Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:
MNSD, MND, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant filed on September 14, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for double *the remaining* security deposit ($551) - Section 38
2. An Order to recover the filing fee for this application ($50) - Section 72.

The landlord filed on October 06, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows, as amended in the hearing by the landlord:

1. A monetary Order for damages ($2116.69) – Section 67
2. An Order to retain the security - Section 38
3. An Order to recover the filing fee for this application ($50) - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant sworn evidence and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 01, 2010. At the outset of the tenancy the landlord collected a security deposit in the amount of $399.50 - which was subsequently mitigated to $275.50 by an Order of the Director.

The tenant vacated April 15, 2011. The landlord served the tenant with an Order of Possession on April 08, 2011 and waited for the tenant to vacate. The tenant claims they paid the rent to April 15, 2011 to the landlord, on agreement with the landlord (the leasing agent vs. the representative in attendance), and with prior knowledge of the landlord that they would vacate on April 15, 2011. The landlord confirmed that rent was paid to April 15, 2011

The tenant testified they attempted to provide the landlord with a cleaned and presentable rental unit at the end of the tenancy. The tenant submitted they removed belongings from the unit then returned at 18:00 on the same day (April 15, 2011) but they were unable to gain access to the unit. The landlord testified the tenant had to vacate by 1:00 p.m. on that day, and the landlord was unavailable to inspect the suite after 5:00 p.m. The landlord submitted a copy of the move out inspection report – which evidence shows they performed their own inspection on April 15, 2011. The tenant asserted that they were not given opportunity to clean the rental unit and that the landlord did not provide them with an opportunity to perform a move out condition inspection. The landlord does not dispute the tenant's claims in respect to the absence of a mutual condition inspection, and that the tenant was required to vacate by an Order.

The tenant testified they subsequently visited the landlord's office on April 18, 2011, provided the landlord with their forwarding address and were given a copy of the landlord's condition inspection. The landlord did not dispute the tenant was given a copy on April 18, 2011. The tenant provided the copy of the inspection form they received. The landlord provided their file copy. The two submissions differ in their contents respecting the Tenant's Forwarding Address section. The tenant's copy includes it – the landlord's does not. The tenant was subsequently sent a letter by a debt collection agent in respect to the landlord's monetary claim for deficiencies they noted on the landlord's inspection on April 15, 2011. The tenant seeks the return of their security deposit and the filing fee.

The landlord claims the tenant caused damage to the rental unit during the nine (9) months of the tenancy, to the extent that the landlord determined to replace carpeting due to excess staining and apparent cigarette burns, and had to replace vinyl flooring due to staining. The tenant does not dispute the tenant's were smokers. They testified the carpeting was new since early 2010. The move in inspection report indicates the carpeting and flooring were not "new" at the outset of this tenancy, and were compromised by some deficiencies. The landlord claims they also had to remove an abundance of items and "garbage" left by the tenant, as well as repaint the rental unit

due to holes and scratches. The landlord testified the walls were painted January 2009, and were described as "good" at the outset of this tenancy. The landlord claims that the tenant did not return keys and they had to expend $90 for re-keying – which the tenant does not dispute. The landlord provided invoices for the claimed remediation of the unit, as well as for garbage removal. The landlord's claim is as follows:

Flooring (carpeting and vinyl flooring)	$1531.69
Painting	$305.00
Re-keying	$90.00
Filing fee	$50.00
Monetary claim by landlord total	$2166.69

Analysis

On the preponderance of the evidence submitted and the sworn testimony of the parties, I find as follows:

Tenant's claim

I find that the landlord accepted rent to April 15, 2011 and being aware the tenancy would end on that date the landlord had opportunity to arrange for a mutual condition inspection of the rental unit. There is no evidence advanced that the landlord provided the tenant with notice or offer of an inspection as required by Section 35(2) of the Act. Section 36 goes on to state that in such an event, the landlord's right to make a claim for the deposit is extinguished.

I find that the landlord did not account for how they knew where to send the tenant their monetary claims via the collection agency, after the tenancy ended. On the balance of probabilities, I prefer the tenant's account that the landlord was provided the forwarding address on April 18, 2011.

As a result of the foregoing I find the Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the amount of the security deposit. I find that the tenancy ended on April 15, 2011, and that the tenant provided (their) forwarding address on April 18, 2011. I further find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, I find that the tenant has established a claim for the security deposit of $275.50 and double that amount for a total of **$551**. The tenant is also entitled to recover the $50 filing fee for this application.

Landlord's claim

If a claim is made by the landlord for damages to property, the normal measure of damage is the cost of repairs (with some allowance for loss of rent or loss of occupation during the repair), or replacement (less depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable, and the landlord is required to mitigate their costs accordingly. I must further be emphasized that the landlord must provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear, and are the result of the conduct or neglect of the tenant.

I find the landlord's evidence respecting the condition of the carpeting and the flooring in the unit clearly depicts both as unclean and subjected to wear and tear. I find their evidence of the condition move in inspection report identifies that the carpeting and flooring contained "chew holes", "nicks" and "staining", but not burns. On the balance of probabilities, I accept the carpeting had cigarette burns. I accept the landlord's claim for replacement of carpeting, and I adjust their claim for carpeting in account of the age, reasonable wear and tear, and the condition of the carpeting at the outset of the tenancy. I grant the landlord **$500** for carpeting, without leave to reapply. I find that the landlord has not provided evidence to establish that the balance of the flooring significantly differed from its condition at the tenancy outset to justify damage beyond reasonable wear and tear.

I find that the tenant was required to vacate the rental unit by 1:00 p.m. **Section 37** of the Act states as follows:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find the tenant did not vacate the unit as required on April 15, 2011 and left the unit unclean. As a result, I grant the landlord **$190** for removal of garbage at the end of the tenancy. In accordance with the undisputed testimony in this matter, I grant the landlord **$90** for costs for re-keying.

I find that the landlord has not provided sufficient evidence to establish that the walls of the rental unit were deficient beyond reasonable wear and tear or that they mitigated their claim in respect to the age of the paint, given painting was conducted in early 2009. As a result, **I dismiss** the landlord's claim for painting, without leave to reapply.

The landlord is further entitled to recover costs of $50 for filing this application. As both parties are entitled to their filing fees, these fees cancel out one another. Therefore,

Calculation for Monetary Order

Flooring (carpeting) to landlord	$500.00
Re-keying costs to landlord	$90.00
Double security deposit to tenant	-$551.00
Total Monetary Award for landlord	**$229.00**

Conclusion

I Order that the landlord retain the remaining security deposit of $275.50 in partial satisfaction of their claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **$229**. If necessary, this order may be filed in the Small Claims 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: November 30, 2011

Residential Tenancy Branch