Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with monetary cross applications. The tenant applied for return of double the security deposit. The landlords applied for compensation for damage to the rental unit and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlords had previously filed an Application for Dispute Resolution against the tenant's security deposit on May 15, 2017 (file number referenced on the cover page of this decision). By way of the application that is before me, the landlords make another claim against the tenant's security deposit. I confirmed that the landlord's previous Application for Dispute Resolution that was set for hearing on October 25, 2017 was dismissed with leave to reapply. I confirmed that the landlords did not refund the security deposit to the tenant after receiving the October 25, 2017 decision. Rather, they made another claim against it by way of the Application for Dispute Resolution that was filed on June 12, 2018 and is before me to resolve.

Issue(s) to be Decided

1. Have the landlords established an entitlement o compensation form the tenant in the amounts claimed?
2. Should the security deposit be doubled?
3. Disposition of the security deposit.

Background and Evidence

The tenancy started on August 15, 2010 and the tenant paid a security deposit of $850.00. The tenant was originally required to pay rent of $1,700.00 on the first day of every month but the rent was increased to $1,800.00 per month by the end of the tenancy. The tenancy ended on April 30, 2017.

The tenant participated in the move-in and move-out inspections with the landlords and the landlords prepared a move-in and move-out inspection reports at the start and end of the tenancy.

Tenant's Application for Dispute Resolution

The tenant seeks return of double the security deposit. The tenant did not authorize the landlords to make any deductions from his security deposit in writing. The tenant provided his forwarding address in writing on the move-out inspection report. The landlords initially made a claim against the security deposit on May 15, 2017 but that application was dismissed. The tenant did not receive a refund of the deposit and the landlord's did not file another Application for Dispute Resolution to make another claim before he filed, seeking double, on December 1, 2017. The landlords made another claim against the deposit on June 12, 2018 and are still holding the tenant's security deposit.

The landlords pointed out that they filed their original Application for Dispute Resolution, claiming against the tenant's security deposit on May 15, 2017 which is within the 15 day time limit for doing so. The landlords submitted that their previous Application for Dispute Resolution was dismissed because the tenant did not appear for the hearing and the landlords had not come prepared to prove the hearing documents were served upon the tenant but the landlords did find the proof of service after the hearing ended. The tenant acknowledged that he was aware of the previous hearing and he had tried connecting to the teleconference call hearing but had difficulties and he was unable to connect.

Both parties claimed to have contacted the Residential tenancy Branch after the October 25, 2017 hearing was held with a view to determining what to do next; however, I noted that the Branch records only reflect the tenant telephoning and making enquiries about the October 25, 2017 hearing and decision. The landlords then stated that they may have made general enquiries without referencing their particular file number.

In any event the landlords did not return the security deposit to the tenant. The landlords point out that they were not ordered to so in the October 25, 2017 decision.

I asked the landlord to explain why they delayed over 7 months in filing another Application for Dispute Resolution to claim against the security deposit. The landlords stated they were researching their rights and trying to figure out what to do and that they have jobs and other things to do. Eventually, on June 6, 2018 the landlords tried contacting the tenant, via email, in an attempt to resolve their dispute(s) but there was no response from the tenant so they filed their Application for Dispute Resolution on June 12, 2018.

The landlords were of the position that the tenant should not be entitled to doubling of the security deposit because they had made their previous Application for Dispute Resolution within 15 days of the tenancy ended which shows they had every intention of complying with the Act and that their intention should be sufficient to avoid paying double.

Landlord's Application for Dispute Resolution

The landlords claimed compensation of $3,701.11 on their Application for Dispute Resolution and provided a Monetary Order worksheet for amounts that total $3,701.11 for replacement of: the kitchen and bathroom flooring, the kitchen countertops, and the living room flooring, as well as recovery of the filing fee. The landlords attempted to raise other issues such as cleaning a dirty toilet and abandoned property left behind but there were no amounts claimed for these items on the Monetary Order worksheet so I did not permit submissions on these other issues.

Below, I summarize the landlords' claims against the tenant, as indicated on the Monetary Order worksheet, and the tenant's responses.

