



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF
 MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the first date and was adjourned for a continuation of testimony. The landlord and tenant both attended the conference call hearing on both dates, gave affirmed testimony and provided evidentiary material in advance of the hearing. The tenant called one witness, and the parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a claim as against the tenant for damage to the unit, site or property?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to recovery of the security deposit or pet damage deposit or double the amount of such deposits?

Background and Evidence

The landlord testified that this month-to-month tenancy began sometime in 2004 and ended on June 30, 2012. Rent in the amount of \$1,325.00 per month was payable in advance on the 1st day of each month. The landlord could not recall whether or not a security deposit was collected from the tenant because records don't show any, but records are only kept for 7 years and this tenancy lasted 8 years.

The landlord further testified that the tenant provided notice on June 17, 2012 to move out of the rental unit on June 30, 2012. The landlord was in Ontario at the time, and at the same time that the tenant provided the notice, the landlord's daughter gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on behalf of the landlord.

The tenant claimed that there was water damage from a roof leak and mould noticed everywhere when the tenant spoke to the landlord's daughter on June 17, 2012. The landlord went through the house with an inspector on June 29, 2012. The inspector went into the attic and found no signs of a water leak except a gutter had drained by the skylight. The leak came from the ceiling in the kitchen. The inspector used a meter and found that the moisture reading was high in the floors. The toilet valve was leaking and the humidity control in the rental unit was turned off.

The flooring in the rental unit was old but the labor to chip out the old subfloor which was glued and stapled was only required due to the water damage caused by the leaking toilet. The 2 bathrooms in the rental unit are back-to-back and the leak spread. The landlord claims \$873.20 for the repair and provided an invoice for underlay and installation to substantiate the claim.

The landlord further testified that laminate flooring was purchased to replace the carpet in the master bedroom. The carpet was 19 years old, but the tenant had a small dog for about 3 months and the smell remaining in the carpet was so strong the landlord had to open windows while in the rental unit during the month of July, 2012. The landlord claims \$374.62 for the new laminate, and provided a copy of an invoice to substantiate that claim.

The landlord further testified that the tenant did not clean the rental unit and provided photographs to illustrate the landlord's claim. The photographs show that the oven has not been cleaned and the carpets had not been vacuumed. Also provided is an invoice from a cleaner dated July 31, 2012 that shows 15 hours of cleaning the oven, oven racks, stove, hood fan, excess grime from window frames, cleaning and vacuuming

floors and carpets, cleaning bathrooms including tubs and surrounds and cleaning cupboards. The invoice separates the hours and cost for each of the items cleaned, and the invoice totals \$375.00. The photographs also show that the grass and yard has not been maintained, and the landlord has provided an invoice in the amount of \$739.20 for power raking, supplying and re-seeding the lawn, and disposal of excess material and debris.

The tenant testified that the landlord collected a security deposit on October 31, 2004 in the amount of \$625.00 which has not been returned to the tenant.

The tenant further testified to attempting to reach the landlord and left messages at the phone number the tenant had requesting the landlord to return the calls. The tenant intended to tell the landlord that rent for the month of June would not be paid because of the mould throughout the rental unit. The landlord never returned the calls.

On June 18, 2012 the landlord's daughter attended at the rental unit and told the tenant that the landlord's phone doesn't work while the landlord was in Ontario. The tenant disagrees that the landlord's daughter served the tenant with a notice to end tenancy for unpaid rent. The tenant showed the landlord's daughter the house, and she agreed that alot of work was required. The landlord's daughter gave the tenant a phone number to call in Ontario, and the tenant called the landlord immediately. The landlord told the tenant that he had lost his phone. The tenant explained that the tenant had been calling and leaving messages and that the tenant could no longer reside in the rental unit. The tenant advised the landlord that June's rent was not paid because of the repairs required and that mould was growing in the walls. The tenant also advised that the tenancy would be ending on June 30, 2012 and the landlord said, "Okay."

The tenant further testified that during the course of the tenancy the landlord procrastinated or refused to maintain the rental unit. Further, the smell on the carpet in the master bedroom is not urine from a dog, but mould and rust. The tenant provided photographs that show copious amounts of mould on ceilings, walls, floors, windows and testified that some of the photographs were taken inside closets of the rental unit. The tenant testified that the landlord wants the tenant to pay for damages that the landlord should have repaired. There was mould in the closets and the entire house was full of mould and damp. The skylights were also leaking.

