Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION and REVIEW HEARING DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to hear the tenant's application for return of double the security deposit. This hearing also served as a review hearing of the landlord's application as the tenant was successful in establishing she was unable to attend the hearing scheduled for October 17, 2011 to deal with the landlord's application. The landlords applied for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, retention of the security deposit.

This decision replaces the decision and Order issued by a Dispute Resolution Officer (DRO) on October 17, 2011. As the decision of October 17, 2011 has been replaced, there is no further need to consider the landlords' Request for Correction of that decision.

Both parties appeared at this 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 matter

In filing their respective applications, the parties were inconsistent in naming the parties of the dispute. I determined it necessary to determine the identity of the tenant(s).

In filing the landlord's application, the landlords named only one tenant (referred to by initials ZI). The landlords were of the position that male occupant (referred to by MC) living with the tenant was not a tenant under the tenancy agreement. The landlords explained that they initially had a tenancy agreement with the ZI for the lower suite and during that tenancy MC moved in with ZI. Then both ZI and MC moved into the main part of the house. The landlords claim there was a written tenancy agreement for both tenancies; however, the landlords could only locate the tenancy agreement for the lower suite. The landlords maintain they did complete a new tenancy agreement for the main

unit, with ZI named as the only tenant, and that they never entered into a tenancy relationship with MC.

In filing the tenant's application, both ZI and MC named themselves as tenants. ZI submitted that MC moved in with her when she lived in the lower suite and that when she and MC moved into the main unit, there was no written tenancy agreement prepared. However, all of the parties were of the understanding MC was a tenant under a verbal agreement. Upon enquiry, ZI and MC acknowledged that it was ZI that paid the rent to the landlords.

When the status of an applicant is in dispute, it is upon the applicant to establish their status under a tenancy agreement. Having heard MC did not pay rent to the landlords, that only ZI was a tenant under a written tenancy agreement when ZI and MC lived in the lower unit, in the absence of any other evidence to corroborate the tenant's position, I find the disputed verbal testimony insufficient to conclude MC was a tenant. Therefore, I have amended the tenant's application to exclude MC as a tenant and this decision and the Order that accompanies it name ZI as the only tenant.

The submissions made by MC during the hearing are herein considered statements of the tenant's witness.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation for damage to the rental unit?
2. Have the landlords established an entitlement to compensation for unpaid utilities?
3. Have the landlords established an entitlement to damage or loss under the Act, regulations or tenancy agreement?
4. Are the landlords authorized to retain the tenant's security deposit or should it be returned to the tenant?
5. Is the tenant entitled to return or credit for double the security deposit?

Background and Evidence

On July 28, 2009 the tenant paid a $350.00 security deposit pursuant to the tenancy agreement entered into for the lower suite. The tenant moved into the main part of the house (the rental unit) on August 1, 2010 and the security deposit was applied to the tenancy agreement for the rental unit. The tenant was required to pay rent of $1,400.00 on the 1st day of every month, starting August 1, 2010, for the rental unit. The tenant

vacated the rental unit June 30, 2011 and provided a forwarding address to the landlord, in writing, on July 4, 2011. The landlords filed their Application for Dispute Resolution on July 14, 2011.

Landlords' application

Below I have summarized the landlords' monetary claims against the tenant and the tenant's response to those claims.

Item	Amount	Landlords' reasons	Tenant's response
Carpet repair	125.00	A carpet patch was required to repair a bleach stain. Near the end of the tenancy the tenant requested the cost be taken from her security deposit. The repair took place when the tenant was present at the unit.	The origin of the bleach stain is undeterminable and without a move-in inspection report the landlords cannot show that the tenant is responsible for this damage. The tenant acknowledged she agreed to compensate the landlord for the repair to stay on good terms with the landlord; however, this was stated before the cost was known.
Tipping fees	15.07	Tenant left abandoned possessions at the residential property including a couch and coffee table that were given to tenant by landlords. The landlord only claimed the dump fees and not for time or gas spent to go to the dump.	The tenant acknowledged that some possessions were left at the residential property but submitted that the couch and coffee table were merely provided for her use during the tenancy and were not given to her.
Smoke detector	27.99	Missing at end of tenancy. Approximately 7 years old.	No response requested.
Glass drawer in fridge	25.00	Glass was broken and missing. This is not the same as the cracked plastic part of the fridge that the landlords acknowledged at the beginning of the tenancy. It is difficult to	The drawer was plastic and broken when the tenant moved in.

