Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs and cleaning and to justify keeping the security deposit in partial satisfaction of the claim. The application was also to deal with the tenant's claim for the return of the security deposit that was not refunded by the landlord and other damages and loss. The landlord and the tenant both appeared.

Issue(s) to be Decided

The issues to be determined, based on the testimony and the evidence are:

Is the landlord entitled to retain the security deposit and additional compensation under section 67 of the Act for damages?

Is the tenant entitled to the return of the security deposit and additional compensation under section 67 of the Act for damages?

Background

Landlord's Application

The tenancy began with on November 1, 2009 and the tenant moved out on July 15, 2011. Current rent was $1,500.00 per month and a security deposit of $750.00 was paid. According to the landlord, the unit was left in a state that required cleaning and significant repairs and the landlord is claiming $17,660.45 plus the $100.00 cost of filing. The claims include: $201.60 for a "false complaint" by the tenant, $181.66 for air filters to minimize odours, $150.00 for cleaning, $12,935.96 for repairs, $2,691.00 for materials and $1,500.00 for one month loss of rent.

Submitted into evidence to support the landlord's claim was a summary of the claim, a copy of the move-in and move-out condition inspection reports, a copy of the tenancy agreement, copies of expenditures and photographs. The landlord also submitted a detailed written chronology with commentary about her observations and interaction with respect to the tenant, the tenant's dogs and the suite, including the date and description of various occurrences.

The landlord testified that the unit had been painted in December 2007. The landlord testified that, during the tenancy, the tenant's dogs caused significant damage to the walls which were badly scratched. The landlord referred to photos showing gouges in the walls.

The tenant acknowledged that there was some damage to the walls, but pointed out that there was evidence of previous damage when they moved in. The tenant stated that some walls had rough patching with mismatched paint over the repaired areas when they took occupancy.

With respect to the state of the premises at the end of the tenancy, the landlord testified that the unit was not left in a reasonably clean condition as required under the Act. The landlord supplied photos showing close-up shots of various areas of the rental premises, including inside drawers, cabinetry, behind the stove, inside of the refrigerator, the range, doors and walls. The landlord provided a cleaning invoice for $150.00 that was initialed by an individual who was paid for 6 hours of cleaning at $25.00 per hour. The landlord admitted that this final clean-up was not done until after the other renovations were fully completed.

The tenant disputed the landlord's claim for cleaning. The tenant stated that the unit was left reasonably clean and provided photos that appeared to support this allegation.

The landlord was seeking compensation for the $201.60 cost spent to hire a drainage specialist during the tenancy. According to the landlord, this was arranged based on the tenant's suggestion that the smells complained about by the landlord may be due to a moisture problem from blocked drains. The landlord feels that the tenant should be responsible to reimburse her for the costs to investigate this potential source of the smell as a possible drainage issue, particularly as it was later established that the odour problem was not created by any drainage problem. The landlord's position is that it was actually found to have been caused by the tenant's pets.

The tenant argued that they were not responsible for the service call being made by the landlord. The tenant questioned why they would be held liable for costs that did not relate in any way to the tenant. The tenant stated that they held an honest belief that some odours may likely have been caused by improper perimeter drainage.

The landlord testified that, at some point during the tenancy, she began to notice just prior to the end of the tenancy. The landlord testified that she often assisted the tenant by letting his dogs outside and had frequently witnessed messes left by the pets in the unit. The landlord testified that the animals had incontinence problems and one of the tenant's elderly dogs was quite ill. The landlord referred to photos that she felt supported these allegations, including pictures of pads on the floor, packages of dog

training pads and packages of canine diapers found in the tenant's unit. The landlord's photos in evidence also featured a spray-bottle labeled as being pet stain and odour remover and a container of special cleaning solution for eliminating urine stains.

The landlord testified that the tenant gave notice to vacate the unit effective July 31, 2011 but abandoned the unit on July 15, 2011, although there were still some of the tenant's possessions left in the unit. The landlord testified that the move-out condition inspection was scheduled for July 30, 2011. The tenants had submitted a copy of the move-in and move-out condition inspection reports.

The landlord testified that during the month of June, before the tenant vacated, she felt it necessary to block the vents in her upper unit, due to strong smells emanating from the tenant's lower suite into her suite above. The landlord stated that she had to purchase air filters at a cost of $181.66. The landlord submitted photos of the sealed vents and invoices for the purchases into evidence. Written statements from witnesses and estimates attesting to the presence of the urine odour, were also included in the evidence.