1. Kitchen and bathroom flooring

The landlords seek to recover from the tenant the cost to purchase and install new flooring in the kitchen and bathroom. The landlord stated the former flooring, most likely sheet vinyl, was installed in the 1980's but was still in useable condition despite its age had it not been for the damage. The landlords pointed out that patches could not be installed because patches would not match the old flooring.

The landlords replaced the old sheet vinyl flooring with “click lock” flooring. The landlords submitted that the tenant is responsible for the replacement cost because there were several dents and drag marks on the kitchen flooring and unsightly marks around the toilet in the bathroom. The landlords stated they did not know the source of the unsightly marks around the toilet. When I looked at the photographs, I informed the landlord that it appears to be staining from under the sheet vinyl, most likely from a leaking seal around the toilet. The landlord’s response was that the tenant had not reported any leaks to them.

The tenant was of the position that the flooring in the kitchen and bathroom was very old and suffered from several years of wear and tear. The tenant submitted that the need for replacement was due to the age and wear and tear which is a landlord’s responsibility. The tenant stated that the toilet in the bathroom was also very old and that the tank leaked which the landlord was aware of, and parts were hard for the repairman to find. The tenant stated he is not responsible for the leaking toilet.

The landlords denied that they were aware of a leak from the toilet but did become aware of an issue with the toilet at the end of the tenancy.

2. Kitchen countertop

The landlords seek to recover from the tenant the cost to purchase and install new countertops in the kitchen. The landlords submitted that the tenant, or his family members, damaged the countertops by putting hot spots on it which left marks. The former countertops were installed in the 1980’s when the house was built and had to be replaced with new countertops.

The tenant stated the countertops were very old, chipped and cracked. The tenant submitted that due to its age; the quality of the countertops was gone, which resulted in the marking of the countertops when hot pots were placed on dishtowels. The tenant took the position the countertops required replacement due to their age and wear and tear over several years of use.

3. Living room floor

The landlords seek the cost to replace the living room floor. The landlords obtained an estimate to replace the flooring but have not had the work done as the unit is now re-rented and the new tenants put furniture over the scratches. The landlords submitted that new laminate flooring was installed just before the tenancy started and at the end of

the tenancy there were a number of long scratches in the flooring that the landlords believe happened when the tenant was moving out.

The tenant acknowledged that there was newer flooring in the living room at the start of the tenancy but was of the position it was very cheap quality material. The tenant submitted that most areas of the floor was covered with rugs and carpet during the tenancy but there were some scratches that the tenant attributed to wear and tear over 7 years of use.

The landlords were of the position that the new flooring was not cheap and that the scratches are beyond wear and tear.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each application before me.

Tenant's Application for Dispute Resolution

As provided in section 38 of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

It is undisputed that the tenancy ended and the tenant provided a forwarding address, in writing, on the move-out inspection report on the same date: April 30, 2017. The tenant did not provide the landlords with written authorization to make any deductions from his security deposit. The tenant participated in the move-in and move-out inspection which means the tenant did not extinguish any right to return of the deposit. Accordingly, the landlords had until May 15, 2017 to either refund the security deposit to the tenant or make a claim against it by filing an Application for Dispute Resolution. It is also undisputed that the landlords did make a claim against the tenant's security deposit in filing an Application for Dispute Resolution on May 15, 2017.

Where landlord makes a claim against a security deposit by filing an Application for Dispute Resolution, the landlord may continue to hold the security deposit pending the outcome of the hearing. A hearing for the landlord's previous Application for Dispute Resolution was held on October 25, 2017 and the landlord's claim was dismissed, with leave to reapply. Although the Arbitrator issuing the October 25, 2017 did not expressly order return of the security deposit to the tenant, the landlords no longer had the right to hold onto the security deposit and I am of the view that a reasonable person acting with due diligence would have either refunded the deposit or made another Application for Dispute Resolution to claim against within a reasonable amount of time. The tenant even waited a number of weeks, until December 1, 2017 before he filed for return of the deposit because the landlords did not take action to dispose of the deposit. In fact, the landlords did not take action for several more months, when they filed again in June 2018. I find the landlords' lack of action for more than seven months after receiving the October 25, 2017 decision is patently unreasonable and I find the tenant is entitled to doubling of the security deposit. Therefore, I award the tenant $1,700.00 plus recovery of the filing fee he paid, as requested by the tenant.

