Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties agreed that this tenancy ended on the basis of a mutual agreement to end tenancy that both parties signed on March 1, 2012. According to this agreement, the tenancy was to end by March 31, 2012. This agreement was entered into written evidence by the landlord. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on April 20, 2012. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for loss and damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, invoices, receipts, estimates, miscellaneous letters and emails, and the testimony of the parties and witness not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

This one-year fixed term tenancy commenced on June 1, 2011 and was scheduled to end on May 31, 2012. Monthly rent was set at $1,600.00, payable in advance on the first of each month. The landlord continues to hold the tenant's $800.00 security deposit paid on May 3, 2011. The parties agreed that a joint move-in condition inspection was conducted on June 1, 2011. There was conflicting evidence with respect to the circumstances surrounding the move-out condition inspection.

The landlord maintained that the tenant suggested March 29, 2012 as the date for the joint move-out condition inspection. When the landlord's witness who was representing him as his agent during the move-out condition inspection process attended, the witness claimed that the tenant advised that she was not yet willing to yield her keys and garage remote openers. Consequently, the landlord's witness refused to conduct the move-out condition inspection without obtaining possession of the rental unit immediately afterwards. The landlord and his witness gave evidence that the tenant refused to identify an alternate time to conduct the final move-out condition inspection. The landlord's witness testified that she looked after the move-out condition inspection, rescheduled for April 2, 2012. She said that she could not conduct a proper inspection because the tenant refused to go through the premises with her. She said that the tenant became very agitated when she identified the damage that the landlord's witness noticed during her inspection of the premises. She said that whenever she called the tenant's attention to anything that was damaged, the tenant refused to look at the damage. She said that she found this to be an exasperating experience.

The tenant testified that the landlord's witness/agent refused to conduct the move-out condition inspection as originally scheduled on March 29, 2012. At that time, the tenant mistakenly asserted that only the landlord could conduct the joint move-out condition inspection because he had conducted the original move-in condition inspection. The tenant said that when she attended at the rental unit for what was scheduled as a joint move-out condition inspection on April 2, 2012, the landlord's witness/agent had already conducted her inspection using the landlord's keys to her rental unit. She said that by then there was clear evidence that workers had already entered the premises and had been conducting work which had caused sanding, dirty footprints on carpets, taping of walls, etc., which had not been present when she vacated the rental unit. The tenant gave undisputed sworn testimony that the landlord's witness/agent had already completed all portions of the move-out condition inspection report. She said that the landlord's witness/agent wanted her to walk through the premises to confirm that her report accurately reflected the damage she had identified during the landlord's witnesses' own inspection of the premises that occurred before the tenant arrived.

When confronted with the tenant's testimony, the landlord's witness admitted that she conducted the move-out condition inspection herself before the tenant arrived. She also confirmed the tenant's claim that she had already filled out the condition inspection report beforehand, as she thought that this would "save time."

A copy of the landlord's move-in and move-out condition inspection reports was entered into written evidence by the landlord. The tenant noted under her signature on the "joint" move-out condition inspection report handed to her by the landlord's witness/agent that she disagreed that the report fairly represented he condition of the rental unit "because the landlord did not show up for 1st inspection and he has been in house since then & has done damage to it."

The landlord's application for a monetary award of $2,068.79 included:

Item	**Amount**
Additional Occupants 9 months @ $100.00 per month	$900.00
Liquidated Damages	300.00
Paint & Repair Walls	109.94
Repair Carpet	170.24
Repair Tap	84.00
Light Bulbs (10 @$16.59 + $20.00 Labour)	36.59
Repair Garage Door	200.00
Cleaning (4 hrs @ $20.00)	80.00
Lawn Cut	20.00
Missing Insulation	64.79
2 Days Rent (April 1 & 2)	103.23
Total Monetary Award Requested	**$2,068.79**

The landlord also applied to recover his $50.00 filing fee for his application.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can

verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

At the hearing, the landlord testified that the tenant agreed at Section 6 of the Residential Tenancy Agreement (the Agreement) to be charged $100.00 per month for each additional tenant or occupant not named in that Agreement as a tenant or occupant. The landlord entered written evidence asserting that the tenant's male friend moved into the rental unit a week after the start of her tenancy and was there continuously for the nine months of her tenancy. The tenant denied that this male friend moved into the rental unit with her, maintaining that he kept a separate address throughout this tenancy. The landlord provided no written or oral testimony that he raised this issue with the tenant during the course of this tenancy. Under these circumstances, I find that the landlord's failure to raise this as an issue during the tenancy and acceptance of the tenant's monthly rental without requiring an additional $100.00 for the presence of another occupant in the rental unit prevents the landlord from retroactively claiming an additional $100.00 per month from the tenant after this tenancy ended. For these reasons, I dismiss the landlord's application for a monetary award for an additional occupant without leave to reapply.

