Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with two related applications. One file is the landlord's application for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. The other file is the tenants' application for a monetary order, including return of the security deposit. As the parties and circumstances are the same for both applications, one decision will be rendered for both.

This hearing was originally scheduled for November 1, 2013. The landlords' evidence had been sent to the tenants by registered mail and only received by the tenants the day before the hearing. The tenants' cross-application and evidence had been sent to the landlords by registered mail and had only been received by the landlords four days before the hearing. However, both parties said they were prepared to proceed as scheduled.

The landlords had not completed their testimony by the end of the time set aside for the hearing so a continuation was scheduled for a date and time convenient to all parties – December 2, 2013 at 1:00 pm.

At the start of the hearing on December 2 the landlords asked for an adjournment. The landlords had been served with the tenant's evidence package and had decided they wanted the assistance of their lawyer for the balance of the hearing. Their lawyer was not available on December 2. The tenants objected to the adjournment. They had adjusted their work schedules to be available for the hearing and they wanted to have the matter resolved as soon as possible.

I granted the landlords' request on the following grounds:

- Any party to a dispute resolution proceeding may be represented by a lawyer if they wish and not granting the adjournment would effectively deprive the landlords of that right.

- The request was a result of the lawyer's schedule; not the intentional neglect of the landlords.
- While the adjournment was an inconvenience to the tenants it would not prejudice them in the presentation of their case.

The hearing was adjourned to a date and time convenient to all the parties and the landlords' lawyer- January 30 at 1:00 pm. The hearing did continue on January 30 and the parties were able to complete the presentation of all their evidence.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced November 1, 2009 as a one year fixed term tenancy. The property was shown to the tenants by the landlords' rental agent. The agent signed the tenancy agreement on behalf of the landlords on October 21, 2009. The tenancy agreement specifies that the monthly rent of $3000.00 was due on the first day of the month. It also sets out that the tenants are to pay a security deposit of $1500.00 and a pet damage deposit of $1500.00. There is no addendum to this agreement.

The tenants testified that they thought they paid a pet damage deposit as well as a security deposit to the rental agent and point to this tenancy agreement in support of that claim. The landlords testified that they never received a pet damage deposit from the tenants or the rental agent and that none of the correspondence they received from the rental agent, copies of which were filed in evidence, indicated that one had been collected.

On October 24 the landlords and the tenants met. They signed an addendum to the tenancy agreement, conducted a move-in inspection, completed a move-in condition inspection report, and had dinner. The tenants gave the landlord post-dated cheques for the year.

The tenants subsequently moved into the rental unit with their two teenage daughters and one small dog.

On October 26 the landlord wrote the rental agent reporting on the transaction. The letter refers to a new tenancy agreement and the addendum, but copies of those documents were not filed by the landlords/

A new tenancy agreement was signed by the parties on October 29, 2010. This agreement specified that the tenancy was for a one year term, commencing November 1, 2010 and ending October 31, 2011, continuing thereafter as a month-to-month tenancy. There is a notation that the security deposit of $1500.00 was already received on October 21, 2009 and that a pet damage deposit was not required. The addendum to the agreement specifically mentions pets. It also contains the following clause: "Monthly post-dated cheques for the term of the tenancy must be received by the landlords for the one year term by November 1, 2010."

The copy of this agreement filed by the tenants shows the monthly rent as $3000.00; the copy filed by the landlords shows the monthly rent as $3069.00. Both parties filed a copy of a Notice of Rent Increase which increased the rent to $3069.00 per month as of February 1, 2011. A note on the document stating that it was delivered October 29, 2010 was signed by the female landlord and both tenants.

In the fall of 2011 the female landlord travelled to British Columbia from their home in Ontario for the purpose of meeting with the tenants and signing a new fixed term tenancy agreement. Both tenants had been called away because of work and the parties never met. The landlord testified that she went to the rental unit; changed the commencement and end dates of the term to make it a one year fixed term tenancy commencing November 1, 2011 and ending October 31, 2013, on a copy of the old tenancy agreement; initialled the changes; gave the amended copy to one of the tenants' daughters and asked her to give it to her parents; and left. The dates in the clause in the addendum relating to the provision of post-dated cheques were not changed. The tenants subsequently sent the landlords a year's worth of post-dated cheques.

