



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 dealt with a landlord's application for a Monetary Order for cleaning and damage; and, authorization to retain the security deposit and pet damage deposit. The tenants did not appear at the hearing. The landlord provided registered mail receipts, including tracking numbers, as proof the hearing packages and evidence were sent to each tenant via registered mail on September 22, 2017 and November 6, 2017 respectively. The address for service was the tenant's forwarding address that appears on the move-out inspection report. The hearing packages sent on September 22, 2017 were successfully delivered. The tenant referred to by initials SW picked up the evidence package sent to her on November 6, 2017; however, the tenant referred to by initials TP did not pick up the evidence package sent to him.

Section 90 of the Act deems a person to be in receipt of items mailed to them five days after mailing, even if the recipient refuses to accept or pick up their mail.

I was satisfied tenant SW received the hearing package and evidence. I was satisfied that tenant TP received the hearing package and he is deemed to have received the evidence package sent to him. Accordingly, I proceeded to hear from the landlord without the tenants present and review the evidence the landlord had submitted.

The landlord had provided a USB stick along with a Digital Evidence details worksheet indicating the landlord would confirm with the tenants before the hearing that they were able to see/hear the evidence on the digital device. The landlord's agent appearing before me acknowledged that the landlord did not confirm with the tenants that they could see/hear the content of the digital device sent to the tenants. As provided in the Rule 3.10 of the Rules of Procedure in effect at the time this Application was filed, where a party intends to rely upon digital evidence, the party must confirm with the other party that they were able see/hear the content on the device. Rule 3.10 provides, in part:

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

Since the landlord made no enquiry with the tenants as to whether they could see/hear the content on the digital device sent to them and the absence of any information to suggest they could see/hear the content, I excluded the digital evidence from consideration in making this decision. Accordingly, this decision is based upon the documentary evidence before me and the landlord's oral testimony.

The landlord requested the monetary claim be amended to reduce the claim. Since this request is beneficial to the tenants, I amended the claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to compensation claimed for cleaning and damage, as amended?
2. Is the landlord authorized to retain the tenants' security deposit and pet damage deposit?

Background and Evidence

A one-year fixed term tenancy on September 1, 2015. A second fixed term tenancy agreement commenced on September 1, 2016 and expired on August 31, 2017. The tenants had paid a security deposit of \$299.00 and a pet damage deposit of \$587.50. The tenants were required to pay rent of \$1,414.88 per month; however, there was a rental incentive for entering into a fixed term which resulted in a net rent payment of \$999.00 per month. The tenants returned possession of the rental unit to the landlord on August 31, 2017.

A move-in inspection report was prepared with the tenants on September 1, 2015 and a move-out inspection report was prepared with the tenants on September 1, 2017. The tenants indicated they agreed with the landlord's assessment of the condition of the property on the move-in and move-out inspection report; however, the tenants did not authorize the landlord to make any deductions from their security deposit or pet damage deposit. Accordingly, the landlord filed this Application for Dispute Resolution within 15 days of the tenancy ending and seeks compensation for the following things:

1. Cleaning -- \$1,085.00

The landlord submitted that it appeared as though no cleaning was performed at the end of the tenancy. The landlord explained that the rental unit is large and required a full unit clean, including carpeting cleaning. The landlord explained that these tasks were performed by the landlord's employees. Since the work was performed by the landlord's staff persons, the

landlord provided a work order to demonstrate the cleaning took 32 hours, for which the landlord seeks \$960.00, and carpet cleaning at the rate of \$125.00.

2. Repairs and garbage removal -- \$1,397.50

The landlord testified that the rental unit was damaged beyond reasonable wear and tear at the end of the tenancy. The work was performed by the landlord's staff persons so the landlord provided a work order that shows a breakdown of labour provided by the landlord's employees and materials supplied for the repairs. The work order also indicates that contents had to be removed from the unit; holes in the drywall patched; carpeting on the stairs replaced; blinds in the living room and dining room replaced; grass repaired; a door replaced; and changing the lock to the master bedroom.

