DECISION

Dispute Codes MND, MNDC, MNSD, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Tenant applied on June 5, 2012 for:

1. A Monetary Order for the cost of emergency repairs – Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order for the return of double the security deposit – Section 38 and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 18, 2012 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order to keep all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following are undisputed facts: The tenancy began on November 1, 2011 and ended on April 30, 2012. Rent in the amount of $3,500.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of $1,000.00. No move-in inspection

report was completed or provided to the Tenant. No move-out inspection occurred between the Parties and the Landlord did not fill out an inspection form and provide a copy to the Tenant.

The Tenant states that in February 2012, the Parties agreed to end the tenancy early and that as part of this agreement, the Landlord agreed to pay the Tenant up to $700.00 of the Tenant's moving costs. The Tenant states that an email dated February 20, 2012 records this agreement. The Landlord agrees that they would pay this cost but state that the agreement was conditional upon the Landlord being present at move-out. The Landlord states that these conditions were stated to the Tenant by way of email in April 2012. The Tenant disputes agreement to these conditions. The Tenant states that his moving costs were $840.00. The Landlord did not dispute this amount.

The Tenant states that as the tenancy ended early, the Tenant should be reimbursed the strata move-in fee of $350.00. The Landlord states that the Tenant agreed to this fee in the tenancy agreement and that this is a normal non-refundable fee. Paragraph nine (9) of tenancy agreement provides as follows: "You are responsible for the non-refundable move-in fee of $350.00 payable to the Strata. There is no move-out fee."

The Tenant states that the dishwasher was not working properly since move-in and that in December 2011, the Tenant asked the Landlord to repair the machine but the Landlord refused. The Tenant states that the dishwasher was repaired and that the repairs were paid for by the Tenant. The Tenant provided a copy of the repair bill dated February 21, 2012 noting that a pump was broken. The bill also notes the complaint that the dishwasher problem existed for over 7 months. The Tenant claims compensation for this cost in the amount of $194.97. The Landlord states that at the time the Tenant told them of the dishwasher problem, the Tenant stated that the dishwasher had broken glass inside and that the dishwasher had already been repaired. The Landlord also states that the Tenant did not contact the Landlord prior to having the repairs done.

The Tenant states that he provided his forwarding address to the Landlord on April 25, May 1 and May 3, 2012 and that the Landlord failed to return the deposit. The Landlord states that the Tenant provided his forwarding address to them on May 3, 2012 by way of email and that their application for dispute resolution was filed within the 15 days provided under the Act.

The Landlord states that the unit was new and unoccupied prior to the tenancy and that the Tenant left the unit with damages and claims as follows:

- $1,344.00 for repair of hardwood floors, invoice and photos supplied. The Landlord states that the Tenant left many dents marks caused by a piano and the use of high heel shoes on the hardwood floor requiring the replacement of some pieces of hardwood flooring in the living room, master bedroom and by the kitchen counter;
- $900.00 for painting and repair of walls in the master and second bedroom, invoice and photos supplied;
- $160.00 for the replacement of patio tiles, repair not yet done, no invoice for estimate of replacement cost provided, photos provided;
- $317.80 for repair of damaged patio doorknobs, invoice and photos provided;
- $200.00 for replacement of missing garden hose and holder, not yet replaced, no invoice for estimate of replacement cost provided;
- $1,800.00 for eleven missing plants and pots, not yet replaced, no invoice for estimate of replacement cost. The Landlord states that the pots were ceramic and the plants were mature and included evergreens;
- $250.00 for replacement of the keys and fobs, invoice provided. The Landlord states that the Tenant's lawyer held the keys and fob hostage in return for monies being claimed by the Tenant. An email from the lawyer to the Landlords was provided as evidence.

The Tenant states that the unit was occupied by a previous tenant, a teacher, and that this tenant was in the unit prior to the Tenant for approximately a year. The Tenant states that the unit was in good condition when he left and that only reasonable wear

and tear occurred during the tenancy. The Tenant states that the photos of the flooring do not indicate the location of the marks. The Tenant states that the entire unit had hardwood flooring except the bathrooms.

The Tenant states that the walls were scratched prior to move-in but that two holes in the wall of the second bedroom were caused by the Tenant.