		find a replacement glass drawer. Claim is based on the lowest estimate obtained.	
Humidity controller	30.22	The battery compartment was broken. As a similar controller is expensive, the landlord replaced the controller with an inexpensive manual one. Landlord was of the position controller must have been broken during tenancy as there was no humidity issues before the tenancy commenced.	The controller never worked and the paint was cracked and peeling as a result. There was no mould as the tenant kept the bathroom clean.
Carpet cleaning	134.40	Tenant cleaned carpets with a rental machine which left excessive soap residue, especially on the edge of the stairs. Landlord called in professional cleaner as excessive soap residue would attract and hold dirt, causing damage to the carpeting.	Tenant was not obligated to clean carpets but did so out of courtesy. It was the landlords' decision to call in a professional carpet cleaner for which the tenant should not be held responsible for paying.
Filing fee	50.00		
Total claim	$ 531.37		

The hydro bill under dispute is for the period of May 11 – July 8, 2011 and in the amount of $135.36. The landlord acknowledges the landlord's son stayed in the unit 20 days in their calculations and during the hearing stated that the son did not stay in the lower unit after June 1, 2011 since he moved into his own place.

Tenant's application

The tenant is seeking return of double the security deposit on the basis the landlord did not prepare condition inspection reports, or provide the tenant with a copy of the move-in or move-out inspection report, and lost the right to claim against the security deposit for damage.

In the tenant's written submission she states she provided the landlord with her forwarding address at the time of moving out; however during the hearing, the tenant acknowledged that she did not provide a forwarding address in writing until July 4, 2011.

The landlord testified that a move-in inspection report was prepared and given to the tenant; however the landlord could not locate the document. The landlord explained that she inspected the rental unit on June 30, 2011 and when MC attended the unit along with another female friend of the tenant, she presented the inspection report to MC. The landlord claimed that MC would not sign or accept the move-out inspection report because the landlord could not produce the move-in inspection report.

The landlords submitted that they conduct their rental obligations in accordance with the Act and have prepared written tenancy agreement and inspection reports for each of the tenancies. However, some documents have been misplaced due to renovations and have not yet been located by the landlords.

Analysis

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.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

Upon consideration of all of the evidence before me, I provide the following findings and the reasons for my findings with respect to each of the applications.

Landlords' application

Hydro bill –

I accept that the tenant was required to pay 100% of hydro bills under the tenancy agreement, as evidence by the testimony of both parties, and the tenant's payment of the bills over several months. I am also satisfied that after the tenancy formed another person began occupying the lower suite and, as a result of concerns raised by the tenant, the parties met and a discussion ensued about the landlord accepting reduced payment for the hydro bills. However, the parties are in dispute as to the reduction agreed upon.

I find insufficient evidence that when the tenancy formed, the tenant's obligation to pay the hydro bill was tied to actual usage or number of occupants. The landlord provided a reasonable argument that the tenant was required to pay for hydro during their tenancy negotiations that also reflected a reduced amount of rent.. Accordingly, I find the tenant remained obligated to pay the entire bill until such time the landlords either waived entitlement to collect the full amount of the bill or until the term was found to be unconscionable.

I accept that in meeting with the tenant to discuss the hydro bill, the landlords were agreeable to reducing the amount the tenant was required to pay in an effort to recognize the increase in the number of occupants during a certain periods of time. I accept that the landlords' agreement to reduce the bill by 25% for each night another occupant was staying in the lower suite kept the hydro term reasonable and conscionable. Therefore, I uphold the landlords' agreement to waive 25% of the hydro costs for the nights the landlord's son occupied the lower suite.

In the absence of evidence to the contrary, I accept that the landlord's son stopped staying in the lower suite; thus, I accept that for during the billing period in question, the hydro bill should be reduced for those 20 nights. However, I find the landlords' request for $123.69 to be based on a flawed calculation as the calculation does not exclude the days after the tenancy ended.
In keeping with my findings above, I have determined that the tenant is responsible for paying the following amount for the hydro billed to the landlord for May 11 through July 8, 2011:

Hydro cost per day: $135.36 / 58 days = $2.3338
# of days in tenant occupied unit x daily cost = 51 days x $2.3338 = $119.02
Portion waived by landlord: 20 days x 2.3338 x 25% = $11.67
Hydro owed by tenant = $119.02 – 11.67 = $107.35

Carpet repair –

I prefer the landlords' submissions that the tenant is responsible for the bleach stain over the tenant's position. I found the tenant's submission that she agreed to pay for the repair to stay on good terms with the landlords to be unlikely and unreasonable. I find the landlord substantiated the cost of the repair and I award the landlords $125.00 as claimed.