I noted that the work order indicates "Unit Reno" and "Standard Reno" as the category section of the work order. The landlord stated that after the tenancy ended the unit underwent significant renovation including a full repainting of the unit and flooring replacement; however, the landlord is only seeking compensation for damage for which the tenants are responsible.

3. GST on cleaning and repairs

The landlord submitted that since the landlord provided a cleaning service and repairs for the tenants the landlord is obligated to collect GST on these services and remit it to the government.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Section 32 of the Act requires that a tenant repair damage caused by their actions or neglect, including that of persons permitted on the property by the tenant. Under section 37 of the Act, a tenant is required to leave the rental unit vacant, reasonably clean and undamaged at the end of the tenancy. Sections 32 and 37 also provide that reasonable wear and tear is not damage. Accordingly, a landlord may pursue a tenant for compensation to remedy damage caused by the tenant, or persons permitted on the property by the tenant, through their actions or neglect; but, a landlord may not pursue a tenant to remedy pre-existing damage or reasonable wear and tear.

Section 21 of the Residential Tenancy Regulations provide that in a dispute resolution proceeding, a condition inspection report is the evidence of the state of repair and condition of the rental unit on the date of the inspection unless there is a preponderance of evidence to the contrary.

The move-in portion of the condition inspection report indicates that as of September 1, 2015 most areas of the rental unit required painting, the window coverings were broken or missing; there were stains and dents on the flooring; the ceiling and walls needed painting as they were marked, dented, chipped and had nail holes; the doors and trim work was very scuffed; the fridge was dented; the basement and patio was dirty; and there were boxes had boxes in the crawl space. Both the landlord and the tenants signed the move-in section of the report indicating it fairly represented the condition of the rental unit as of September 1, 2015.

The condition of only one area of the rental unit is described on the move-out inspection report performed on September 1, 2017. Under the column "floors, carpets, linoleum" is a notation of "torn step" in the entry, halls and stairs section. The tenants signed in the space indicating the report accurately reflected the condition at the time of the move-out inspection. Beside the tenants' signature is a notation that appears to be written by the landlord's agent that reads: "to be assessed". The move-out inspection report does not indicate the rental unit is dirty or damaged except for the "torn step".

I find the landlord's claims against the tenants for painting, repairs and cleaning are not supported by the move-out inspection report. Rather, the move-in inspection report appears to demonstrate that the rental unit was due for a renovation and repairs and there was only one additional area of concern at the end of the tenancy which was a "torn step". No other damages are noted on the move-out inspection.

While the tenants may be responsible for a "torn step" and there is a claim for carpeting on the stairs, carpeting has an average life of 10 years as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*, and it would appear to me that all of the carpeting was likely in need of replacement given its age and pre-existing condition.

As for claim for cleaning, the move-out inspection report does not indicate that the unit was unclean. As for the work order for cleaning, I note that it is dated the same date as the work order for the renovations and the category on the cleaning work order is listed as being "unit reno" and "standard reno". I find it reasonable to expect that cleaning would be required after a renovation and it would appear that these charges relate to the renovation that was performed.

In light of the above, I find the landlord's evidence does not persuade me that the tenants are responsible for the amounts claimed for cleaning and damage and I dismiss the landlord's application in its entirety, without leave to reapply.

Having dismissed the landlord's claims against the tenants and their security deposit and pet damage deposit, in keeping with Residential tenancy Policy Guideline 17: *Security Deposit and Set-Off*, I order the landlord to return the deposits to the tenants in the full amount of \$886.50 without delay.

Provided to the tenants with this decision is a Monetary Order in the amount of \$886.50 to ensure payment is made.

Conclusion

The landlord's claim against the tenants is dismissed without leave. The landlord has been ordered to return the tenants' security deposit and pet damage deposit to them in the full amount of \$886.50 without delay. The tenants are provided a Monetary Order in the amount of \$886.50 to ensure payment is made.

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: April 13, 2018

Residential Tenancy Branch