

I note landlords submitted into evidence a substantial volume of email correspondence and text messages between the parties dating from September 16, 2017 to December 5, 2016. In one email from the male tenant to the landlord dated October 2, 2016 the tenant wrote:

> "The cost of repair seems quite high and I'm wondering if the decision to wait to get it fixed factors in to that. If you would like to keep the whole deposit to cover the costs of that repair then please go ahead. I would like to get some of it back as I believe we kept pretty good care as if it were our home. Whatever document or paperwork needs to be in writing, I'm back in town next weekend."

In another email dated November 26, 2016 the female tenant wrote that they completely disagreed with the landlord's charges for cleaning and carpet cleaning as they had already completed both prior to the end of the tenancy. She also wrote:

> "Regarding the ceiling repair, we believe that both we as tenants and you as landlords are jointly responsible for the costs incurred, as we discussed the issue and options of how to move forward with repair together when it first happened, and as time went on no action was taken or directed as to the next steps in addressing the issue until we mutually agreed that the tenancy would end."

As noted above, the landlord's also seek compensation for cleaning and carpet cleaning. In support of their claim the landlords have submitted a copy of a Condition Inspection Report that records the condition of the rental unit at the start and end of the tenancy.

In relation to these claims the landlord recorded the following statements: entry closet – "dirty walls/doors"; entry floor carpet – "self-cleaned/still stained"; master bedroom bathroom – "drawers stained/dirty" and finally – "carpet cleaning assessment/minor detail cleaning".

The landlord also submitted an invoice dated August 31, 2016 for cleaning for 4 hours at $20.00 for a total amount of $80.00. The invoice lists that the patio door tracks were washed out; kitchen floor was mopped; kitchen drawers were washed out; and the master ensuite was cleaned. The landlord also submitted a copy of an invoice dated September 1, 2016 for carpet cleaning in the amount of $183.75.

The tenants submitted that they had cleaned the carpets at the end of the tenancy and provided a copy of a receipt for rental of a carpet cleaning from August 30, 2016 to August 31, 2016 in the amount of $59.14.

The tenants also submitted that they made reasonable efforts to clean the rental unit and that during the move out inspection they advised the landlords that they would "re-wipe out the ensuite bathroom drawers; the kitchen drawers; and power wash the garage floor, the driveway and the rear cement porch" and they later completed those tasks.

The landlord seeks compensation in amount equivalent to ¼ of the costs for painting and wall repairs unrelated to the toilet overflow damage. Specifically, the landlords wrote the following in the Condition Inspection Report (in relation to damage other than the toilet overflow): entry – "walls prepped for paint"; living room fireplace – "peeling paint damage"; stairwell and hall railing/bannister – "very worn (no stain"; bedroom (2) electrical outlets – "hole punched through (electrical cord)"; garage or parking area – "tire marks on walls" and "hole between bedroom".

The tenants submit that during the tenancy the male tenant had on at least 2 occasions sanded and filled the walls and painted the main areas of the house. They also stated that the residential property had not been painted at the start of their tenancy. The landlords testified the unit was last painted by them in February 2010.

The landlords have submitted a copy of an invoice dated September 7, 2016 for painting the residential property interior for a total of $1,207.50 but seek compensation only in the amount of 241.50, as noted above.

The tenants submit that they provided their forwarding address to the landlords on the last day of the tenancy, August 31, 2017. I note the address is written on the Condition Inspection Report submitted by the landlord. I also note the tenants submitted their Application for Dispute Resolution to the Residential Tenancy Branch on November 30, 2017. As part of their evidence the tenants provided copies of registered mail receipts dated December 3, 2016 for service of their Application on the landlords. I note the Application contains the same address as the tenants' forwarding address.

The landlords filed their Application for Dispute Resolution on March 21, 2017 seeking, in part, to retain the security deposit.

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 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

In relation to the damage caused by the first flood, I am not persuaded by the tenants' oral submissions at the hearing that they do not believe that their son was responsible for plugging the toilet. I make this finding, in part, because I find the tenants' submissions to this hearing are inconsistent with the documented correspondence between the parties. Not once did the tenants raise the possibility that they were not responsible for the damage, at least in part, in any of the correspondence.

With the exception of the email from the female tenant dated November 26, 2016 where she states they believe that both parties should be jointly responsible there is no evidence before me that the tenants

ever denied any responsibility for the costs to repair this damage. However, I also note that the female tenant does not provide any explanation as to why they believe they should be jointly responsible.

If the tenants truly believed, especially after the second toilet flooded, that the flooding was caused by something other than what they had originally accepted responsibility for, I find it is very unlikely that they would not have mentioned it some time prior to this hearing which was held 9 months after the tenancy ended.