Tipping (dump) fees –
Although the parties were in dispute as to the ownership of the couch and coffee table, I heard the tenant acknowledge leaving possessions at the residential property and I accept the landlords had to deal with those abandoned possessions. Since the landlord did not claim for time and other costs associated with transporting goods to the dump I find the landlord's claim of $15.07 to dispose of the tenant's possessions to be reasonable. Accordingly, the landlords are awarded $15.07 as claimed.

Smoke detector –
As I heard smoke detector was approximately 7 years old and I find the typical useful life of a smoke detector to be 7 years, I find the depreciated value of the missing smoke detector to be nil. I find it unnecessary to make a finding as to whether the tenant is responsible for the missing smoke detector since the loss to the landlords is nil.

Fridge drawer –
Without making any finding as to whether a move-in inspection report was prepared, in the absence of a copy of the move-in inspection report for this proceeding, I find the disputed verbal testimony does not satisfy me as to the condition of the drawer at the beginning of the tenancy. As the landlords bear the burden of proof, I find they have not met their burden and I deny this portion of the landlord's claim.

Humidity controller –
Although I heard from the landlords that a move-in inspection report was prepared, I did not hear whether the parties tested or removed the battery compartment in conducting the move-in inspection. Further, since the pieces were plastic, the expected useful life is limited. Based on these factors, and faced with only disputed testimony, I find the landlords have not met the burden of proof and this claim is denied.

Carpet cleaning –
The Act provides that a tenant is responsible for leaving a rental unit "reasonably clean". Residential Tenancy Policy Guideline 1 was prepared to assist landlords and tenants determine their responsibilities under the Act. The policy states that tenants are usually held responsible to clean the carpets after one year of tenancy or if the tenant had a pet or smoked. The policy does not supersede the Act, meaning if the carpets are soiled or

stained, beyond normal wear and tear, within the first year of tenancy, the tenant is still required to clean the carpets.

The tenant submitted that she was not required to clean the carpets when she decided to rent a cleaner. This may or may not be the case as her requirement to clean the carpets depended on whether the carpets were “reasonably clean”. I am unable to determine the condition of the carpets before she cleaned them. However, at issue is the condition of the carpets after she cleaned them and I have been provided evidence as to the condition of the carpets after the tenant cleaned the carpets.

I accept the pictures and professional carpet cleaning invoice sufficient to accept the landlords’ position that excessive soap residue was left in the carpets at the end of the tenancy. I find no other motive for the landlord to clean the carpets again on July 6, 2011. Therefore, I find the landlords entitled to recover the cost to have the carpets cleaned again in order to remove excessive soap residue and I grant the landlords request for compensation of $134.40.

Filing fee –
Given the landlords’ relative success in this application, I award the landlords $40.00 towards the filing fee paid for their application.

In total the landlords have established an entitlement to an award of $421.82

Tenant’s application
Section 38(1) of the Act requires the landlord to either return the security deposit to the tenant or make an Application for Dispute Resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.
Since the tenant provided her forwarding address in writing to the landlord on July 4, 2011 the landlords had until July 19, 2011 to either refund the deposit or make an Application for Dispute Resolution to avoid the application of section 38(6) of the Act. I find the landlords complied with section 38(1) by filing an Application for Dispute Resolution within 15 days and the security deposit is not doubled.

In light of the above, I credit the tenant with $350.00 to be offset against the amounts awarded to the landlord pursuant to section 72 of the Act. I do not award the filing fee to the tenant as I found the tenant’s application unnecessary given the landlord’s application had already been served upon the tenant.

Monetary Order

After offsetting the security deposit, I provide the landlords with a Monetary Order in the net amount of $71.82 to serve upon the tenant and enforce as necessary.

Conclusion

The landlords are authorized to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords and the landlords are provided a Monetary Order for the net amount of $71.82 to serve upon the tenant.

This decision and the Monetary Order that accompanies it replace the decision and Order issued October 17, 2011.

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 28, 2011.

Residential Tenancy Branch