Landlord's Application for Dispute Resolution

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under sections 32 and 37 of the Act, a tenant is responsible to repair damage they, or persons they permit on the property, cause by their actions or neglect and to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 also provide that reasonable wear and tear is not damage. Accordingly, a landlord may not pursue a tenant for pre-existing damage or for reasonable wear and tear.

It is also important to note that awards for damages are intended to be restorative. Where a fixture, appliance or other building element is so damaged it requires

replacement, it is often appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements.*

1. Kitchen and bathroom flooring

Upon review of the condition inspection reports, I note that the kitchen floor was marked as being in good condition at the start of the tenancy in 2010 and having “spots” at the end of the tenancy. The photographs of the kitchen floor before me do show spots; however, I do not see drag marks and dents as described by the landlords. Rather, the photographs of the kitchen floor appears to show a worn out floor and considering the floor is approximately 30 years old I am of the view the floor has well exceeded its expected useful life.

Policy guideline 40 provides that carpeting has an average useful life of 10 years and hardwood flooring has an expected useful life of 20 years. While vinyl or “lino” flooring is not specifically mentioned in the policy guideline, I am of the view vinyl flooring has an average life closer to that of carpeting, or 10 years. As such, I find that the 30 year old vinyl flooring likely has little or no depreciated value left and was in need of replacement due to wear and tear and aging.

The condition inspection reports show that the bathroom floor was in good condition at the start of the tenancy and good at the end of the tenancy. The landlords provided photographs of the floor behind the toilet that is stained on top of the floor and coming from underneath, such as from a leak from under the toilet. The landlords stated the tenant did not notify them of a leak from under the toilet; however, I am of the view that a leak under the vinyl floor would become noticeable only after the vinyl floor began showing signs of staining. Further, as stated above, these floors also 30 years old and well past its expected lifespan.

In light of the above, I find the landlords’ claim to recover 100% of the cost to install new “click lock” floor in place of 30 year sheet vinyl flooring from the tenant is completely unreasonable and I dismiss their claim.

2. Kitchen countertop

The condition inspection reports show that the kitchen countertop was in “fair” condition at the start of the tenancy and “fair” condition at the end of the tenancy but with “spots”

at the end of the tenancy. In the photographs provided to me, I see signs of hot pots leaving circular burn marks in the countertop but I also see what appears to be the surface wearing away. Considering the countertop, which also appears to be a vinyl laminate product, was approximately 30 years old at the end of the tenancy and it was only in “fair” condition when the tenancy started, I am of the view the landlords’ request to recover the replacement cost for new countertops is unreasonable and I dismiss the landlords’ claim.

3. Living room floor

The condition inspection reports show that the living room floor was in good condition at the start of the tenancy and in good condition at the end of the tenancy with a notation there were scratches in the floor at the end of the tenancy. There are other words next to the word scratches that I find illegible.

The parties were in agreement that the flooring in the living room was rather new at the start of the tenancy and I see a number scratches and a gouge in the pictures presented to me. It would appear to me the scratches and the gouge are the result of accidental damage or failure to use felt pads under furniture. In either event, I find the scratches and gouge to be beyond reasonable wear and tear and it is damage for which the tenant is responsible. The flooring appears to be laminate and in keeping with policy guideline 40, I find it appropriate to consider the useful life of laminate flooring to be approximately 10 years. The age of the flooring is less than 10 years; however, considering the landlords have not replaced the floor, the landlords have re-rented the unit without evidence they suffered a loss in rental revenue as a result, I find the landlord’s claim for replacement cost of 7 year old laminate floor in these circumstances is not sufficiently supported. Rather, I find the scratches and gouge has likely resulted in diminished value and I find it appropriate to award the landlords a nominal award of $100.00.

Given the landlords very limited success in their application, I award the landlords recovery of only a portion of their filing fee, or $25.00.

In light of the above, I award the landlords a total amount of $125.00 which I offset against the tenant’s award.

Conclusion

The tenant has been awarded a total of $1,800.00 and the landlords have been awarded a total of $125.00. Pursuant to section 72 of the Act, I offset the two awards and provide the tenant with a Monetary Order for the net amount of $1,675.00 to serve and enforce upon the landlords.

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: July 20, 2018

Residential Tenancy Branch