The landlord had made promises and the tenant provided the landlord with a list of required repairs. The landlord never did put a second coat of paint in the rental unit, and the linoleum in the bathroom was coming apart from the walls. The tenant's son

wasn't able to open the front door and the landlord was told who said it would be repaired. A few days later the tenant found a new knob with keys on the outside steps of the rental unit; the landlord did not install it. Further, gutters were never cleaned during the tenancy; the landlord ignored the tenant as long as rent was paid. It was the tenant who cleaned the siding to keep the rental unit looking nice.

The tenant further testified that the humidity control switch never worked at all during the tenancy.

The tenant did not want to move out of the rental unit due to its location, and the tenant's son is still going to school in that area. The tenant drives an hour every day to prevent the child from moving schools, but moved due to the deteriorating condition of the rental unit and the landlord's un-kept promises to complete repairs.

The tenant also provided photographs of mouldy bedding and a mouldy leather jacket and estimates for their replacement costs in the amount of \$102.56 and \$568.86 including taxes. The tenant also claims the cost of truck rental for moving possessions stating that the move was necessary and caused by the landlord's neglect, and provided a receipt in the amount of \$295.26. The tenant also claims recovery of the cost of developing the photographs to prepare for this hearing in the amount of \$44.27 and recovery of the \$50.00 filing fee for the cost of this application.

The tenant further testified that a previous dispute resolution hearing was conducted by the director, Residential Tenancy Branch between the parties and provided a copy of the resulting Decision. The Decision is dated July 18, 2012 wherein the landlord had applied for an Order of Possession and monetary order for unpaid rent and the landlord was found to have established a monetary order for one month of rent for the month of June, 2012 in the amount of \$1,325.00. The landlord's application for loss of revenue for the following month was dismissed. The tenancy had ended prior to the hearing date and the landlord's application for an Order of Possession was dismissed. The tenant also pointed out that the Decision states that the tenant paid a security deposit at the commencement of the tenancy in the amount of \$625.00. The tenant also testified that the tenant gave the landlord a forwarding address in writing on June 30, 2012.

The tenant's witness testified to being in the rental unit often during the 8 year tenancy and almost every Christmas during that time. The witness has been doing home renovations and framing for the last 25 years and witnessed absolute neglect to the rental unit on the home-owner's part. The witness stated that no one should live in

those conditions and the landlord has created himself a lot of work by not maintaining the rental unit.

The 2 bathrooms in the rental unit are back-to-back. The witness turned off the valve and showed the landlord the leak and the landlord suggested that the witness should repair it.

The windows in the rental unit have a track with holes in it for release of water caused by condensation, but they are plugged due to neglect. The gutters have never been cleaned and there is water behind the poly in the skylights. It can't be painted over and must be repaired properly. It's not something a tenant could have done; the drywall needs replacing. The back stairs are rotted off and unsafe. The witness also walked the landlord through the house and pointed out issues wanting to see how the landlord could leave the rental unit in that condition. The witness did not want the tenant to remain in the rental unit due to its condition and assisted the tenant in finding a new home.

The witness also saw the tenant provide the landlord with a forwarding address in writing on June 30, 2012.

The witness also testified to knowing the tenant throughout their whole lives and knows the tenant to be a clean person.

Analysis

The landlord could not recall whether or not a security deposit was collected from the tenant stating that there is no record of it, but records are destroyed after 7 years, and this tenancy lasted 8 years. The tenant testified to paying a security deposit in the amount of \$625.00 on October 31, 2004. Firstly, I do not accept that a landlord can destroy records regardless of the age of the records when those records involve trust monies. Further, I cannot accept the testimony of the landlord that perhaps the tenant didn't pay one, because the landlord has applied in these proceedings for an order to keep the security deposit. Therefore, I find that the tenant did pay the landlord a security deposit in the amount of \$625.00 and that money is still held in trust on behalf of the tenant.

The *Residential Tenancy Act* requires a landlord to ensure that move-in and move-out condition inspection reports are completed at the beginning and end of a tenancy. If the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the landlord testified that perhaps a move-in condition inspection report was completed, and certainly no move-out condition

inspection report was completed. Therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

The *Act* also requires a landlord to return a security deposit in full or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either within that 15 day period, the landlord must be ordered to repay double the amount of such deposits. In this case, the landlord received the tenant's forwarding address on June 30, 2012 but did not apply for dispute resolution claiming against the security deposit until October 1, 2012, which I find is well beyond the 15 days required under the *Act*. Further, if a landlord's right to claim against the security deposit for damages is extinguished, the landlord is left with only one option, and that is to return the security deposit in full to the tenant. The landlord has not done so, and therefore, I find that the landlord is indebted to the tenant double the amount of the security deposit and interest on the base amount from October 31, 2004.

