Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the unit 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 their 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 tenant confirmed that Landlord AS handed him a copy of the landlords' dispute resolution hearing package on February 22, 2013. I am satisfied that the landlords served their hearing package to the tenant in accordance with the *Act*.

After much discussion between the parties to attempt to resolve their dispute and after considerable sworn testimony was heard, the parties testified that there had been another application for dispute resolution filed by the tenant with respect to this tenancy and heard by another Arbitrator appointed under the *Act*. This decision issued on January 30, 2013 by an Arbitrator (the original decision) dismissed the tenant's application to be allowed access to the rental unit, to a monetary claim for damage or loss, and to order the landlords to comply with the *Act*.

While the merits of the Arbitrator original decision have little bearing on the issues currently before me, his decision did reach a final and binding determination as to who were the tenant's landlords in this tenancy. As this was a very important issue raised in the current application, I notified the parties that the following excerpt from the original decision prevented me from reconsidering the Arbitrator final and binding determination that Landlords AS and HS were in fact the tenant's landlords for the purposes of this tenancy.

> *...I find on a balance of probabilities that the named Landlord, D.F. is not K.C's Landlord. H.S. and A.S. are the Tenant's Landlords. The named Landlord, D.F. shall be removed from this Application...*

In his application, the tenant had attempted to include D.F., one of the owners of this property (as well as E.K., who no longer owned the property) as landlords along with Landlord HS.

In accordance with the legal principle of *res judicata*, the determination as to who were the tenant's correct landlords during this tenancy has already been made by the Arbitrator on January 30, 2013. As this matter has already been decided with respect to this tenancy, I am unable to vary the previous determination that the landlords for this tenancy were H.S. and A. S., who identified themselves as the tenant's landlords in the current application before me.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for their application from the tenant?

Background and Evidence

The landlords (H.S. and A.S.) rented the upper level of a three level rental building from the owners of this property. They occupied two of the bedrooms and sub-let the third furnished bedroom to the tenant on the basis of a periodic tenancy that commenced on January 30, 2012. The landlords entered into written evidence one page of a document entitled "Tenancy Granted on the Following Agreement." This page contained items 12-20, which were initialled by Landlord H.S. and the tenant. The parties agreed that the monthly rent was set at $675.00, and was paid to Landlord A.S. The landlords continue to hold the tenant's $325.00 security deposit paid to Landlord H.S. on January 30, 2012.

Although the landlords testified that a joint move-in condition inspection was conducted and a move-in condition "report" was created, it appears that this "report" was in actuality the provisions of the tenancy agreement (i.e., Items 12-20 from the Tenancy Agreement). No joint move-in condition inspection was conducted for this tenancy, nor did the landlords produce or forward to the tenant a copy of their own move-out condition report. The landlords did supply photocopies of photographs taken at the end of this tenancy regarding the condition of the rental unit at the end of this tenancy. The

quality of a number of these photographs was so poor that they provided little assistance to the landlord's application.

The tenant testified that the landlords were trying to convince him to leave the rental unit for some time during this tenancy. He gave undisputed sworn testimony that the landlords told him on January 30, 2013, that they were intending to end their tenancy by March 1, 2013. He said that the landlords served him with a copy of their letter at that time. Since the landlords were planning to end their tenancy with the owners of the property the following month, the tenant commenced searching for alternative accommodations. He did not believe that as an occupant he would have any status with the new tenants who would be renting the upper level three-bedroom suite from the property owners.

The tenant said that he was able to locate new accommodations by February 15, 2013. He said that he sent the landlords a text message on February 7, 2013 of his intention to end his occupancy of his room by February 15, 2013. At that time, he agreed to let the landlords keep his security deposit and apply it against his unpaid rent for the first 15 days of February 2013.

The landlords entered into written evidence a copy of a signed 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to the tenant on February 8, 2013. This 10 Day Notice seeking an end to his tenancy by February 18, 2013 identified $675.00 in rent then owing for February 2013. The landlords also entered into written evidence a copy of an unsigned 1 Month Notice to End Tenancy for Cause that they did not deliver to the tenant. The landlords entered undisputed written evidence that the tenant vacated the rental unit on February 15, 2013, without paying any rent for that month.

The landlords' application for a monetary award of $1,138.00 included the following:

Item	**Amount**
Unpaid February 2013 Rent	$675.00
Retention of Security Deposit	335.00
Recovery of 1/3 of Costs of Cleaning Blinds	52.00
Recovery of 1/3 of Carpet Cleaning Costs	26.75
Recovery of Filing Fee for this Application	50.00
Total of Above Items	**$1,138.75**

The landlords also entered written evidence and gave sworn testimony that the tenant left his bedroom in a messy condition, damaged the walls, some of the furniture, the bed and the mattress, and left food and personal items in the rental property that they had to dispose of before they could end their own tenancy.