The landlord testified that all of the concrete under-floor and the floor coverings of the unit were ruined by animal urine. This included the carpeting in the bedrooms, the laminate flooring in the main living areas and an exposed aggregate surface in the bathroom and kitchen areas. The landlord testified that, despite the fact that the flooring was less than 4 years old, all of these floor coverings had to be removed, discarded, and totally replaced.

The landlord testified that, in addition to the replacement of the flooring, all of the cement underneath, which was not sealed, also had to be disinfected and sealed before this new flooring could be installed. The landlord had submitted photos of the floors, copies of estimates and a copy of the final invoice for the work.

The landlord provided estimates and a final invoice dated September 5, 2011 that verified charges of $12,935.96 for the degreasing and sealing the concrete, new laminate flooring, new tile in the kitchen and bathroom, baseboards, repairs to the walls and repainting the entire suite. The amalgamated labour cost was shown as $9,410.00, total cost of materials was $2,139.97 and tax charged was $1,385.99. The landlord also submitted numerous individual receipts for purchases of flooring including laminate, underlayment, tile and carpet as well as various other tools, equipment and supplies.

Testimony by the landlord's witness supported that there was a strong smell of urine in the tenant's suite which she testified caused her to gag.

In addition to the costs associated with replacing the flooring, the landlord was claiming $1,500.00 loss of rent for the month of July 2011, because the unit had to be kept vacant to do the necessary work on the floors.

The tenant disputed the landlord's claim and stated that there were no significant urine odours in the suite.

The tenant provided a professional report from a qualified building inspector who conducted a thorough inspection on July 23, 2011 and issued a document that supported the tenant's testimony that there was absolutely no urine odour to be detected. The tenant pointed out that the report specifically indicated that "*no significant odours of any kind were noted*" , and that, "*the carpets throughout showed no staining or indications of previous moisture issues*". The tenant wanted it noted that this report was created by an impartial professional who, unlike the landlord's contractor bidding on her renovation project, would have no expectation of further profit based on the outcome. The tenant pointed out that under "*Conclusions*" the inspection report specifically stated that, "*There was no odour of urine in the lower suite*". The tenant testified that the inspector's report also noted that the material used for the bathroom and kitchen floors was, *"an exterior stone pebbles coating typically found on walkways*." and that there was "*shrinkage and settlement cracks*" in some areas of the concrete floor.

The tenant stated that the landlord's need to remove the porous pebble flooring was not attributable to any failure by the tenant to keep it clean, but was likely necessary because of the fact that this was unsuitable as an interior finish, due to its porosity.

The tenant stated that the photos clearly show that no urine stains, no discolouration and no crystallization was visible on the concrete floor surfaces, even the areas that, according to the landlord, had been irreparably fouled by the dogs.

The tenant acknowledged that training pads were sometimes placed on the floor for the dogs when they were penned and the animals were fully trained to use these. The tenant stated that the dogs were not allowed free run of the house. The tenant refuted the landlord's allegation that his elderly dog was euthanized because of increasing incontinence. The tenant stated that the dog was old and had developed blindness and it was sadly necessary to have him put down for that reason.

The tenant testified that the disinfectant and containers of urine-elimination compounds, shown in the photos, were only purchased in the final weeks of the tenancy to clean and treat the floors in response to concerns that were expressed by the landlord at that time. The tenant 's position is that that the unsealed concrete floor, beneath absorbent flooring materials, made it impossible for the tenant to ever completely clean the floors.

The tenant stated that it was an unreasonable expectation that they could succeed in removing everything that had ever seeped down into the concrete in the history of the suite. The tenant pointed out that this type of surface could have retained residual mildew, water seepage or any other pollutants that were already there prior to their tenancy.