As to the second toilet flooding, again, if the tenants had had problems with this toilet that they had been complaining about to the landlords since the start of the tenancy; and knowing they had already taken responsibility for another toilet flooding, I am confused as to why the tenants would not have reported the second toilet flood immediately after it happened or they discovered the additional damage.

I also note the landlords wrote in an email dated September 27, 2016 to the tenants:

> "As you know, the unit at [address removed] had some pretty extensive ceiling damage due to the toilet overflowing on a few occasions on both levels of the home. This was not due to normal wear & tear as there is/was nothing wrong with the toilet(s) and therefore must be taken out of the damage deposit provided."

None of the emails submitted by either party show that at any time the tenants disputed these statements made by the landlords. As such, I am satisfied the tenants, on a balance of probabilities, are responsible for the ceiling repairs resulting from both floods. I grant the landlords the amounts claim of $2,773.05.

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 note the standard of cleanliness the tenant is obligated to at the end of the tenancy under Section 37 is "reasonably clean". There is no requirement for any tenant to ensure the cleanliness is at a higher standard than this. I note that landlords wrote on the Condition Inspection Report they sought to hold the tenant responsible for "minor detail cleaning".

In addition, I find that the bulk of the Report indicates only a few minor items that required cleaning but nothing to the point of making the rental unit left in an unreasonably clean condition. I also note that some of the tasks completed by the landlords' cleaner were not even identified on the Condition Inspection Report has been required.

As a result, I find the landlords have failed to establish the tenants have failed to comply with their obligations for cleaning the rental unit under Section 37 and I dismiss this portion of the landlords' claim in the amount of $80.00.

Residential Tenancy Policy Guideline #1 states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Based on the length of the tenancy, I find the tenants were responsible to have these carpets steam cleaned or shampooed. I find there is no requirement that this cleaning be completed by a professional carpet cleaner and renting a machine to do it themselves is an acceptable method of carpet cleaning. I am satisfied that the tenants have met this requirement.

The landlords have indicated in only one location that the carpet was "still stained" and yet the landlords seek compensation for carpet cleaning of the whole rental unit. The landlords have provided no evidence that the stain was removed as a result of their additional cleaning.

As such, I am not satisfied that the tenants should be held responsible for the landlords' decision to have the entire rental unit carpets re-cleaned. Therefore, I dismiss this portion of the landlords' claim in the amount of $183.75.

In relation to the landlords' claim for wall repairs and painting, I find the only issue identified in the Condition Inspection Report that may require repair or painting as a result of the tenants is the hole between two rooms where a cord or cable and been put through.

However, I find that even though there is no dispute that the tenants did this, the repair itself is so insignificant it does not warrant a claim of $241.50. Furthermore, Residential Tenancy Policy Guideline 40 lists the useful life of an interior paint job is 4 years. As the landlords have confirmed that the rental unit had not been paid for at least 5 ½ years from the end of the tenancy, any award I granted here would be discounted by 100%.

Therefore, I dismiss the landlords claim for repairs and painting in the amount of $241.50.

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.

From the evidence of both parties, I am satisfied the landlords had the tenants' forwarding address by the last date of the tenancy, August 31, 2016. As result, I find the landlords were required to either return the full amount of the deposit or file an Application for Dispute Resolution seeking to claim against the deposit no later than September 15, 2016.

While I recognize the parties were in communication during this period attempting to negotiate what to do with the security deposit and whether or not the tenants should pay the landlords more for losses related to the issues in these Applications; the *Act* does not allow for any period of negotiation and if the landlord believes they need to retain the deposits they must file their Application within the required deadline.

In addition, I note that in one of the emails from the male tenant quoted above, the tenant suggests that the landlord might be able to keep the security deposit. However, he goes on to say in the same email that he does wish to get some of his security deposit. I find the parties never did reach agreement on any compensation owed to the landlord that would include retention of the security deposit. As such, I am satisfied the tenants did not agree to have the landlords retain the deposit.

In the case before me, the landlords submitted their Application for Dispute Resolution seeking to claim against the deposit on March 21, 2017 – several months beyond the September 15, 2016 deadline. As a result, I find the landlords have failed to comply with their obligations under Section 38(1) and the tenants are entitled to double the amount of the deposit, pursuant to Section 38(6) of the *Act.*

Conclusion

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **$1,650.00** comprised of $1,550.00 double the security deposit and the $100.00 fee paid by the tenants for their Application.

In addition, I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **$2,823.05** comprised of $2,773.05 repairs due to flooding and $50.00 of the $100.00 fee paid by the landlords for this application, as they were only partially successful in their claim.

I order the amount awarded to the tenants is set off against the amount awarded to the landlords. I grant a monetary order to the landlords in the amount of **$1,173.05**. This order must be served on the tenants.

If the tenants fail to comply with this order the landlord 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 23, 2017

Residential Tenancy Branch