The landlord based his application for a monetary award for liquidated damages on the following provision in Section 5 of the Agreement:

> *…If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of $300.00 as liquidated damages and not as a penalty…*

As noted at the hearing, I find that the tenancy did not end on the basis of the tenant's end to this fixed term tenancy or a breach of the *Act* or a material term of the Agreement. Rather, the tenancy ended on the basis of a signed mutual agreement to end this tenancy by both parties. While the tenant may have initiated the discussion that led to the mutual end to tenancy, the landlord agreed to this legal way to end this tenancy prior to the expiration of the fixed term tenancy Agreement. As such, I dismiss the landlord's application for a monetary award for liquidated damages without leave to reapply. I do so as I find that the tenancy did not end for any of the reasons set out in Section 5 of the Agreement that would entitle the landlord to obtain liquidated damages. Residential Tenancy Branch Policy Guideline #40 establishes guidelines to assist Dispute Resolution Officers in determining the useful life of various items in a tenancy.

Interior painting is estimated to have a useful life of 4 years (i.e., 48 months). In this case, the landlord testified that this rental property was built in the fall of 2008. Using October 2008 as the date of the original interior paint job, this would result in the April 2012 painting being required 42 months into this 48 month cycle for repainting. On this basis, I find that the landlord is entitled to a monetary award for the remaining 6/48 of his $109.94 invoiced costs for paint and labour for repainting. This results in a monetary award to the landlord of $13.74 (i.e., $109.94 x 6/48 = $13.74).

The landlord's claim for carpet repairs resulted from his need to replace a section of carpet that he maintained was heavily stained even after professional cleaning. He submitted an invoice for this section of carpet that had to be removed and replaced. The landlord entered into written evidence a copy of an April 11, 2012 invoice of $40.00 for carpet to repair stairs and $112.00 for labour (plus tax). This invoice included a note that the "carpet seems to have been melted." The move-out condition inspection report included a comment that "carpet damaged on two stairs on main floor to upstairs." There was no such note on the joint move-in condition inspection report.

The tenant entered into written evidence an invoice from the professional carpet cleaning company she hired to steam clean the carpets and stairs on March 26, 2012. This invoice (#1545) included the comment from the steam cleaning company "No heavy staining observed on carpets." This information varied from the original of an earlier invoice entered into written evidence by the landlord from the same company issued on the same date (Invoice # 0321). This invoice contained no comment regarding the staining on the carpets. When asked about why there are two different invoices entered into written evidence for the same carpet cleaning, the tenant explained that she had given the landlord the original of her invoice and had to return to the carpet cleaning company to obtain another invoice. She said that she asked at that time for the carpet cleaning company to comment on whether heavy staining was evident when they worked on the carpet in her rental unit.

Based on a balance of probabilities, I find it more likely than not that damage arose during this tenancy to a section of carpet on two of the steps on the stairs which required the landlord to incur costs to repair this damage. In coming to this determination, I attach more weight to the landlord's written evidence in the form of the move-out condition inspection report and the note from the company that replaced this section of carpet, as opposed to the contradictory evidence with respect to two separate invoices for the same work commissioned by the tenant.
The useful life of interior carpet according to Residential Policy Branch Policy Guideline #40 is estimated at 10 years (i.e, 120 months). As this portion of carpet was 42 months

old at the time of its replacement, I find that the landlord is entitled to a monetary award of $110.66 (i.e., $170.24 x 78/120 = $ 110.66).

After reviewing the photographic, written and oral evidence regarding the landlord's claim for damage to repair the tap, I find that the landlord is entitled to a monetary award for repairs to the tap in the upstairs bathroom. Although the tenant claimed the tap needed repair from the beginning of this tenancy, there is no mention of a problem in the initial move-in condition inspection report. As an element of the landlord's claim likely resulted from normal wear and tear, I allow 80% of the landlord's claim for this item, resulting in a monetary award of $67.20 (i.e., $84.00 x 80% = 67.20).

The tenant did not dispute the landlord's claim that she did not replace light bulbs that burned out during her tenancy. She did question the landlord's claim that he was entitled to a higher labour charge than his claim for the actual replacement light bulbs. I allow the landlord a monetary award of $16.59 for replacement of light bulbs and $5.00 for labour to replace them, a reasonable allowance for changing light bulbs.

The landlord's claim for repair of the garage door resulted from his assertion that he observed that the tenant's male friend was parking his Jeep in the garage which was a very tight fit for this garage. He testified that there was a dent in the garage door which required a strip to be replaced and installed. He entered into written evidence reference to this item in the move-out condition inspection report, a reference that was not present in the joint move-in condition inspection report. He also entered into written evidence a copy of the $207.90 bill he incurred from a garage door replacement installer.

