



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlords and by the tenants. The landlord named in the Landlord's Application for Dispute Resolution has applied 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 tenants for the cost of the application. The details portion of the application specifies damages to the rental unit, and I amend the application to show that the landlord has applied for a monetary order for damage to the unit, site or property in addition to the other relief claimed. The tenants named in the Tenant's Application for Dispute Resolution have applied for a monetary order for recovery of double the amount of the security deposit or pet damage deposit and to recover the filing fee from the landlords for the cost of the application.

The landlord's application names 2 tenants, and the tenants' application names 2 tenants, but only one of those tenants has been named in the landlord's application. During the course of the hearing, the landlord explained that there were 3 tenants, but there was only room on the application form to name 2 tenants.

One of the named landlords and an agent for both tenants attended the conference call hearing. The landlord also advised that the two named landlords on the Tenant's Application for Dispute Resolution are the same person. The tenants' agent called one witness and the parties and the witness gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing, however some of the evidence of both parties was not received within the time required under the *Residential Tenancy Act* and Rules of Procedure. The parties agreed that all evidence should be admitted. 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 were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants 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?
- Have the tenants established a claim as against the landlord for recovery of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this fixed term tenancy began on October 15, 2011 and ended on September 1, 2012. Rent in the amount of \$1,200.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord testified that the rental unit is a basement suite, and the landlord lives in an upper unit. The rental unit was renovated 2 years ago; walls were painted, carpets were shampooed and the rental unit was clean. The house was appraised a year ago at about \$900,000.00. The parties shared laundry facilities.

The landlord further testified that the tenants left the rental unit very dirty. Cobwebs remained in the rental unit, the floors, sinks and the bathroom were left dirty. The landlord also had to re-paint and fill picture holes at the end of the tenancy, and testified to doing the work. The landlord's application claims \$42.00 per hour for 10 hours, however the landlord testified that the claim is \$50.00 per hour for painting, and 3 hours for cleaning the rental unit at \$42.00 per hour. The landlord provided photographs to substantiate the testimony.

The landlord further testified that during the tenancy the landlord painted the fireplace twice for the tenants at their request and installed a security system. The tenants moved into the rental unit from a house that had just been sold and the tenants had a lot of furniture and belongings. Boxes were stacked in the bedrooms from the floor to the ceiling which scratched the walls. A move-in and a move-out condition inspection report was completed and a copy provided for this hearing.

The tenants' agent testified that the tenants had to chase down the landlord to have the move-in condition inspection completed. The tenants received the keys for the rental unit on October 14, 2012 and advised the landlord that the inspection had to be completed, and it was completed on October 16, 2012.

The tenants' agent also testified that the landlord had made promises to the tenants before they moved in that the carpet, which was very dirty, would be removed and laminate would be installed. The landlord failed to do anything with the carpet, and if the landlord had not made the promise for laminate, the tenants would not have moved in. Further, there was mouse feces in the storage room, fireplace and in kitchen cabinets. The storage room had newspapers all over the floor, and although the tenants' agent does not know why the newspapers were there, they covered the feces in that room. It was pointed out to the landlord who finally gave the tenants 2 black boxes stating that they were for catching mice, but provided no other assistance to rid the rental unit of the rodents.

The tenants' agent also testified that photographs provided by the landlord and by the tenants show a sticky tack, not a hole in a wall in the living room, and no other damage was done to the living room.

The tenants sent a letter to the landlord in February, 2012 outlining repairs promised but not completed by the landlord. One issue that the landlord had promised was to cover a fireplace, and instead, the landlord attended the rental unit during the tenancy and spray painted the floor to ceiling brick fireplace with red spray paint and did a horrible job. The tenants did not request red paint, and provided photographs of the red fireplace which show spray paint on white walls around the fireplace, and a tape mark on the carpet clearly showing that the red paint was sprayed onto the carpet.

The tenants' letter had also included a request to fix a towel rack in the bathroom, which the landlord did, but left it held together with duct tape. During cross examination, the tenants' agent was asked if the duct tape was there as a repair or to hold the rack in place until the glue dried, but the agent did not know, and stated that the tenants were not told that.

The tenants' witness testified that the witness was on the rental property on August 31, 2012 and the landlord had indicated that there was not a new tenant moving in right away and getting the keys by September 1, 2012 was okay.

The witness further testified that the carpets had been vacuumed before the tenants departed at move-out and the house was clean. All that remained in the rental unit on August 31, 2012 were plastic containers which contained cleaning supplies. The

tenants finished cleaning sometime on August 31, 2012. The witness does not recall if the windows were cleaned inside, but the screens were damaged and had not been cleaned outside. The screen was never fixed during the tenancy as promised by the landlord. The witness did not witness anyone wash walls, but the witness cleaned some marks.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party 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 *Residential Tenancy 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.

Further, any award for damages must not place the claiming party in a better financial situation than the party would be if the damage or loss had not existed.

In this case, I have reviewed the move-in and move-out condition inspection reports, and the photographs provided by the parties. I particularly notice that the spray paint used by the landlord on the fireplace has been sprayed on the carpet and the walls surrounding the fireplace. As a result of that evidence, I find that the landlord has attempted to collect more for painting a rental unit than the landlord would be entitled to. I further find that any award for painting would put the landlord in a better financial situation than the landlord would be if the tenants had not even lived in the rental unit.

I further find that the landlord's testimony with respect to the appraisal on the house is irrelevant, especially considering the move-in condition inspection report. The report shows that at the outset of the tenancy, the fireplace isn't noted at all, no screen was even in the window in the kitchen or bedroom windows, tiles were chipped, the closet door was apart, and stains appeared in the cabinets and living room floor. The move-out condition inspection report shows that the windows/coverings/screens were dirty in the living room, the cabinets and mirror in the main bathroom were left dirty, and the windows/coverings/screens in the 3rd room were left dirty. I fail to see how cleaning bathroom cabinets and a mirror would take 3 hours to clean, nor do I see that a landlord should be entitled to claim \$42.00 per hour to complete such minor cleaning. Tenants are not expected to clean outside windows.

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

The tenants have applied for double recovery of the security deposit, which the tenants would be entitled to if the landlord had not made the application claiming against the security deposit within 15 days of the date the tenancy ended or the date the landlord received the tenants' forwarding address in writing. The parties testified that the tenancy ended on September 1, 2012 and the landlord received the tenants' forwarding address in writing on that day. The landlord filed the application for dispute resolution on September 13, 2012, and therefore the tenants are not entitled to double return of the security deposit. The tenants are entitled to have the deposit returned in full, and I hereby grant the tenants a monetary order. Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$650.00.

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: December 07, 2012.

Residential Tenancy Branch