Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site, or property, to keep the security and or pet deposit and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof to establish he suffered a loss as a result of damage caused to the rental unit during the tenancy?
2. Has the Landlord suffered a loss due to damage caused to the rental unit by the Tenant's pet?
3. Has the Landlord extinguished his right to retain the security and/or pet deposits?

Background and Evidence

At the outset of the hearing the Tenant affirmed she did not receive the Landlord's evidence until February 1, 2012. She also advised that she had personally delivered her evidence to the *Residential Tenancy Branch* January 30, 2012 and had sent the Landlord's copy via priority mail. At the time of the hearing the Tenant's evidence had not yet been matched to the file.

The Landlord affirmed he received the Tenant's evidence February 1, 2012 and that he did not submit his evidence to the *Residential Tenancy Branch* until February 1, 2012, via fax.

The parties agreed the Tenant began to occupy the rental unit sometime in August 2007. Rent was payable on the first of each month in the amount of $1,700.00 and on approximately August 13, 2007 the Tenant paid $1,700.00 as deposits or as the Tenant understood it to be called “last month’s rent”, as noted on her cheque. The tenancy ended on July 31, 2011. No move in inspection report was completed and although a move out walk through was conducted on July 31, 2012, no move out inspection report form was completed and signed by both parties. Instead, on August 2, 2012, the Landlord wrote the Tenant a letter outlining what he found to be deficiencies. The Tenant provided the Landlord her forwarding address during the move out walk through, for the return of her deposits.

The Landlord stated this was a verbal tenancy agreement with no pets allowed while the Tenant argued she recalls signing a tenancy agreement.

The Landlord affirmed he was seeking monetary compensation for damages to the unit as the Tenant had left the unit unclean, missing light bulbs, with damage to the walls, she had installed dimmer light switches and a mantel above the fire place, and had damaged the toilet seat. As a result he is claiming the following:

A)$400.00 for painting and patching the walls – The Landlord stated the rental unit was completely painted prior to the onset of the tenancy in 2007 and when the Tenant moved out she left hooks in the walls, the mantel above the fireplace, and damage to the ledge by window at the sink. He referenced the painting invoice provided in his evidence which totalled $1,097.60 for the work performed on approximately August 1st or 2nd, 2011. He had requested the painter separate the costs for patching and sanding which is the $400.00 he is claiming.

The Tenant refused to accept responsibility for these costs and advised the unit was left in pristine condition. She confirms she installed a mantel and two dimmer switches without the Landlord’s permission and that these were improvements to the unit and were permanent fixtures which she left in the unit when she moved out. The hooks were actually installed by the Landlord, not her and there were only minor nail holes in the walls from pictures, which she finds to be normal wear and tear.

B) $95.20 to remove cat odours in the rental unit – The Landlord stated the Tenant had a cat and a dog in the rental unit and when his new tenant(s) occupied the unit they complained of a foul cat odour. He references the receipt he provided in his evidence which is dated August 24, 2011 which proves he had to have enzymes and deodorizers used on the unit.

The Tenant did not agree with this charge and argued that they did not have a dog; rather she was only looking after a friend's dog for a short period of time. She confirmed they had a cat and argued that without being given a copy of the tenancy agreement there was no way for her to know for certain if they were allowed pets or not.

C) $365.97 for the cost to replace bulbs, replace dimmer switches, replace toilet seat, and repair blinds as needed. The Landlord reference an invoice provided in his evidence and confirmed that this invoice was generated by him under his own company name. He states he had one of his staff members complete the work on approximately August 3, 2011.

The Tenant disagrees with all of the items being claimed. She argued the toilet seat was marked from the beginning of the tenancy and was not damaged during her tenancy. She confirmed, as stated earlier that she changed two switches to dimmer switches, which she deemed an upgrade and noted they were left installed when she moved out. The blinds were of poor quality from the outset of the tenancy and fell down all the time, which she could not prevent. They were not in pristine condition at the beginning of the tenancy and they continued to deteriorate from normal wear and tear because of the poor quality. She stated that she had provided pictures of the unit in her evidence which were proof of how she left the unit and was concerned that these photos had not made it to the file in time for the hearing.

D) $116.55 To have the mail box rekeyed. The Landlord is seeking to recover the cost for when he had the mail box rekeyed after the Tenant called to say she lost the mail box key. The work was performed around February 21, 2008 as supported by the invoice in his evidence.

The Tenant agreed that she had lost the one and only mailbox key that was provided to her. However, she argued that at no time did the Landlord tell her she would have to pay for this cost. She argued that had she known she would be responsible for the cost she would have chosen a much less expensive lock smith or alternate route to have the lock changed.

E) $100.00 for having the unit cleaned. The Landlord states the unit required additional cleaning before his new tenant could occupy the unit. He believes the work was performed August 2, 2011 but paid cash so did not have a receipt.