Based on a balance of probabilities, I find that the landlord is entitled to recover losses he incurred to repair damage to the garage door that arose during this tenancy. The useful life of a garage door as set out in Policy Guideline #40 is 10 years (i.e., 120 months). As such, I find that the landlord is entitled to a monetary award of $135.15 (i.e., $207.90 x 78/120 = $135.15) for his losses incurred to repair the garage door.

The tenant claimed that she left the rental unit in very good and clean condition when she left the rental unit at the end of March 2012. She maintained that any cleaning that was subsequently required by the time of the April 2, 2012 move out inspection resulted from the landlord's decision to access the premises and commence the process of hiring workers to start preparing for repairs. The landlord did not deny that at least one worker entered the premises prior to the move-out condition inspection. He did not dispute the tenant's evidence with respect to specific signs she detected that the landlord, his agent or his workers had commenced the process of preparing for construction activity before she yielded the keys to the landlord's witness/agent. Under

these circumstances, I limit the landlord's entitlement to cleaning to one hour of cleaning at a rate of $20.00 per hour.

I heard conflicting evidence from the parties with respect to the landlord's claim that he was entitled to a monetary award of $20.00 for the tenant's failure to cut the lawn before she ended her tenancy. There was no dispute that the tenant was responsible for mowing the lawn during this tenancy. The landlord estimated that the lawn was 5 to 6 inches long at the end of this tenancy. The tenant said that she cut the lawn late in the fall and that it was very unlikely that it would have required mowing by the end of March 2012 when she ended her tenancy. Based on the evidence before me, I find it more likely than not that the landlord is not entitled to a monetary award for lawn cutting when this tenancy ended. I find it unlikely that grass would have grown to the extent that the landlord claimed between the last autumn mowing and the end of this tenancy.

The landlord maintained that the during this tenancy a section of insulation went missing from the ceiling of part of the basement of the rental property. He entered into written evidence a copy of his $225.57 receipt for replacement of this insulation. This amount was significantly higher than the $64.79 claimed for this item in the landlord's application for a monetary award. The tenant testified that she did not remove any insulation from the rental property and questioned what use she would have put to a batch of used insulation. She also asserted that the reference to this missing insulation was added to the move-out condition inspection report after she signed it.

In considering this portion of the landlord\s application, I find that the tenant has raised a valid question when she asked what useful purpose could be achieved by extracting a piece of used insulation from the ceiling of this basement. I also question the difference between the specific amount originally claimed in this part of the landlord's application and the amount shown on his April t, 2012 invoice. Under these circumstances, I am not convinced that the landlord has demonstrated sufficient entitlement to a monetary award for this item and dismiss his application without leave to reapply.

I find that the tenant's failure to provide the keys and the garage opener to the landlord by March 31, 2012, the mutually agreed end date for this tenancy, led to her overholding in the rental unit until April 2, 2012. However, during that time, the landlord was clearly proceeding to access the rental unit as if he had already been granted vacant possession of the rental unit. This is evidenced by the preliminary work that he was already conducting prior to the move-out inspection and his agent's inspection of the entire premises without the tenant. While the tenant should not have retained the keys and garage door opener after her tenancy was scheduled to end, I do not find that the landlord has demonstrated that her actions resulted in any loss to him. She had

removed her belongings from the rental unit and he did not provide evidence to demonstrate that her actions interfered with any plans he had made for the rental property or increased his costs. Under these circumstances, I dismiss the landlord's application for a monetary award for unpaid rent for April 1 and 2, 2012 without leave to reapply.

As the landlord has only been partially successful in his application, I allow him to recover $25.00 of his filing fee from the tenant. I allow the landlord to retain a portion of the tenant's security deposit to satisfy the monetary award issued in this decision. I order the landlord to return the remainder of the tenant's security deposit forthwith.

Conclusion

I issue a monetary Order in the tenant's favour which allows the landlord to retain a portion of the tenant's security deposit to compensate the landlord for his losses and damage arising out of this tenancy and part of his filing fee for this application.

Item	**Amount**
Paint & Repair Walls	$13.74
Repair Carpet	110.66
Repair Tap	67.20
Light Bulbs (10 @$16.59 + $5.00 Labour)	21.59
Repair Garage Door	135.15
Cleaning	20.00
Missing Insulation	64.79
Less Security Deposit	-800.00
Filing Fee	25.00
Total Monetary Award	**($341.87)**

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the landlord's application for a monetary award without leave to reapply.

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: June 20, 2012

Residential Tenancy Branch