The female landlord testified that basically the same thing happened in the fall of 2012.

The landlords filed some e-mail correspondence from 2012. The only topic of the e-mails was the provision of post-dated cheques for November, 2012 to November, 2013. There is no mention of the amended agreement and no request for the return of a copy signed by the tenants.

The landlords testified that they interpreted the provision of post-dated cheques by the tenants as their acceptance of the amended tenancy agreement. The tenants testified that they did not think the 2010 agreement had been amended as the only request from the landlords was for post-dated cheques and they thought the tenancy had become a month-to-month tenancy.

On August 1, 2013, the tenants sent the landlords an e-mail saying they intended to vacate the rental unit by the end of August. It was only in the ensuing discussions that the difference in the parties' understanding of the tenancy agreement because apparent.

A move-out inspection was conducted on August 30, 2013 and a move-out condition inspection report completed at that time. The condition inspection report, which was signed by the female tenant, refers to a security deposit having been collected; there is no reference to a pet damage deposit having been paid.

The tenants provided their forwarding address in writing to the landlord on August 30.

The landlords cashed the September rent cheque. They still have the October and November cheques.

On September 13, 2013, the landlords filed this claim for the October rent, cleaning and damages. The tenants subsequently filed their claim for return of the security deposit and repayment of the September rent.

With respect to the claims for damages and cleaning the parties' evidence was as follows:

Garage Door

The landlords testified that the garage door had two dents in it and that the strata was requiring them to replace it. The total cost of the door, including repainting it to the colour required by the strata, is $1795.50. The female tenant testified that the neighbour had told her the female tenant had hit the door several time.

Although no damage to the garage door was noted on the move-in report, the tenants say that one dent existed at the start of their tenancy. They acknowledge that the door was dented a second time during the tenancy but say that no one in their family caused the damage. They pointed out that this unit is at the end of cul-de-sac in the strata development and the turn-around space is quite small so it is quite possible that someone else backed into the garage door. The male tenant suggested that the dent looked like it was caused by a hitch of some sort. The tenants do not have hitches on any of their motor vehicles but some of their neighbours do.

The letter from the neighbour says that: “although I can’t say for certain how the damage was caused, I can confirm [the] garage door was visibly damaged, likely from an automobile. For a long time the tenants were parking a car parallel on the short driveway skirt in front of the door.”

Carpet

The carpets were installed in 2005 and were eight years old at the end of the tenancy. It is acknowledged by both parties that there were some spots on the carpet on the lower level at the start of the tenancy. The landlord described them as being smaller; the tenant described them as being larger. The tenant testified that they covered the spots with area rugs during their tenancy. During the tenancy the landlord offered the tenants $1500.00 towards the replacement of the carpets on the lower level. The tenants did not take up the landlords’ offer.

The landlord testified that on move-out there were new stains in the bedroom, hallway and closet. The tenant said the only stain they were responsible for was a small stain in the closet.

There is not mention of stains on the move-in report and only stains in the bedroom are noted on the move-out.

Electrical Repairs

After the tenants moved out the landlord had “E” electrical company look at the kitchen lights. He refused to tell her what was required to give her a quote unless she paid a “diagnostic fee” of $253.50, which she did. “E’s” quote was too high and the landlords were able to have their usual electrician “C” perform the repairs. C did several repairs but the landlords are only claiming two:

- to replace the transformers and fixture in one bathroom at a cost of $270.39; and,
- to replace the transformers and puck lights in the kitchen at a cost of $289.16.

The diagnostic fee and quote included other repairs that are not included in this claim.

The tenants say the bathroom light was not working when they moved in. They acknowledged that the kitchen lights did not work but they did not know why. The female tenant said she reported problems with the kitchen lights to the female landlord. The landlord asked her to call someone but she did not have time. She unplugged the lights but did not rip them out of the wall. The landlords had testified that the transformers had been ripped out of the wall; a claim the tenants denied.

