Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

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

The landlord originally submitted an Application for Dispute Resolution on November 1, 2016 claiming $525.00. On November 3, 2016 the Residential Tenancy Branch received an Amendment to an Application for Dispute Resolution seeking to increase his claim to $1,370.29, including the mailing costs for service of documents related to this hearing.

At the outset of the hearing the landlord confirmed that there is no unit number for the rental unit as it is a single family dwelling. I note the landlord had indicated a unit number as part of the dispute address on his Application for Dispute Resolution. I amend the landlord's Application to reflect the correct address.

I note that at the outset of the hearing, I found the landlord to be quite combative and disrespectful of the hearing process. Initially, the landlord declined to respond to specific questions or he provided incomplete answers. However, eventually, the landlord became less combative and provided fuller and complete responses.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit; to recover the costs of serving hearing documents and 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 *Residential Tenancy Act (Act).*

Background and Evidence

Both parties submitted partial copies of tenancy agreements signed by the parties for a 1 year fixed term tenancy that began on November 1, 2015 for a monthly rent of

$1,050.00 due on the first of each month with a security deposit of $525.00 and a pet damage deposit of $525.00 paid.

The tenancy ended when the tenants vacated the rental unit on October 15, 2016. The parties agreed one of the deposits held by the landlord was applied to the last month's rent.

The landlord submits that at the end of the tenancy he had to replace the carpet because of odours and stains he attributed to the tenant's dog. The landlord seeks $1,000.00 for the cost to replace the carpet.

In support of his claim the landlord has submitted the following documents:

- A copy of a Condition Inspection Report dated October 14, 2015 signed by an occupant of the rental unit just prior to this tenancy indicating no problems with the with the rental unit;
- A copy of a letter dated October 29, 2016 from a person who identified himself as being "in the floor covering industry and worked with carpet for 28 years" stating that the only thing the landlord could do with carpet was to remove and replace it;
- A copy of a receipt from the same person noted above in the amount of $1,000.00 dated October 29, 2016; and
- Copies of two letters dated November 2, 2016 from the occupants of the rental unit immediately after this tenancy stating, in part, that the "carpet reeked like dog urine and wet dog and needed to be replaced"

The landlord confirmed that he had not completed a Condition Inspection Report at either the start or the end of this tenancy. The landlord initially testified that he had completed the move out inspection with the occupant previous to this tenancy at "virtually the same time" as he did the move in inspection with these tenants.

When I asked for clarity, eventually, the landlord confirmed that he did not do the inspections with the previous occupant and these tenants at the same time at all.

I note that the landlord did not provide a copy of a move in Condition Inspection Report confirming the condition of the rental unit at the start of the tenancy with the occupant who moved into the rental unit immediately after these tenants. Rather the landlord relies on the two letters from the new occupants dated 2 weeks after they moved into the rental unit.

In addition to the comments related to the carpets, the new occupants wrote that the rental unit required substantial cleaning and repairs to the baseboards and walls (requiring holes to be filled and painting) and the range hood fan light cover. These new occupants stated the landlord paid them $100.00 for them to complete cleaning and repairs to the baseboards and walls, an amount the landlord claims against the tenants. The landlord also claims $25.00 for replace to the range hood fan light cover.

The landlord also seeks compensation for cleaning and painting supplies in the amount of $117.78 and has provided copies of receipts for these items. Also in support of these claims the landlord submitted 4 photographs; copies of two receipts from a hardware store for supplies; and a quote for a range hood fan light cover.

The landlord testified the rental unit had been built in 1999 and that he took possession in 2009. He further testified that the range hood was likely original to the property but that appliances and new carpets were install in or around 2009 and it was last painted in 2013.

The tenants submit that the Condition Inspection Report that the landlord submitted was fraudulently made. They submitted a letter from the previous male occupant dated December 8, 2016 stating that the landlord had just contacted him on November 3, 2016 to sign a document he had not signed at the end of his tenancy (October 31, 2015). He signed the document which appeared to record a number of items and their condition at the end of the tenancy.

The tenants also submitted email correspondence between the female tenant and the previous female occupant dated from November 3, 2016 to November 11, 2016. In this correspondence the former occupant told the tenants that they were concerned because the landlord had just contacted the previous male occupant and said that the tenants were blaming the previous occupants for the dog smell.

The female tenant's response was that at the start of their tenancy the landlord had told them the previous occupants caused the dog smell because they had had puppies. The previous occupant respondent by stating there had always been a dog smell, even when they moved in as she remembered scrubbing the hall and bathroom floor when they first arrived in an attempt to get rid of it.

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.

When one party to a dispute provides testimony and evidence regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me the burden rests with the landlord and I find he has provided absolutely no record of agreement of the condition of the rental unit at either the start or the end of the tenancy.

I accept the landlord has provided a document he states confirms the condition of the rental unit on the same date as the tenancy began and two letters from the new occupants of the rental unit that records the condition at the end of the tenancy plus his 4 photographs (none of which were of the carpet).

On the other hand the tenants have provided a document that indicates that the landlord's document confirming the condition of the rental unit was signed by the previous tenant after this tenancy ended and not at the time that his previous tenancy ended and this one began. The tenants have also provided evidence that the issue of the dog smell existed not only at the start of this tenancy but also at the start of the tenancy before this one.

As a result, I find that by failing to complete a Condition Inspection Report signed by these tenants agreeing to the condition of the rental unit at the start of the tenancy and because the tenants have provided an equally plausible, but different account of the condition of the rental unit at the start of the tenancy, I find the landlord has failed to meet his burden to provide evidence of the condition of the unit at the start of the tenancy.

As result, I find the landlord has not provided sufficient evidence to establish that any damage to the carpet or walls and baseboards occurred during the course of this tenancy.

In regard to the landlord's claim for the cost of cleaning completed by the new occupants of the rental unit, I find that just because the new occupants said it needed cleaning does not provide any evidence that these tenant's failed to meet their obligations under Section 37 to leave the rental unit reasonably clean at the end of the tenancy. The new occupants may have a higher standard than is required by the *Act*.

Again, the absence of any evidence from the landlord that the parties agreed to the condition of the unit at the end of the tenancy or any photographic or other documentary evidence, other than the new occupants complaints, that the unit was uncleaned I find the landlord has failed to establish the rental unit required any cleaning at all.

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety and without leave to reapply.

Conclusion

As I have dismissed the landlord's Application I find the tenants are entitled to return of their deposit and I grant a monetary order in the amount of **$525.00.** This order must be served on the landlord. If the landlord fails 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.

While I have issued the above noted monetary order, I had failed to recognize the parties had agreed that one of the deposits in the amount of $525.00 had been applied to the last month's rent and that the parties had confirmed in their evidence and testimony that the landlord had returned the other deposit of $525.00 by electronic transfer on November 2, 2016. As a result, I correct this decision to confirm that the monetary order issued above on June 1, 2017 has been satisfied and is no longer enforceable.

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 1, 2017

Residential Tenancy Branch

Corrected: July 21, 2017

Residential Tenancy Branch