The Tenant argued she had the unit professionally cleaned a few weeks prior to the end of her tenancy so it was presentable for the Landlord to show the unit to prospective tenants. She then had assistance in cleaning the unit at the end of her tenancy.

In closing the Tenant stated the Landlord agreed to return her deposit(s) and that is why she provided him with her forwarding address. She was very concerned that I may not be considering her evidence.

The Landlord reiterated that he did conduct a walk through move out inspection and confirmed he did not complete the required form. He confirmed that he personally completed the invoice for $365.97 generated from his company.

Analysis

The Tenant's evidence which included 26 pages of documents and 17 photos, were received to file February 9, 2012 and were included in this decision.

Eleven pages were received February 1, 2012, by fax from the Landlord as evidence. Three of the pages were not legible and appear to be photos, while the remaining documents were legible. The documents, which were invoices to which the Landlord provided testimony of during the hearing, were considered in my decision, pursuant to Rule # 11.5 of the *Residential Tenancy Branch Rules of Procedure.*

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. 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. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37.*

Part 3 Section 21 of the *Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the

inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the absence of a move-in or a move-out inspection report form and in the absence of photographic evidence from the Landlord, I accept the Tenant's photographic evidence taken July 31, 2011, as evidence of the condition of the rental unit at the end of the tenancy.

The Landlord is seeking $400.00 to patch and sand the walls. He confirmed he requested the painter to separate this amount out from the total invoice. The evidence supports the unit was painted in approximately August 2007 and the tenancy lasted four years up until the end of July 2011.

The *Residential Tenancy Policy Guideline* #1 provides that where a tenant follows the landlord's instructions for hanging and removing pictures/mirrors/hooks, it is not considered damage and the tenant is not responsible for filling the holes or for the cost of filling the holes. The *Residential Tenancy Policy Guideline* #37 indicates the normal useful life of interior paint is four years.

In the absence of proof the fireplace mantel was removed or in the absence of proof the Tenant was provided written instructions as to how she was to hang up pictures, I find the Landlord has provided insufficient evidence to support damages, above normal wear and tear, were caused to the walls of the rental unit. Accordingly I dismiss the Landlord's claim of $400.00.

The evidence supports the Landlord was required to pay $95.20 to have the rental unit treated to remove pet smells. The Tenant confirmed she had a cat inside the rental unit. Section 37 (2)(a) of the Act provides that when a tenant vacates a rental unit the tenant must ensure the unit is reasonable clean; which would include free from pet odours.

It is not unusual for tenants who reside with pets to grow accustomed to their pet's odour and not notice when an odour remains after they remove the pet. Therefore, I find the Landlord has met the burden of proof to establish he suffered a loss when having the unit treated for pet smells. Accordingly I award the Landlord **$95.20.**

The Landlord provided a self-generated invoice in the amount of $365.97 to claim for materials and labour to repair the rental unit. In the absence of receipts to support the actual dates and amounts paid to acquire the materials being claimed on this invoice I find the invoice does not meet the burden of proof, as noted above, to establish the actual value of the loss being claimed. Furthermore, in the absence of a move in and

move out inspection report I find there is insufficient evidence to support the work was required as a result of damage during this Tenant's tenancy or that is was actually completed. Therefore I dismiss the Landlord's claim of $365.97.

The evidence supports the Landlord paid $116.55 to have the mail box rekeyed in 2008. There is no evidence before me to support the Landlord made any effort to collect this amount from the Tenant, three years prior to the end of the tenancy. Conversely there is evidence from the Tenant to support she was never told this cost would be her responsibility. As per the aforementioned I find the Landlord failed to mitigate this loss and failed to inform the Tenant that this would be her responsibility. Accordingly, I dismiss the Landlord's claim of $116.55.

The Landlord claims $100.00 for costs to clean the unit with no supporting evidence. The Tenant provided opposing evidence which supports she had the unit professionally cleaned just prior to the end of her tenancy along with photographs of the unit on the last day of her tenancy. After considering the aforementioned, I find the Landlord has not met the burden of proof, as listed above, and I dismiss his claim for $100.00 for cleaning.

The Landlord has partially been successful with his application; therefore I award partial recovery of the filing fee in the amount of $25.00.

Section 24 of the Act provides that if a landlord fails to complete a move in inspection report then the right of the landlord to claim against the security or pet damage deposit is extinguished. However, this does not preclude offsetting the deposits against a monetary award.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and/or pet deposit plus interest as follows:

Removal of pet smells	$ 95.20
Filing Fee	25.00
SUBTOTAL	$ 120.20
LESS: Deposits $1,700.00.00 + Interest $35.43	-$1,735.43
Offset amount due to the Tenant	**$1,615.23**

Conclusion

The Landlord is HEREBY ORDERED to return the offset balance amount of $1,615.23 to the Tenant forthwith.

The Tenant's decision will be accompanied by a Monetary Order in the amount of **$1,615.23**. This Order is legally binding and must be served upon the Landlord.

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: February 10, 2012.

Residential Tenancy Branch