



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and the landlord was accompanied by Legal Counsel. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions. The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, although not by affirmed testimony, Legal Counsel for the landlord acknowledged receiving on behalf of the landlord a forwarding address in writing from the tenants on April 7, 2017.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 7, 2016 and was to expire on August 1, 2017 thereafter reverting to a month-to-month tenancy, however the tenancy ended on March 24, 2017. Rent in the amount of \$1,250.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$625.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resided in the upper unit of the home at

the beginning of the tenancy and until December, 2016. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy. At the end of the tenancy, a move-out condition inspection report was also completed, which was attended by the landlord, the landlord's spouse, both tenants and another man not known to the landlord. The man kept following the landlord, was too close, and made the landlord uncomfortable so the landlord asked him to leave. The inspection did not go well due to damages, and the tenants didn't agree to pay for any damages and left. A copy of the move-in/out condition inspection report has been provided for this hearing, which is signed by a tenant at move-out disagreeing with the report. The notation of the landlord states: "Hole in wall in living room area. Drywall and paint repair to wall in master bedroom; approx.. \$250.00." The tenant's notation states: "Small patchwork that needs to be done; just some plaster & paint and they are trying to get more money and make it a bigger job."

The landlord and the tenants were angry, and the tenants signed the report and left. After they departed the landlord noticed some further damages and finished filling in the move-out condition inspection report. The tenants and their friend had been standing on a portion of the floor that had holes in it, so the landlord hadn't noticed before the tenants departed.

The landlord testified that the tenants left a hole in a wall, 3 holes in the floor and a broken sink stop. The laminate flooring had some water damage and the rental unit was disgustingly dirty with something smeared on walls and food splattered on the ceiling. The landlord had asked the tenants to pay \$250.00 for the hole in the wall which they refused to do. The landlord's legal counsel sent the tenants an email giving them an opportunity to return to the rental unit to clean, but the tenants declined to do so. Photographs have been provided as evidence as well as an invoice and checklist for cleaning in the amount of \$376.95 and an estimate for repairs totaling \$853.90. The landlord testified that the contractor could not repair the sink stopper and called a plumber, and that cost is included in the \$853.90 estimate. Most of the other work on the estimate has now been completed. There were no notations on the move-in condition inspection report of damages to be repaired at the beginning of the tenancy except for some damage to the ceiling of the closet in the master bedroom, for which the landlord makes no claim.

The landlord claims \$376.95 for cleaning, \$853.90 for repairs and recovery of the \$100.00 filing fee, for a total of \$1,330.85, and an order permitting the landlord to keep the \$625.00 security deposit in partial satisfaction.

The first tenant (ART) testified that during the move-out condition inspection, there was no mention of anything wrong with the rental unit except a hole in the drywall. The tenant was present for the inspection, however only the other tenant signed the report. The tenants have provided video evidence of the inspection, and testified that the landlord swore at them so it wasn't safe for them. The landlord's photographs do not depict an accurate reflection and were taken after the tenants departed.

At the beginning of the tenancy the parties did not confirm that all of the sink stoppers worked, and the tenants noticed during the tenancy that it wouldn't stay down, but didn't want to complain to the landlord about it so it was never mentioned. It slowly rises up, and won't stay down, and likely needs something tightened.

The tenant does not deny the hole in the wall, but did not agree that it would cost \$250.00 to fix. The friend who was with the tenants during the move-out condition inspection has completed renovations and is a home owner. He advised that it would cost about \$20.00 to repair.

The tenants left the rental unit spotless. Debris on the floor may have been from the landlord and spouse leaving their shoes on. All walls were washed with vinegar, water and fiber cloth. Someone had apparently painted small spots on the flooring which wore off during the tenancy and were very small.

The second tenant (MCM) testified that there was nothing on the report when the tenants were present except for the \$250.00 notation for the hole in the wall. The landlord's spouse even fought with the landlord about it saying that it wouldn't cost that much.

The move-in condition inspection report was missing a notation that the sink stopper wouldn't stay down, but it was totally intact. Someone had painted a small hole in a floor the same color as the floor.

The landlord would scream at the tenants, and they were scared to deal with her. The digital video evidence was taken only during the move-out condition inspection.

Analysis

In order to be successful in a claim for damages the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and

4. what efforts the claiming party made to mitigate any damage or loss suffered.

The regulations to the *Residential Tenancy Act* go into great detail of how the move-in and move-out condition inspection reports are to be completed. A landlord may not alter a report after the tenant has signed it. The *Act* states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, but I cannot rely on a report that has been altered after it was signed by the tenant(s).

The tenants deny that any cleaning or repairs were required at the end of the tenancy other than the hole in a wall. The parties agree that the parties were angry during the move-out condition inspection, and I find it just as likely that the photographs of the landlord do not depict the actual condition of the rental unit. Therefore, any claims for items added after the tenants departed cannot succeed, and I dismiss the landlord's application for cleaning costs.

I have also reviewed the Estimate provided by the landlord for repairs. It shows that a charge of \$250.00 is estimated for "drywall repair" and \$125.00 for "prime and paint damaged area." I am not satisfied that the landlord has established element 3 in the test for damages, in that the repair, priming and painting were for more than the single hole agreed to by the tenants.

Therefore, I dismiss the landlord's application for a monetary order for damage to the unit, site or property and the landlord's application to keep the security deposit. Since the landlord has not been successful with the application the landlord is not entitled to recovery of the filing fee.

The parties are in agreement that the landlord received the tenant's forwarding address in writing on April 7, 2017. The landlord filed the application for dispute resolution on April 26, 2017, which is 19 days beyond the date the landlord received the forwarding address. The *Act* requires a landlord to return a security deposit or make an application claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. The parties agree that the tenancy ended on March 24, 2017, and I find that the landlord has not complied.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set-Off, which states, in part:

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:

- ☐ a landlord's application to retain all or part of the security deposit; or
- ☐ a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the *Act*¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

And:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit¹⁵:

- ☐ if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

The tenants did not specifically waive doubling of the deposit, and the legislation takes a very serious view of trust monies. Having dismissed the landlord's application, and having found that the landlord did not make the application within 15 days of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing, I grant a monetary order in favour of the tenants for double the amount of the security deposit, or \$1,250.00.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,250.00.

This order is final and binding and may be enforced.

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: September 27, 2017

Residential Tenancy Branch