Tenant's Application

The tenant testified that they were requesting $1,500.00 for the return of double the security deposit. The tenant testified that they were also requesting a $1,500.00 rent abatement for the month of July 2011, as they had to move out due to the landlord's ongoing badgering and intrusions. The tenant testified that they had tried to cooperate with the landlord, even removing the existing laminate flooring, installed by the previous tenant, at her request, leaving only the bare concrete underfoot. The tenant testified that, despite their efforts, the landlord grew increasingly confrontational and demanding to the extent that they were driven from the unit. The tenant testified that they were forced to stay with friends in July 2011, prior to the planned end date of their tenancy. The tenant alleged that the landlord made statements with threatening overtones and insisted on serving them with the Notices of hearing and additional evidence at their place of employment. The tenant submitted copies of the landlord's written communications.

The tenant was also claiming compensation for storage costs and reimbursement for a wireless router that they claim the landlord did not return.

The landlord disputed the above claims. With respect to the tenant's claim for the return of the security deposit, the landlord pointed out that she applied to keep the deposit and records show this was done on July 15, 2011 even before the tenancy had ended. The landlord also pointed out that, in one communication from the tenant, the tenant had acknowledged that there was some damage and suggested that the security deposit could be retained to cover this.

The landlord took issue with the tenant's claim of harassment and stated that there was no malice in her communications as she was merely trying to settle outstanding matters between them. The landlord testified that she had no choice but to contact the tenant at his place of employment in order to serve him with the documents and evidence in person, because the tenants had moved out and were not living in the unit by mid- July.

The landlord argued that, while she did enter the suite at times without written notice, she had verbal consent for access. The landlord stated that the parties had always had a friendly arrangement with respect to being able to enter the suite. The landlord

testified that she did start to give proper written notice when the tenant expressed concerns.

The landlord stated that the tenants had inadvertently left their router in the unit and after notifying them, she set it aside for them in the carport. The landlord testified that the router was removed at some point, and she presumed it may have been taken by the tenant. The landlord pointed out that the tenant did not provide any receipts or invoices to support their monetary claims.

Analysis: Landlord's Claims

With respect to an Applicant's right to claim damages from another party, I find that section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof was on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to cleaning and repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

With respect to the landlord's claim that the unit was not reasonably clean, I find that the tenant had not thoroughly wiped out some of the drawers and cabinetry, nor the range

and left some scuff marks on the walls. Wit respect to cleaning behind appliances, I find that a tenant is not responsible to pull out an appliance to clean, unless they are able to move it freely on wheeled casters and provided that the appliance was pulled out during the move-in inspection.

Although there may have been some areas of the unit not completely cleaned by the tenant, I find that most of the rental unit was left in a reasonably clean state when the tenant vacated. In any case, I find that the landlord subsequently conducted repairs and renovations after the tenancy concluded, and this naturally would have made further cleaning necessary, whether or not the unit had been left in a pristine state by the tenant. Therefore I find that the landlord's claim for compensation, pursuant to the cleaning invoice dated August 27, 2011, fails to meet element one of the test for damages and must therefore be dismissed.

With respect to the landlord's claim for reimbursement of the costs for checking out the drains, I find that inspection, maintenance and repair costs of infrastructure items, such as perimeter drains, is solely the landlord's responsibility under the Act. Accordingly, I find that this portion of the landlord's claim must be dismissed.

With respect to the need for wall repairs, I accept the landlord's evidence showing that walls had been scratched by the dogs and required repairs. However, the specific cost of these repairs was not clearly established by the landlord's evidence, being that the invoice from the contractor was an amalgamation that included a number of other tasks besides the drywall repairs . In addition, the individual cost for the painting work was also not isolated in the contractor's invoice submitted into evidence by the landlord.

While I do I accept that some repainting of the damaged areas of the drywall would be required, I find that the landlord did not sufficiently prove that the entire rental unit needed to be completely repainted.

Moreover, I find that awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position he or she would otherwise be in, had the damage not occurred. Where an item or finish has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the appropriate depreciated value..

In order to estimate depreciation of the replaced item, reference to Residential Tenancy Policy Guideline 37 is helpful in accurately assessing what the normal useful life of a particular item or finish would be. I find that the guidelines set the average useful life for interior paint at 4 years.

I find that the landlord's specific financial outlay for the wall repairs that can be attributed solely to the tenant's violation of the Act, is not clear. While I hesitate to assign an arbitrary amount for the value of the wall repairs and for the portion of the painting necessary to touch up the affected areas of the walls, I do find that the landlord is entitled to some pro-rated compensation for the scratched wall repairs and the re-painting of these damaged areas and I find that a reasonable amount, taking into account the age of the paint, would be $165.00.