Repair the Shelving in the Master Bedroom Closet

These were new in 2005. The tenants acknowledged that the shelving pulled out of the wall. They had a handyman patch the walls but they did not repaint or have the shelving re-installed.

The landlord testified that they had to purchase new brackets and hardware at a total cost of $135.91. The bill for patching the closet walls and installing the shelving was $300.00.

Repair Oven Door

The oven is a built-in Jenn-Air oven. The landlord testified that at the end of the tenancy the door would not close properly because the hinges had been damaged. Because the door did not close properly the self-clean cycle could not be used. In addition, the light had burned out because the door did not shut properly. The parts have been ordered at a cost of $268.19 but as of the date of the hearing had not yet arrived.

The tenants said that although the problem was not noted on the move-in report it had always existed. They were able to use the oven but only if they lifted and pushed the door in a particular manner. They acknowledged that the light would stay on if the door did not shut properly.

The tenants never reported this issue to the landlords.

Tempered Glass Shelves

The landlord claimed $100.80 to replace two tempered glass shelves in the kitchen cabinets. The tenants say they did not break any shelves.

Cleaning

The landlord testified that the house looked cleaner at the move-out inspection then it actually turned out to be. The invoice for cleaning, dated October 1, 2013, is for $460.68. The female landlord also cleaned but did not submit any claim for her time.

The tenants testified that they kept the unit clean during the tenancy and that they cleaned when they moved out. On the move-out inspection "oven/cleaning - $200.00" is noted. The female tenant did sign her agreement to that notation.

The landlord filed invoices from the people who cleaned the unit in July 2009 and a let to the rental agent dated October 26, 2009, in which she complains about the poor job of cleaning done by the cleaners.

Blinds

Every window in the unit has a roll-up blind – the type that is mounted on tracks at the top with chains to open and shut them. The landlord testified that the blinds were new in 2008. The landlord said that three of the blinds are particularly frayed at the edges and she estimates the replacement cost as $600.00.

The tenants acknowledge there is some wear on these blinds but suggest that it was only wear and tear, not damage.

Repair Patio Door

The wheels were out of the runner. The landlord bought rollers and the painter/handyman installed them. The landlord claims $200.00 labour for this item. (The other $300.00 of the $500.00 claimed from the painter's invoice dated September 29, 2013, was attributed to the closet repairs.)

The tenants say they always had a problem with this door. They ran it upside down because the rollers at the bottom were not good. This problem was not reported to the landlords.

Analysis

Did the Tenants Pay a Pet Damage Deposit?

The only documentary evidence in support of the payment of a pet damage deposit is the first tenancy agreement. However, every document singed by the tenants thereafter is quite clear that only a security deposit had been collected. If this was inaccurate, the tenants had several opportunities to correct the record, which they did not. Further, when the tenants filed for dispute resolution they only asked for return of one deposit. Accordingly, I find that the tenants did not pay a pet damage deposit.

Are the Landlords Entitled to Payment of the October Rent?

If this was a one-year fixed term tenancy the landlords are; if it was a month-to-month tenancy, they are not.

Section 14(2) of the *Residential Tenancy Act* states that a tenancy agreement may be amended to add, remove or change a term only if both the landlord and tenant agree to the amendment. The onus is on the landlords to prove, on a balance of probabilities that the tenants agreed, twice, to change the tenancy agreement from a month-to-month tenancy to a fixed tern tenancy. This they have failed to do. There is no evidence of any conversations between the parties about the amendment; no correspondence between them about the amendment; and no signature from either tenant on the amended agreement. Neither a landlord nor a tenant can unilaterally change the terms of a tenancy agreement by merely writing it a new term and initialling it.

Although the landlords argued that the provision of post-dated cheques was significant, I find that it was not. In many month-to-month tenancy the landlord will require or request and the tenant will provide twelve post-dated cheques at a time as an efficient means of paying the rent. The fact that the tenants provided post-dated cheques cannot be interpreted as more than the continuation of an established practise.

Accordingly, I find that the landlords are not entitled to payment of the October rent.

