Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged service and receipt of the hearing documents and evidence submitted by the other. Each party gave affirmed testimony during the hearing and were 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. Is the Landlord entitled to a Monetary Order?
2. If so, will the Landlord be entitled to keep the security deposit as partial satisfaction of his monetary award?

Background and Evidence

The parties agreed that the female Tenant entered into a fixed term written tenancy agreement with the Landlord and the Tenant's adult son was to be the sole occupant of the rental unit. The tenancy began on February 15, 2011 and ended February 29, 2012. Rent was payable on the first of each month in the amount of $1,750.00 and on January 12, 2011 a payment of $875.00 was given to the Landlord as the security deposit. A move-in condition inspection report was completed on February 14, 2011 with both parties signing and agreeing to the condition of the unit. On February 29, 2012 the move-out inspection was conducted however the meeting became contentious at which time the Tenant and her spouse left without completing or signing the condition inspection document.

The Landlord requested that the Tenant's photos which were provided on a c.d., not be considered as evidence as the Tenant did not provide him with a manner in which to view the CD. He understood that he could not provide his evidence in this manner without providing a method of view them and so he was faced with costs to have his photos developed. He confirmed having a laptop type computer and advised that it does not have a CD drive so he could not view the photos.

The Tenant argued that her evidence should be accepted as the Landlord would have access to a computer at his work if he wanted to view the photos. If not accepted she would like to have the opportunity to provide the photos in print format.

During the Landlord's testimony he made reference to his evidence which included, among other things, photographs which were taken February 29, 2012, and copies of: invoices; his written submission; a letter from his new tenant dated March 26, 2012; the Tenant's forwarding address; the move-in condition inspection report; and a letter from the appliance repair company.

The Landlord affirmed the Tenant and/or her occupant son caused damage to the unit so he is seeking to recover the following amounts to repair the damages:

- $281.65 for 5 hours of handyman wages and supplies to repair the hinges on the kitchen cupboard door, realign the bi-fold door that was replaced by the Tenant and not installed properly; and to re-patch a hole that was in the master bedroom and not patched properly;
- $550.00 to repaint every wall in the unit because the Tenant had patched all the holes and marks in the walls and then painted over them with a different color of paint that did not match the wall color, which is supported by the receipt from the painters and the photographs;
- $11.19 ($9.99 plus tax) for stain remover that was purchased to remove the stain on the carpet in the master bedroom which appeared to be red wine;
- $73.07 to cover the cost of a new vacuum that the Landlord states he had to purchase to clean the rental unit with. He alleged that the unit was not properly vacuumed and he has a built in vacuum at his home so had to purchase a new vacuum to clean the rental unit prior to his new tenant taking possession;
- $117.54 to cover the cost he had to pay for restocking and trip charges by the appliance repair company as supported by their invoice and letter which was dated April 3, 2012 outlining the chronological events;

- $134.40 for the cost to re-key the rental unit at 11:00 p.m. on February 29, 2012. The Landlord said he felt the need to have the unit re-keyed that day because of how upset the Tenant was when she left the rental unit during the inspection. He feared that because both key fobs were not returned he needed to rekey the lock on the rental unit door to prevent them from gaining access and causing damage.

The Tenant denied responsibility for most of the items being claimed by the Landlord. She affirmed that her spouse was present during the move in and move out inspections and he too provided testimony to support that they left the unit in better condition than it was at the beginning of the tenancy.

The Tenant referenced her evidence during her testimony which included: her written statement; a list of her photos on the CD which were taken on February 14, 2011(the day of the inspection) and on February 20, 2011 after her son had moved into the unit; text messages; the tenancy agreement; the move in condition inspection report; and her consumer credit profile. She advised that it took several requests on her part before the Landlord would agree to conduct the move-in inspection.

The Tenant confirms they replaced the bi-fold door and argued that the original door was broken at the beginning of the tenancy. Both she and her spouse confirmed their new door needed some minor adjustments and for the bottom track to be installed and they should not have to pay for that. There was a spring missing from the hinge on the cupboard door which was missing from the start of the tenancy. The hinge was there and just need a spring. They patched the hole in the bedroom the best they could so they should not have to pay to have it patched again.

The Tenant advised her photos prove the walls in the rental unit had numerous scratches and gouge marks at the start of the tenancy which were simply painted and not filled by the painters at the beginning of the tenancy. She disputes that the Landlord paid $550.00 to have the unit painted when she had found a painter to do the same work for $240.00 at the beginning of the tenancy. This is supported by a text message she sent and provided in evidence. They filled and sanded all the holes and painted them. Her spouse testified that they took a paint sample to the store and the clerk was surprised they were able to match the color so closely. It was shiny when wet but it was the same color so the Landlord's photos are misleading. They believe this was normal wear and tear because they patched and painted the damaged areas.

They agree there was a stain left on the carpet in the master bedroom however they do not agree that it was red wine. They believe it was dye off of a red comforter.

The Tenant stated they should not have to pay for the Landlord to purchase a new vacuum because they vacuumed the entire carpet. The spouse pointed to the Landlord's photos which show how clean the carpet was.

