Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit and a cross-application by the landlords for a monetary order and an order permitting them to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing, the landlord being represented by their property managers (the "Agents").

Issues to be Decided

Are the tenants entitled to the return of double their security deposit?
Are the landlords entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on June 1, 2006 and ended on July 1, 2011. I have addressed the claims and my findings around each below.

1. **Tenants' claim: Double security deposit.** The tenants seek an award of double their security deposit. The parties agreed that the tenants paid a $360.00 security deposit at the outset of the tenancy and that the landlords received the tenants' forwarding address in early July 2011. The landlords did not file their claim until August 17, 2011. Section 38(1) of the 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 forwarding address is received in writing. I find the landlords received the tenants' forwarding address in early July and failed to repay the security deposit or make an application for dispute resolution within 15 days. I find that the landlords are therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit. I award the tenants $731.97 which represents the double security deposit and the $11.97 in interest which has accrued to the date of this judgment.

2. **Landlord's claim: Repainting and repair of walls, kitchen cabinets and entryway.** The landlords seek to recover $1,773.97 as the cost of repainting the walls, the kitchen cabinets and repainting and repairing an entryway. The Agents testified that the tenants had painted the walls and kitchen cabinets a dark colour and had failed to return the walls to a neutral colour at the end of the tenancy. They further alleged that the tenants used a paint other than a melamine paint on the cabinets and had also painted over wallpaper. The Agents stated that the landlords had to apply several coats of paint on the walls to cover the dark colour, strip off the paint on the kitchen cabinets and restore the cupboards. They further testified that the tenants had pressure washed the entryway, causing paint to peel necessitating stripping off the old paint and repainting and resealing. The tenants acknowledged that they had painted the walls and cabinets and testified that when the question of painting was discussed with the landlords, they were told not to go crazy and paint walls black. The female tenant testified that she could not recall the landlord having imposed any restrictions. She recounted a conversation with the landlord during the tenancy when he told her he was upset with the colours she had used and testified that she told him she would put everything back to its original state if he asked her to do so. Because he didn't ask, she didn't act. The male tenant acknowledged having pressure washed the entryway but testified that the deck was already peeling when he moved in and that the pressure washer he used wasn't powerful enough to remove paint.

   I find that the tenants were obligated to return the colour of the walls and cabinets to their original colour. Although they claimed that the landlord did not ask them to do so, I find that in order to be relieved of liability, the tenants must prove that the landlord specifically told them they did not have to repaint. I am not satisfied that this is the case. Residential Tenancy Policy Guideline 37 provides that the useful life of interior paint is 4 years and the useful life of exterior paint is 8 years. The tenants lived in the unit for 5 years. I find that the interior of the unit would have required repainting in any event. However, I accept that more coats of paint were required as a result of the dark colour used and further accept that on the cabinets, the paint had to be stripped and the painted wallpaper removed. In the absence of a condition inspection report showing the condition of the deck at the beginning of the tenancy, I am not satisfied that the paint on the deck was intact at that time and I find that the tenants should not be held responsible for the cost of repainting the deck. The landlords presented invoices totalling $2,660.63 for repainting and repairing the deck. In light of my finding that the landlords had to apply additional coats of paint and to strip the old paint from the cupboards and remove wallpaper, I find it appropriate to award the landlords $399.09 which represents 15% of the total cost.

3. **Landlord's claim: Carpet cleaning.** The landlords seek to recover a total of $263.20 as the cost of cleaning carpets at the end of the tenancy. The Agents testified that when the tenants vacated the unit, they had the carpet professionally cleaned at a cost of $100.80. Several weeks later, they detected an odour of urine and arranged for the carpet cleaning company to return to treat the carpet at a cost of $162.40. The Agents theorized that the tenants' unauthorized pets urinated on the carpet. The tenants testified that the only pets they kept were lizards which were continually contained in an enclosed terrarium. They testified that they cleaned the carpet at the end of the tenancy. The Agents argued that the tenants should have provided evidence to show that the carpet was cleaned at the end of the tenancy. Because there is no evidence that the landlords knew or should have known that the carpet was cleaned at the end of the tenancy, I find that the first carpet cleaning was reasonable and should be the responsibility of the tenants. I am not persuaded that the second carpet cleaning was necessary as I find the landlords should have arranged for any special pre-treatment at the time the first cleaning was performed. I award the landlords $100.80 in compensation for the first cleaning.

4. **Tile repair.** The landlords seek to recover $150.00 as the cost of repairing a broken tile on the fireplace. The tenants agreed that they broke the tile, but suggested that it had not been properly installed which left it more susceptible to breakage. In the absence of evidence to corroborate that the original tiling work was defective, I find that the tenants should bear the cost of repairs and I award the landlords $150.00.

5. **Filing fee.** Both parties seek to recover the $50.00 filing fee paid to bring their applications. As both parties have enjoyed some success, I find it appropriate that each bear the cost of their own filing fee.

Conclusion

The tenants have been awarded $731.97 and the landlords have been awarded $649.89. Setting off these awards as against each other leaves a balance of $82.08 payable by the landlords to the tenants. I order the landlords to pay this sum forthwith and I grant the tenants a monetary order which may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: October 31, 2011

Residential Tenancy Branch