



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlords' alleged failure to return it as required under the Act and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for damages to the rental property and if so, how much?
2. Are the Tenants entitled to the return of a security deposit and if so, how much?

Background and Evidence

This month-to-month tenancy started on July 26, 2009 and ended on November 30, 2010 when the Tenants moved out. Rent was \$1,300.00 per month. The Tenants paid a security deposit of \$650.00 at the beginning of the tenancy.

The Landlords' Claim:

The Parties completed a Condition Inspection Report at the beginning of the tenancy and but did not complete one at the end of the tenancy. The Parties met at the rental property on December 5, 2010 to conduct a move out inspection but did not finish it because a dispute broke out over damages allegedly caused by the Tenants. The Landlords claim that the Tenants caused the following damages to the rental property:

- (a) **Carpet damage:** The Landlords claim that at the end of the tenancy they found stains on the living room carpet upstairs and on the family room carpet downstairs. The Landlords said the carpet was only 2 years old and in good condition at the beginning of the tenancy. The Landlords provided photographs of the stains in question and said they could not be removed. The Landlords said that the carpet in one of the photos appears orange but that was due to a problem with the flash and that the carpet is a beige colour. Consequently, the Landlords sought

compensation to replace the stained carpets and provided an estimate in the amount of \$1,084.38.

The Tenants denied knowing anything about a red stain on the carpet in the basement that is in the shape of a foot print. The Tenants said there was a stain in the basement carpet that was caused by a drain tile issue which they brought to the Landlords' attention. The Tenants said they cleaned this area of the carpets as best they could.

- (b) **Fire damage:** The Landlords said the Tenants failed to advise them about a fire that occurred at the side entrance of the rental unit. The Landlords said the fire and smoke caused damage to the side entrance door, door frame and side of the house and they sought compensation of \$3,145.00 to repair and repaint that damage. The Landlords provided photographs of the damages in question.

The Tenants admitted that approximately 2 weeks prior to the end of the tenancy, a friend of their son's started a fire on the concrete step in front of the door. The Tenants argued that the Landlords exaggerated the damages and claim that only the door frame needs to be replaced. The Tenants claimed that only the paint on the door was damaged and that only a small area on the wall suffered smoke damage. The Tenants argued that the Landlords' quote for painting is for the whole house which is unreasonable given that the paint on the exterior was old and needed to be repainted in any event.

- (c) **Back door damage:** The Landlords claimed that the back door and frame of the rental unit also suffered fire damages and they sought compensation of \$800.00 to repair the damage. The Landlords admitted that this amount incorrectly included an amount of \$160.00 for 2 doors which were included in the amount sought for fire damages.

The Tenants claimed that there was no fire damage to this door but admitted that the damages to the back door were caused by their dog scratching it. The Tenants claimed that only the paint was damaged and that the door and trim did not need to be replaced but rather re-painted. The Tenants also claimed that the weather stripping would have to be replaced.

- (d) **Yard damage:** The Landlords said that the Tenants damaged the grass in the yard by having an above-ground pool without their consent and did not repair holes dug by their dog. Consequently, the Landlords sought compensation of \$200.00 to fill the holes and to re-seed the damaged areas.

The Tenants admitted that the grass was damaged by the pool but argued that when they returned to the rental unit approximately 5 days after vacating (to do the move out inspection), the grass had already started to grow in that area. The

Tenants also said they filled one hole with dirt but could not rake it because the ground was frozen

The Tenants' Claim:

The Parties agree that the Tenants gave their forwarding address in writing to the Landlords on December 5, 2010, that the Tenants did not give the Landlords written authorization to keep the security deposit and that the security deposit has not been returned to the Tenants.

Analysis

The Landlords' Claim:

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect (or by an act or neglect of someone he or she permits on the rental property) but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Consequently, the Landlords have the burden of proof and must show (on a balance of probabilities) that the Tenants were responsible for damages to the rental unit and that they were not the result of reasonable wear and tear. This means that if the Landlords' evidence is contradicted by the Tenants, the Landlords will need to provide additional, corroborating evidence to satisfy the burden of proof.

Section 35 of the Act says that a Landlord must complete a condition inspection report at the end of a tenancy even if a tenant refuses to participate. A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if they have left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. The Landlords did not complete a move out condition inspection report but provided photographs of the rental property that they said they took on or about December 2, 2010.