The Tenant's spouse confirmed that the appliance repair technicians were instructed to contact him to make the appointments to gain entry into the unit because this would upset the Tenant's son if they attempted to contact him directly. He would schedule the appointment and then inform his son when they would be expected. If they arrived late it would upset their son and he would refuse them access or leave. They were told the repair was not a necessity and therefore could be put off so they agreed to pay the restocking fee for the part which they were told was going to be $32.00 and not $117.54 which is the amount being claimed.

In closing both parties agreed the relationship became acrimonious during the move out inspection. The Tenant confirmed that one key fob was not returned to the Landlord as it had been found damaged after a break in occurred in the unit and that she did not explain that to the Landlord; however they did return all of the keys and should not have to pay for the unit to be rekeyed as the lost fob only allowed access to the building and not the rental unit.

The Landlord stated the Tenant and occupant had the keys to the unit by February 1, 2011 and they were allowed entry before the start of the tenancy, after it was painted. He noted that his wife was also present during the move out inspection. He did not hire the painting company referred to in the Tenant's text message because it was related to a coupon which he did not follow through on. He confirmed the same company painted the unit at the beginning and end of the tenancy for the exact same amount of $550.00.

Analysis

The *Residential Tenancy Branch Rules of Procedure #11.8* speaks to how audiotape and videotape evidence may be considered however there a rule pertaining to CD and DVD evidence has not yet been established. There is however a notation at the end of Rule # 11.8 which stipulates that the Rules of Procedure will be updated to reflect CD/DVD technology ***when*** RTB (*Residential Tenancy Branch)* **is able to accept and use those formats** [my emphasis added].

Based on the aforementioned, I have not considered the Tenant's photographs which were submitted on a CD; however I did consider all other documentary evidence and testimony that was before me.

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 on the date of the inspection.

As per the aforementioned, I declined the Tenant's request to submit printed photographs after the hearing, in accordance with the *Residential Tenancy Branch Rules of Procedure # 11.5,* because I find these photos would hold no evidentiary weight as to the condition of the rental unit at the beginning of the tenancy as the Tenant advised they were taken on February 14, 2011 and February 20, 2011, **after** the move in condition inspection report was completed and after the Tenant's son had moved into the unit. Accordingly, I accept the move-in condition inspection report, which is signed by both parties, to be evidence of the state of repair and condition of the rental unit on the date of the inspection, pursuant to section 21 of the Regulation, as noted above.

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.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides 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.

Based on the aforementioned I find the Tenant has attempted to repair some of the damage however some of her attempts, such as repairing the hole in the wall, touch up painting and partial installation of the bi-fold door, has left the unit requiring additional repairs. I find this to be a breach of sections 32(3) and 37(2) of the Act, as the unit was left with some damage at the end of the tenancy.

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.*

After careful consideration of the aforementioned, I accept the move-in condition report indicates the condition of the unit at the beginning of the tenancy and the Landlord's photographs prove the condition at the end. Therefore on a balance of probabilities I find the Landlord has met the burden of proof for damages in the amount of **$741.18,** for the following:

- $281.65 for handyman wages and supplies – the Tenant acknowledged the following: the cupboard door required repair and the bi-fold door installed by the Tenant's needed adjustment and the floor track needed installed
- $412.50 to repaint the rental unit required to cover the mis-matched paint – this amount is based on the depreciated value of the interior paint which has the normal useful life of four years
- $11.19 ($9.99 plus tax) for carpet stain remover as the Tenant acknowledges the stain; and
- $35.84 for the restocking charge for the dishwasher part as $32.00 plus tax as acknowledged by the Tenant's spouse as being the restocking fee that was agreed to. I did not allow the full amount claimed by the Landlord as I found there to be insufficient evidence to prove the Tenant, her spouse or the occupant knew that the cost would be $117.54 if the dishwasher repair was not completed.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove the need to have the locks changed and for the purchase of a vacuum. I accept the Tenant's argument that there was no need to have the locks changed or for the Landlord to have to purchase a vacuum as the Tenant's spouse vacuumed the unit at the end of the tenancy.

Based on the aforementioned, I find there to be insufficient evidence to prove the test for damage or loss for the Landlord's claim for $134.40 for the cost to re-key the rental unit and $73.07 for the purchase of a vacuum. Accordingly these claims are dismissed.

The Landlord has been partially successful with his application; therefore I award recovery of their filing fee in the amount of **$50.00.**

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 deposit plus interest as follows:

Repairs, painting, and materials	$ 741.18
Filing Fee	$ 50.00
SUBTOTAL	**$ 791.18**
LESS: Security Deposit $875.00 + Interest 0.00	- 875.00
Offset amount due to the TENANT	**$ 83.82**

The Landlord is ordered to return the balance of the security deposit in the amount of **$83.82** to the Tenant forthwith.

Conclusion

The Tenant will be issued a Monetary Order in the amount of **$83.82.** 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: May 29, 2012.

Residential Tenancy Branch