Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNR, MND, MNSD, FF; MNSD, OLC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order of possession based on a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for unpaid utilities and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- authorization to obtain a return of double the value of their security deposit, pursuant to section 38;
- an order requiring the landlord with comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for their application, pursuant to section 72.

"Tenant TJ" did not attend this hearing, which lasted approximately 62 minutes. Tenant RJ ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had authority to speak on behalf of his wife, tenant TJ, as an agent at this hearing (collectively "tenants").

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord confirmed that he did not receive a copy of the tenants' written evidence consisting of the parties' move-in and move-out condition inspection reports. However, the landlord confirmed that he included these same reports in his own written evidence package and intended to rely on them at this hearing. Therefore, I considered the parties' move-in and move-out condition inspection reports at the hearing and in my decision, as per both parties' consent.

The landlord confirmed that he did not require an order of possession because the tenants had already vacated the rental unit. Accordingly, this portion of his claim is dismissed without leave to reapply.

The tenants did not provide any evidence regarding their claim for an order requiring the landlord with comply with the *Act*, *Regulation* or tenancy agreement. Accordingly, this portion of their claim is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities and for damage to the rental unit?

Is the landlord entitled to retain the tenants' security deposit?

Are the tenants entitled to obtain a return of double the value of their security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal and relevant aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2014 and ended on February 28, 2017. Monthly rent in the amount of $1,550.00 was payable on the first day of each month. A security deposit of $750.00 was paid by the tenants and the landlord continues to retain the deposit in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided for this hearing. The landlord did not have written permission to keep any amount from the tenants' security deposit. The tenants provided a written forwarding address to the landlord in the move-out condition inspection report on February 28, 2017. The landlord's application was filed on July 9, 2017.

The landlord seeks a monetary order of $4,309.55 from the tenants. The landlord also seeks to recover the $100.00 filing fee paid for his application. The landlord seeks $106.18 for water, heat and hydro utilities. He also seeks $1,900.00 to refinish the kitchen cabinets and make repairs to the damaged walls in the rental unit, $622.72 to replace the kitchen countertops, $80.00 to clean the black spatter paint from the railing, $547.05 to replace the blinds, $145.58 to replace the living room fan, and $158.02 to replace the hood fan. The landlord provided invoices for all of the above work, with the exception of the $80.00 because he did that work himself. The landlord provided photographs of the damaged areas referred to above and noted the damages in the move-out condition inspection report. He said that the tenants repainted all

of the above items with black craft paint without his permission and that they caused nail holes in the walls that required repairs. He said that despite doing inspections of the rental unit every couple of months, he did not want to issue a notice of eviction and it was too late to complain or change things back once the tenants had repainted, so he waited until the end of the tenancy in order to claim back the costs.

The tenant disputed all of the above claims, except for the utilities of $106.18 which he agreed that the tenants owed the landlord. He said that the landlord did not notify the tenants during his monthly inspections of the rental unit, that he had any issues with their repainting of the unit or that he wanted them to return the unit to its original condition. He claimed that the landlord, in fact, complimented the work done by saying that he liked it, and did not raise any issues until the move-out condition inspection. He stated that if he was notified by the landlord prior to the end of the tenancy, he could have returned the rental unit to its original condition but he was not given the chance to do so. He maintained that the landlord acting as if the changes were agreeable and then claiming back the costs to return the unit to its original condition in the move-out condition inspection was misleading. He explained that the nail holes in the walls were reasonable wear and tear from hanging items in the rental unit.

The tenants seek to recover double the value of their security deposit, totalling $1,500.00 plus the $100.00 filing fee paid for their application.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I award the landlord $106.18 for the water, heat and hydro utility costs for February 2017. The tenant agreed to pay this amount during the hearing. I order the landlord to retain $106.18 from the tenants' security deposit in full satisfaction of the monetary award made in this decision.

I dismiss the remainder of the landlord's application for repairs and damages totalling $4,203.37. All damages were disputed by the tenants. I find that the wall damage and nail holes are reasonable wear and tear. Regarding the repainting and paint spatter, I find that the

landlord was well aware of all the changes made by the tenants during this tenancy and conducted inspections every couple of months, according to his testimony. Yet, he failed to notify them that he was not agreeable to the changes they made, that he had issues with the changes, that he expected the tenants to return the unit to its original condition, that he expected the tenants to pay for any damages, or that he intended to deal with any problems at the end of the tenancy. The landlord agreed in his testimony that he was silent on these issues until the end of the tenancy.

One of the reasons to conduct periodic inspections of a rental unit during an ongoing tenancy is to examine the unit, complete any repairs, and notify the tenants of any issues to correct. At the very least, the landlord could have notified the tenants that he was not happy with their changes and intended to deal with them at the end of the tenancy, if they did not correct the issues themselves before they vacated.

I accept the tenant's testimony that the tenants were completely unaware that the landlord had any issues with their changes, they were not told anything by the landlord, the landlord acted as if the changes were okay and most importantly, they were not given the chance to return anything to its original condition before vacating. The tenant said that he would have corrected the issues at his own cost if notified by the landlord prior to the final move-out condition inspection. Therefore, I find that the landlord failed part 4 of the above test by completely failing to mitigate the damages and losses he claimed.

As the landlord was mainly unsuccessful in his application, except for the amount that the tenants agreed to pay, I find that he is not entitled to recover the $100.00 filing fee paid for his application.

Tenants' Application

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlord continues to hold the tenants' security deposit of $750.00. No interest is payable on the deposit during the period of this tenancy. This tenancy ended on February 28, 2017. The landlord received the tenants' forwarding address on February 28, 2017, by way of the move-out condition inspection report. The landlord did not have written permission from the tenants to keep any part of their security deposit. The landlord's application to retain the deposit was filed on July 9, 2017, more than 4 months after February 28, 2017. Therefore, as per section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I am required to double

the amount of the tenants' security deposit. Accordingly, I find that the tenants are entitled to double the value of $750.00, totalling $1,500.00, minus the $106.18 awarded to the landlord for utilities above.

As the tenants were mainly successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlord.

Conclusion

I order the landlord to retain $106.18 from the tenants' security deposit in full satisfaction of the monetary award made in this decision.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $1,493.82 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' application is dismissed without leave to reapply.

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: August 25, 2017

Residential Tenancy Branch