Although the landlord's right to claim against the security deposit for damages is extinguished under the *Act*, the landlord's right to make a claim for damages is not extinguished. The landlord and the tenant have both applied for damages, and the onus on both parties, in order to establish their respective claims, is to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

The *Act* also specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and at move-out. In the absence of such reports, it is difficult to ascertain what damages the tenant may be liable for.

A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. A landlord's responsibility is to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, and a landlord's responsibility in that regard applies whether or not the tenant knew of a breach by the landlord at the commencement of the tenancy.

I have reviewed the photographs of the rental unit provided by both parties, and I do not accept that the tenant was responsible for any mould inside the rental unit. The landlord testified that the humidity control was left off and the toilet leaked, and I fail to

see that that could have contributed to the amount of mould contained inside the rental unit. I further accept the descriptive testimony of the tenant's witness that repairs were required throughout and that the witness and tenant both notified the landlord and showed the landlord the serious issues. Therefore, I find that the landlord has failed to establish element 2 in the test for damages with respect to replacing carpets or linoleum or laminate.

With respect to the landlord's claim for cleaning the rental unit at the end of the tenancy, I have reviewed the photographs provided by the landlord and I agree that the oven and carpet were not cleaned. I have also reviewed the invoice for cleaning provided by the landlord and I accept that the cleaner cleaned the items contained in that invoice. However, I have no evidence before me to satisfy me as to the condition of the rental unit at the commencement of the tenancy. Neither party provided any evidence of whether or not the tenant had a clean oven or clean carpets and cupboards at the commencement of the tenancy, nor if the tenant cleaned those items at the end of the tenancy, leaving some portions stained or soiled or how much the landlord's cleaner was able to clean off in comparison to the photographs. I do not accept that the tenant can be held responsible for the mould on all windows or in bathrooms as a result of the condition of the rental unit itself.

Further, I do not have any evidence before me to satisfy me as to the condition of the yard of the rental unit at the commencement of the tenancy. The photographs provided by the landlord show a lawn mower in the yard, however, I have heard no evidence from either party of who the lawn mower belongs to, if the tenant owns a lawn mower, or if the lawn mower in the photographs is operable. I find that the landlord has failed to satisfy element 2 in the test for damages.

The landlord's application is hereby dismissed without leave to reapply.

With respect to the tenant's claim for ruined bedding and a ruined leather jacket, I accept that the tenant has satisfied elements 1, 2 and 4 in the test for damages. With respect to the amount of such damage or loss, I am not satisfied, however, that the tenant has provided sufficient evidence of the quality of the ruined bedding or ruined coat. I have reviewed the photographs that show the amount of mould contained on the items, and I find that the tenant has established that it is in fact a leather coat, and I find that the tenant has established a monetary amount of \$200.00 for the two items.

With respect to the tenant's claim for the truck rental, I consider the testimony of the tenant that the tenant did not want to move out of the area and now drives an hour every day to get the tenant's child to the same school. I also consider the testimony of the tenant's witness that he was somewhat instrumental in the tenant's decision to

move simply because of the state of the rental unit and its neglect by the landlord. In simple terms, the tenant lived there for 8 years and did not want to move a child to a different school but had to move because of the landlord's failure to maintain the rental unit. Therefore, I find that the tenant has established the 4-part test for damages and the tenant is entitled to a monetary amount of \$295.26.

The *Residential Tenancy Act* does not provide for recovery of the cost of preparing for a hearing, and the tenant's application for the cost of developing photographs is hereby dismissed.

In summary, I find that the tenant has established a claim as against the landlord in the amount of \$1,250.00 for double the amount of the security deposit; \$22.11 for interest on the deposit, \$200.00 for damaged items; and \$295.26 for the moving truck rental, for a total of \$1,767.37. Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of the application. The landlord's application is hereby dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,817.37.

The landlord's application is hereby dismissed without leave to reapply.

This order is final and binding on the parties and may be enforced.

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 23, 2012.

Residential Tenancy Branch