Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with two applications as follows:

By the tenant: as an application for a Monetary Order for the return of double the security and pet damage deposits; and to recover the filing fee associated with this application.

By the landlord: as a cross application for a Monetary Order for damage to the unit; and to recover the filing fee associated with her application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of double the amount for her security and pet damage deposits?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of a townhouse in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on December 18th, 2009. The monthly rent of $1200.00 was payable on the 18th of each month. The tenant paid a security and pet damage deposit in the combined amount of $1200.00. Condition inspection reports were completed at the start and the end of the tenancy but were not provided as evidence to the hearing.

At the outset, the landlord's lawyer cited Section 38(2) of the *Residential Tenancy Act*, and argued that the tenant's right to the return of the security deposit was extinguished because the tenant, although present for the move-out condition inspection report, did not sign the report and therefore did not participate as required by statute. The tenant argued that she did not sign because the landlord's mother was verbally abusive and felt under duress. She stated however that she initialled the report in the areas where she did not agree with the landlord's observations concerning the unit. The landlord's lawyer testified that he was currently in possession of the original report and could not find the tenant's initials anywhere. The tenant testified that she did not have the report in front of her, but stated that the copy that she received from the landlord had been altered.

The landlord testified that in January 2010, the tenant caused a flood in the unit by overloading the washing machine. She stated that she arranged for repairs and that she installed a new washing machine in February 2010. She said that the tenant reported more problems with that machine as well. The landlord said that she removed the machine in June 2010 because the tenant did not follow her instructions not to touch the machine, which caused further damage when water leaked through the floor and damaged the ceiling directly below. The landlord made a claim of $1000.00 for the refund of her insurance deductible, and $201.60 to repair the ceiling. In her evidence, the landlord provided in part 10 photographs, showing the related damage to the ceiling.

The landlord stated that a significant leak from the downstairs toilet was identified on September 22nd, 2010, four days after the tenancy ended.

She said that while it was not identified during the move-out condition inspection report, it occurred during the tenancy and the tenant was responsible. The landlord made a further claim for the refund of her insurance deductible of $1000.00, for a monetary claim totalling $2201.60.

The tenant argued that she never used the downstairs toilet and questions the credibility of this claim since it was identified after she moved out.

Concerning the washing machine, the tenant testified that the washing machine was 28 years old, and that she reported problems to the landlord since the start of the tenancy. The tenant said that a service man addressed an issue with a potential problem because the machine was not on an even floor. The tenant also argued that the landlord did not make any claim against her at the time, that repairs were completed, and that the retention of her security and pet damage deposits was not justified. She stated that the damage caused to the ceiling occurred when the landlord removed the new machine in June 2010. She said that she was at work at the time and that when she returned home both taps were dripping on the floor.

Analysis

Concerning the tenant's claim for the return of double the security and pet damage deposits, the burden of proof was originally on the tenant to support her claim with sufficient evidence. There was disputed verbal testimony on the contents of the report. The landlord's lawyer relied on Section 38(2) of the Act and submitted that although the tenant was present at the condition inspection, she did not participate when she failed to sign the report, pursuant to Section 23(5). While I accept that a condition report was completed, neither party provided evidence of that report. Section 23(5) also stipulates that the report must be completed in accordance with the regulations.

Section 20(1) of the Regulations sets out the standard information that must be included in a condition inspection report: in its' absence, I am unable to determine what the landlord presented to the tenant and whether the landlord met the obligations that trigger her right to keep the damage deposit. As the landlord is alleging that the tenant extinguished her right to the return of the deposits, the landlord bears the burden to prove that this right has indeed been extinguished. I am not convinced that the tenant's refusal to sign the report, in the circumstances, signified that she did not participate. In the absence of that evidence, I find that the landlord failed to meet this burden and that she was not entitled to keep the security and pet damage deposits.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. The evidence established that the tenant left on September 18th, 2010, and provided written forwarding address on September 20th, 2010. The landlord did not file for dispute resolution within 15 days and I find that the tenant is entitled to double her security deposit pursuant to Section 38(6) of the Act.

Turning to the landlord's claim regarding the washing machine: the parties were also at odds with this part of the dispute. The landlord said there was nothing wrong with the machine and that the tenant was responsible due to overloading.

The tenant said that the machine was old and defective. Section 32 (3) of the *Residential Tenancy Act* provides in part that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. In this matter, the burden of proof was on the landlord to support her claim. It was not disputed that the machine was old. The *Residential Policy Guidelines* provide an estimated useful life of various items for reasonable wear and tear in rental units. In the case of a washing machine, that useful life is 15 years. Based on the available evidence, I do not find that the landlord proved that the damage was caused solely because the tenant violated the Act or the tenancy agreement.

The tenant perceived a problem and contacted the landlord. The machine was old and well beyond its useful life, and could have started to deteriorate at any time. I am not convinced that the problem was caused strictly by overloading as the landlord alleged. Therefore that portion of the landlord's application is dismissed.

Similarly, the *Residential Policy Guidelines* established a useful life of 20 years for plumbing and toilets. The landlord stated that the unit was built in the early 80's; therefore the toilet leak could have occurred because the related joints and plumbing are well beyond their estimated useful life. I also note that the landlord identified a leak, and did not infer a toilet plug, for which I would have given different consideration. Therefore I also dismiss that portion of the landlord's application.

Conclusion

The tenant has established a claim of $2400.00. Since she was successful, I also award the tenant the $50.00 filing fee. Pursuant to Section 67 of the Act, I award the tenant a monetary order for the sum of $2450.00.

The landlord's application is dismissed in its' entirety.

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: February 11, 2011.

Residential Tenancy Branch