In regard to the need to replace the floors, I find that the landlord's allegation that a urine odour existed likely did have some merit and I accept that this may have been the case during the tenancy. That being said, I find that the landlord had an obligation to address this matter early on in the tenancy immediately when it became evident. I find that the landlord neglected to take action to deal with this problem in a timely manner.

With respect to the landlord's position that this urine odour was of a permanent nature and that it was not successfully eradicated by the tenant at the end of the tenancy, I find that there is credible evidence to indicate otherwise. I find that the odours were apparently no longer detectible at the time that the unit was inspected by a qualified building inspector and this was clearly notated in the report.

I do not accept the landlord's allegation that the urine odours could only be eliminated through a complete removal of all flooring and reinstallation of new floors.

However, even if I did accept the landlord's contention that the urine contamination had permanently infused the floor surface, I would still have to find that this likely occurred due to the properties of unsealed concrete and the exposed aggregate floor finishes. I find that, in such a case, it would not be a reasonable expectation that the tenant could keep the concrete or aggregate floors clean, nor restore them to the original state, because of the porosity and absorbent qualities of these surfaces. I find that this fact was supported by both the landlord's contractors and by the building inspection report.

Moreover, I find that the removal of the aggregate and the sealing of the concrete would likely be considered necessary to maintain basic hygiene and the integrity of the suite's interior, even in consideration of expected normal wear and tear in future.

Accordingly, I find that the landlord is not entitled to be compensated for the removal of the flooring, the sealing of the concrete nor the replacement of the flooring. I find that the monetary claim for these repairs has failed to meet element 2 of the test for damages.

Given the above, I find that any delay in re-renting the unit was caused by repairs or renovations completed by the landlord, for which the tenant was not responsible. I find that the landlord's claim for loss of rent for August 2011 must be dismissed.

Accordingly, I find that the landlord is entitled to monetary compensation of $165.00 for patching and painting damaged drywall.

Analysis: Tenant's Claims

With respect to the tenant's claim for the return of double the $750.00 security deposit, I find that a deposit is always held in trust for the tenant and is a credit owed to the tenant.

I find that section 38 of the Act states that, within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either:

- repay the security deposit or pet damage deposit to the tenant with interest **or**
- make an application for dispute resolution claiming against the security deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing that the landlord can keep it to satisfy a liability or obligation of the tenant. I find that the tenant did not give the landlord written permission to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit.

I find that the landlord made an application for damages and against the security deposit on July 15, 2011. Under the Act, a claim for the security deposit is to be made at the end of the tenancy. Therefore, I find as a fact that the landlord had apparently accepted that this tenancy had ended as of July 15, 2011 and I find that the landlord did make the application within the required 15 days after the end of the tenancy.

I also note that the landlord's decision to serve the tenants at their place of employment, instead of the rental unit, confirms that the landlord had accepted that the dispute address was no longer the tenant's place of residence for the purpose of receiving mail.

With respect to the tenant's request for a 100% retro-active rent abatement for the month of July, in the amount of $1,500.00, I find that the tenancy had been accepted by the landlord as having ended mid-month, on July 15, 2011. However, I find that the

tenant had already paid rent for the full month of July. Therefore I find that the tenant is entitled to a partial rent abatement of 50% amounting to $750.00.

With respect to the tenant's claims for compensation for storage costs and reimbursement for a wireless router, I find that these claims do not satisfy the test for damages and must be dismissed. .

Based on the above, I find that the tenant is entitled to total monetary compensation in the amount of $1,500.00 comprised of $750.00 credit for the security deposit refund and a rent abatement of $750.00.

Conclusion

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation of $165.00 for repairs and painting of the drywall damage. Based on the evidence and testimony, I find that the tenant is entitled to total monetary compensation of $1,500.00 for the return of the $750.00 security deposit and $750.00 rent abatement for July 2011.

In setting off these two amounts by deducting the $165.00 owed to the landlord from the $1,500.00 owed to the tenant, I find that $1,335.00 is remaining in favour of the tenant.

I hereby issue a monetary order to the tenant for $1,335.00 to the tenant. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application and the tenant's application are dismissed without leave. Each party is responsible for their own application costs.

This decision is final and binding and 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 20, 2011.

Residential Tenancy Branch