Are the Tenants Entitled to Return of the September Rent?

Section 45 of the *Residential Tenancy Act* provides that a tenant may end a periodic tenancy by giving the landlord notice effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that the rent is payable under the tenancy agreement. In other words, when the rent is payable on the first day of the month, notice must be given on or before the last day of the month. The effective date of a notice to end tenancy given August 1 is September 30. The tenants were responsible for the September rent.

Claims for Damages and Cleaning

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The significance of the move-in or move-out condition inspection report is that section 21 of the *Residential Tenancy Regulation* provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Garage Door

The expected useful life of a garage door is ten years. The evidence only establishes that the door was damaged during the tenancy; it does not establish that the damage is solely attributable to the action of the tenants. There are no witnesses to what happened - even the neighbour who reported to the landlord was not prepared to put his allegations into writing. It is just as possible that someone else backed into this door. Accordingly, this claim is dismissed.

Carpet

The expected useful life of carpet in a rental unit is ten years. The carpets were eight years old so the depreciated value of the carpet replacement is $461.68. I find that the carpets were damages at the start of this tenancy and more damaged at the end. Although the damage that was incurred during this tenancy was not the only reason why the carpet had to be replaced the damage did make timing of the replacement more urgent. I find that the tenants should share in the cost of carpet replacement and I award the landlords $250.00 for this item.

Electrical Repairs

If the problems existed at the start of this tenancy the tenants should have reported them. A logical conclusion from their failure to do so is that the damages occurred during the tenancy.

The expected useful life of light fixtures in a rental unit is fifteen years. I apply a depreciation rate of 50% to this claim and I award the landlords $406.53 for this item. (I have included the “diagnostic fee” in the total, because it was part of the expense incurred by the landlords, and applied the same depreciation rate in recognition of the fact that the fee related to some other repairs as well.)

Master Bedroom Closet Repairs

The expected useful life of interior paint in a rental unit is four years. Accordingly, nothing will be allowed for repainting the closet. The tenants had already repaired the holes. The landlords are entitled to compensation for the cost of the closet parts in the amount of $135.91. The invoice filed by the landlords does not provide an hourly rate for the painter nor does it break out the labour for each task performed. Based upon the usual costs claimed for repairs of this nature I award the landlords $150.00 as general damages for the labour costs of repairing the closet.

Repair Oven Door

Once again any problem with the oven was not reported during the tenancy and I draw the same conclusion. The expected useful life of a stove in a rental unit is fifteen years. Accordingly, I allow the landlords one half of the amount claimed, $135.00.

Glass Shelves

I find that this damage occurred during the tenancy. Given the nature of the items, no depreciation will be applied. I allow the full amount claimed - $100.80.

Cleaning

The standard to be applied to claims for cleaning is set out in *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises*: “The tenant must maintain ‘reasonable health, cleanliness and sanitary standards’ throughout the rental unit . . An arbitrator will determine whether or not the condition of the premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.”

Two points come to mind about the claim for cleaning. It appears that the landlord has high standards for cleaning – which is not a bad thing – but is not necessarily the standard set out in the Guideline. The second is that judging from the date on the cleaners’ invoice this cleaning was done after repair work had been done in the unit. Some of the cleaning may have been required as a result of that repair work.

On the other hand the tenant did acknowledge on the move-out report some responsibility for cleaning.

After considering all of these factors I award the landlords $200.00 for cleaning.

Blinds

The expected useful life of blinds in a rental unit is ten years. From the evidence filed by the landlords it is impossible for me to determine whether the wearing was actual damage or wear and tear. Accordingly, this claim is dismissed.

Patio Door

I find that the damage occurred during this tenancy. The expected useful life of a door in a rental unit is twenty years. Accordingly, I award the landlords $120.00 for this item. ($200.00 X 60%)

Conclusion

I find that the landlord has established a total monetary claim of $1598.24 comprised of cleaning and damages in the amount of $1498.24 and the $100.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of $1500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of $98.24. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

The tenants' claim is dismissed.

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: February 27, 2014

Residential Tenancy Branch