The tenant testified that all of the items in the furnished bedroom were used when he moved in and that he left them in similar condition when he ended his tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator 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 landlords 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.

I should first note that any oral notice the landlords may have given to the tenant to end his tenancy on or about January 30, 2013 did not absolve the tenant from complying with section 45(1) of the *Act* which requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for February 2013, the tenant would have needed to provide his notice to end this tenancy before January 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing.

I find that the tenant's February 7, 2013 text message that he would be ending his tenancy eight days later did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*. However, section 7(2) of the *Act*

places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

There is undisputed evidence that the tenant did not pay any rent for February 2013, the last month of his tenancy. He also remained in this tenancy until February 15, 2013, by which time he had vacated the rental unit.

Although Landlord AS testified that the landlords attempted to locate another sub-tenant for the third bedroom in the upper level of this rental property, most of these efforts appear to have pre-dated the landlords' January 30, 2013 decision to end their own tenancy and vacate their premises. They provided no copies of advertisements either on-line or in print they placed in an effort to mitigate the tenant's losses for the period from February 16-28, 2013, nor did they provide details of such efforts to locate another sub-tenant. Given that the landlords were planning to end their own tenancy by the end of February 2013, I am not satisfied that the landlords had any reasonable prospect of mitigating the tenant's losses for the last 13 days of February 2013. Under these circumstances, I do not find that there are any reasonable steps that the landlords could have taken to minimize the tenant's losses when he ended his tenancy early and without paying rent for any of February 2013. They provided him with one month's notice that they were ending their own tenancy and he chose to vacate his premises before the end of February, when he was still contractually bound to pay rent for that month. I find it exceedingly unlikely that any prospective tenant would have agreed to enter into a 13-day sub-tenancy with tenants who were in the process of vacating the premises themselves. For these reasons and as I find that there is no reasonable action that the landlords could have taken to mitigate the tenant's losses under section 7(2) of the *Act*, I find that the landlords are entitled to a monetary award of $675;.00 for unpaid rent owing for February 2013.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. The landlords' failure to conduct and produce move-in and move-out condition inspection reports reduces their ability to contest the tenant's assertion that he left the premises in essentially the same condition as when he entered into this tenancy. However, section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended.

Based on a balance of probabilities and after considering sworn testimony, written and photographic evidence, I find it more likely than not that the tenant did not leave the premises reasonably clean and undamaged. However, the landlords did not provide bills to demonstrate any losses they may have incurred other than their claims for carpet and blind cleaning, which I will address later in this decision. The landlords also did not dispute the tenant's sworn testimony that the furniture and furnishings in the rental unit were second-hand. For these reasons, I allow the landlords a somewhat nominal monetary award of $40.00 for general cleaning and repairs arising out of this tenancy, an amount which enables them to recover 2 hours of cleaning at a rate of $20.00 per hour.

The landlords submitted a copy of a February 16, 2013 bill from the company that cleaned the blinds before they ended their tenancy with the owners of the property. Based on this $159.04 bill paid on February 16, 2013, I allow the landlords a monetary award of $53.01 for the costs that they incurred to have the blinds in the three-bedroom rental unit cleaned at the end of their tenancy. This enables the landlords to recover one-third of their costs to have the blinds professionally cleaned.

I have also considered the landlords' claim for professional carpet cleaning costs they incurred at the end of this tenancy. While the February 18, 2013 bill they entered into written evidence only identified the steam cleaning of two bedrooms, I also note that the agreement the tenant signed committed him to have the carpets of his rental unit professionally cleaned at the end of this tenancy. I find it more likely than not that the reference to the steam cleaning of two bedrooms was an oversight on the bill submitted to the landlords. As the tenant has not supplied any evidence that he retained professional carpet cleaners to conduct this service at the end of his tenancy and did not dispute the landlord's request for reimbursement of one-third of their carpet cleaning costs, I find on a balance of probabilities that the landlords are entitled to recover one-third of their $84.00 carpet cleaning bill. For this reason, I allow the landlords a monetary award of $28.00 for this item ($84.00 x 1/3 = $28.00).

I order the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued to the landlords. No interest is payable over this period. As the landlords have been successful in their application for dispute resolution, I allow them to recover their filing fee from the tenant.

Conclusion

I issue a monetary award in the landlords' favour under the following terms, which allow the landlords to recover unpaid rent, damage arising out of this tenancy and their filing fee, and to retain the tenant's security deposit.

Item	Amount
Unpaid February 2013 Rent	$675.00
Less Security Deposit	-335.00
Recovery of 1/3 of Costs of Cleaning Blinds	53.01
Recovery of 1/3 of Carpet Cleaning Costs	28.00
General Cleaning and Repairs	40.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$511.01**

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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 21, 2013

Residential Tenancy Branch