The Tenant states that the patio door handles were a problem from the onset of the tenancy and that the Tenant had to use ties to close the door. The Tenant states that the Landlord was informed of this problem on December 18, 2011 but that nothing was ever done about this. The Landlord denies that the Tenant informed him of any problems with the patio door handles during the tenancy.

The Tenant denies that any items were missing at move-out.

The Tenant states that the Landlord was not stopped from picking up the keys to the unit and that an email was sent to the Landlord on May 1, 2012 informing the Landlord of where to pick up the keys.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the undisputed evidence of the Parties that in February 2012 the Landlord agreed to pay the Tenant up to $700.00 to reimburse the Tenant's moving costs, I find that the Landlord agreed to pay this amount to the Tenant. I find that the later conditions put forward by the Landlord does not affect the original agreement as there is no evidence to support the acceptance of the conditions by the Tenant. Given the undisputed

evidence of the Tenant in relation to the costs of the move, I find that the Tenant has substantiated an entitlement to **$700.00**.

Given the terms of the tenancy agreement that sets out that the move-in fee is non-refundable, and regardless of the date of move-out, I find that the Tenant is not entitled to reimbursement of this fee and I dismiss this part of the Tenant's claim.

Given the invoice in relation to the dishwasher, and noting the date of repair, the problem noted as existing for several months and the repairs undertaken, I find that the Tenant has established on a balance of probabilities that the dishwasher was not functioning during the tenancy. Based on the Landlord's evidence, I further find that the Landlord was informed about this problem and refused to be responsible for the repair. Given these facts, I find that the Tenant has substantiated an entitlement to compensation for the repair cost of **$194.97.**

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24 of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Section 18 of the Residential Tenancy Regulations (the "Regulations") requires that a copy of the inspection report be provided to the Tenant within 7 days after the condition report is completed. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the Landlord's evidence that no move-in inspection was conducted, I find that the Landlord's right to claim against the security deposit is extinguished. I find therefore that the Tenant is entitled to return of the security deposit of **$1,000.00**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the

landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Landlord's acknowledgement of receipt of the Tenant's forwarding address on May 3, 2012 and considering that there is no evidence to corroborate an earlier date of provision of the forwarding address, I find on a balance of probabilities that the forwarding address was provided on May 3, 2012. As the Landlord applied to retain the security deposit on May 18, 2012, I find that the Landlord is within the fifteen (15) days as required by the Act and is not required to pay the Tenant double the security deposit.

Given the lack of estimates or invoices, I find that the Landlord has failed to establish costs in relation to the patio tiles, garden hose and plants. I therefore dismiss these claims.

Given the lack of a move-in inspection and considering that the photos of the floors do not show the extent of the damages claimed, I find that the Landlord has failed to substantiate a claim for the total costs claimed. Given however that the photos do show some damage and considering the evidence of the activities of the Tenant and guests, I find that the Landlord has substantiated that the Tenant caused some damage to the floors. As the photos do not show more than five damaged floor planks, and considering that the Landlord is claiming for the replacement of thirty-five (35) floor planks at a cost of $38.00 per plank, I find that the Landlord is entitled to **$190.00** (5 planks x $38.00).

Given the lack of a move-in report and considering the Tenant's evidence that some damage was pre-existing but that the Tenant did cause holes in one wall, I find that the Landlord has substantiated reasonable compensation of **$150.00** for the repair of the wall with the two holes.

Given the lack of a move-in report and considering the Tenant's evidence that the doors were problematic during the tenancy, I find that the Landlord has failed to establish that

the Tenant caused the damage to the patio door knobs and I dismiss this part of the Landlord's claim.

Although the Tenant states that the Landlord was able to pick up the keys, I note the evidence of the email from the Tenant's lawyer that informs the Landlord that the keys will be provided upon receipt of monies claimed. As a result of this letter, I find that the Landlord has established on a balance of probabilities that they keys to the unit were being withheld at the end of the tenancy and I find that the Landlord is entitled to compensation for the cost of new keys and fobs in the amount of **$250.00**.

As each Party was only partially successful, I decline to award recovery of their filing fees.

The total entitlement of the Tenant is $1,894.97. The total entitlement of the Landlord is $590.00. Setting these amounts against each other leaves **$1,304.97** owing by the Landlord to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$1,304.97.** 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: July 11, 2012.

Residential Tenancy Branch