- (a) **Carpet damage:** I find that there is insufficient evidence to conclude that one of the stains on the carpet was caused by an act or neglect of the Tenants. Based on the shape and discoloration of the stain shown in the Landlords' photograph, I find that this stain could reasonably have been caused by a water leak as the Tenants suggested. Although the Tenants denied any knowledge of another bright red, foot print shaped stain on the downstairs carpet, I find on a balance of probabilities that they were responsible for it. In particular, based on the move in

Condition Inspection Report, I find that the carpet did not have any stains at the beginning of the tenancy. I also find that the red stain was discovered by the Landlords only a few days after the tenancy ended and before anyone else occupied the rental unit. Given that this stain appears to be a foot print rather than the result of some kind of leak, I find that this stain was the result of the Tenants' neglect rather than reasonable wear and tear.

Consequently, I find that the Tenants must compensate the Landlords for the damage caused by red stains to one of the carpets. However, I find that there is insufficient evidence to conclude that the carpet cannot be salvaged or repaired as a result of this stain and as a result, I find that the Landlords are entitled to compensation for the loss in value of the carpet which I assess at **\$300.00**.

- (b) **Fire damage:** The Tenants admitted that a guest of one of their children started a fire at the side entrance of the rental property which resulted in some smoke damage to the side of the house and covered entrance as well as to damage to the paint on the door and the door frame. The Tenants argued that the amounts sought by the Landlords for repairs are excessive and in particular claim that the Landlords are seeking to recover the cost of repainting the whole house and to replace a door that is not damaged. The Landlords claim that the quote they obtained was for repairs needed to address the damage caused by the fire.

I find that the Landlord's quote of \$3,145.00 is excessive as it indicates that it is for power washing and re-painting the whole house rather than just the area at the side of the house with smoke damage. In the circumstances, I find that the area of the house near the side entrance will have to be power washed and re-painted and the door frame replaced. As the Landlords' photographs do not show damage to the side door, I conclude that it does not need to be replaced. Consequently, I find that the Landlords are entitled to a portion of the amount they have claimed for this damage which I assess at **\$800.00**.

- (c) **Back door damage:** The Tenants admitted that the back door was damaged by their dog scratching it. The Tenants argued however that the scratches were only to the paint and that the door and frame did not need to be replaced. I find that the Landlords photographs of the door in question show that this is the case. It appears from those photographs that the weather stripping must be replaced but that only the paint on the door and frame are damaged and will have to be re-painted. I find that this damage is not reasonable wear and tear and as a result, the Tenants are responsible for compensating the Landlords for it. Consequently, I find that the Landlords are entitled to recover **\$150.00** as reasonable repair expenses for this damage (supplies and labour).

- (d) **Yard damage:** The Tenants claimed that they filled in a hole at the end of the tenancy and argued that any grass damage caused by their pool was temporary and that the grass would grow back. The Landlords claimed that they told the

Tenants a number of times to remove the pool but the Tenants failed or refused to do so. The Landlords provided a photograph of the area of the lawn in question that shows patches of bare ground, and brown grass a few spots of green grass. Based on the photograph, I find that some remedial work will be necessary to bring the grass back and to fill in some small holes, however I find that the Landlord's estimate for this work is excessive and I award them instead **\$50.00**.

In summary, I find that the Landlords have made out a total monetary claim for \$1,300.00.

The Tenants' Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date they receive the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however they may not offset those damages from the security deposit.

I find that the Landlords received the Tenants' forwarding address in writing on December 5, 2010 but did not return their security deposit of \$650.00 and did not have the Tenants' written authorization to keep the security deposit. The Landlords made an application for dispute resolution to make a claim against the security deposit on January 31, 2011 however, it was filed after the 15 day time limit required under s. 38(1) of the Act. Furthermore, I find that the Landlords right to make a claim against the security deposit was extinguished under s. 36(2) of the Act because they did not complete a move out condition inspection report in accordance with the Regulations to the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit (\$1,300.00).

Conclusion

As each of the Parties has made out a monetary claim for \$1,300.00 against the other, I order pursuant to s. 72 of the Act that those awards be offset with the result that each of the parties' claims has been satisfied in full. As the Parties would also each be entitled

to recover their respective filing fees for this proceeding, I also make no order for reimbursement of the filing fees and that part of the Parties' claims are 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: March 23, 2011.

Residential Tenancy Branch