Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:
Landlord: MNSD, MNDC, FF
Tenant: MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties.
The landlord filed their application November 13, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order as compensation for damage or loss – Section 67
2. An Order to retain the security deposit to offset damages - Section 38
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed their application February 11, 2014 pursuant to the *Residential Tenancy Act* (the Act), orally amended in the hearing, for Orders as follows:

1. A Monetary Order as compensation for damage or loss – Section 67
2. An Order to retain the security deposit to offset damages - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and testimony in respect to their claims and to make *relevant* prior submission of evidence to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. Both parties acknowledged receiving the evidence of the other. The parties were apprised that despite all of their evidence only *relevant* evidence would be considered in the Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?
Each party bears the burden of proving their respective claims.

Background and Evidence

The undisputed evidence in this matter is as follows. The rental unit is a house

purported to be approximately 35 years old. The tenancy began July 19, 2009 as a written tenancy agreement - submitted into evidence. The tenant vacated October 31, 2013 pursuant to a settlement. At the outset of the tenancy the landlord collected a security deposit in the amount of $1600.00 which the landlord retains in trust. During the tenancy the payable rent was in the amount of $3300.00 due in advance on the 1st day of each month, plus utilities. The parties agree there was no move-in condition inspection report completed, although the parties "walked" through the house. On the same date the tenant vacated the parties conducted a mutual move-out condition inspection which the landlord recorded, and the parties signed, on a Condition Inspection Report (**CIR**) - submitted into evidence.

Landlord's application. The landlord and their witness, their realtor, testified that the rental unit has been for sale since the tenant vacated. The landlord's application claims that at the end of the tenancy the rental unit required reparation, replacement, and cleaning as a result of the tenant's conduct or negligence during the tenancy. The landlord provided an invoice totalling $11,172.00, inclusive of a 12% management fee and tax. The invoice itemizes the landlord's *costs* as follows:

- landscaping cleaning & disposal of exterior garbage $1250.00,
- cleaning of whole house including windows $2000.00,
- replace carpets and underlay in all upper floor areas & 2 rooms in basement (.....) $4200.00,
- replace broken window in basement $750.00,
- re-hang dining room and living room partition wall panelling $500.00,
- re-adjustment of all sliding glass doors $400.00,
- remove and dispose of all related garbage left by tenant $400.00.

The landlord provided into evidence the CIR dated October 31, 2013, which was overseen and signed by the tenant's agent of this hearing. The tenant did not agree the deficiencies identified in the report by the landlord fairly represented the condition of the rental unit, writing on the CIR: *"odour due to 35 y. o. carpet and multiple toilet leaks so this (****). Carpets cleaned but 35 yrs old, (molded), glass broken from beginning of tenancy".* However, the tenant agreed to a deduction from the security deposit of $150.00 for chimney cleaning. In the hearing the tenant disagreed with all claims advanced by the landlord, testifying that despite cleaning, the apparent condition of the carpeting of the house indicated it was likely the original installment 35 years earlier, and stained and deteriorated from normal wear and tear and beyond its useful life. As well, the tenant testified the house was left at least reasonably clean. The landlord testified that they are only aware of the past 5 year history of the house and the carpeting was not new at the start of the tenancy. The landlord could not confirm all of the condition of the house at the start of this tenancy as they did not record its condition or possess a completed CIR. However, the landlord provided testimony from their agent that the condition of the house at the end of the tenancy was, "atrocious", "really

bad", and generally run down. The landlord's realtor, stated that the house was, "very dirty', "a mess', 'poo all over the place', "yard needed attending', and 'difficult to sell, until now", referring to the landlord's claim regarding work to the house.

Tenant's application. The tenant requests the return of the security deposit of $1600.00, and acknowledged that $150.00 was originally pledged to the landlord for chimney cleaning, and that they owe this amount.

The tenant and landlord agreed the *Jacuzzi* of the rental unit did not function at all from the outset of the tenancy – and for which the tenant claims that a reduction in the total paid rent is appropriate. The tenant claims 5% of the total rent paid as a reduction in the value of the tenancy agreement: $7750.00. The landlord testified that it was apparent from the outset that the Jacuzzi was inoperative and the tenant ought to have known that as a result it did not represent part of the tenancy agreement.

The tenant claims that 2 of the 5 bedrooms of the rental unit were mitigated by ingress of water in the last 4 months of the tenancy, for which the tenant claims a reduction in the value of the overall tenancy agreement in the sum of 20% of the rent paid for this period: $2640.00. The landlord did not contest the facts for this portion of the claim.

The tenant argued that as a result of the landlord's refusal to repair a broken window in the basement, with a resulting 20 cm. x 20 cm. open area, they had to expend additional gas heating costs of $504.00 during 3 billing periods of the tenancy, despite covering the damage / open are. They additionally claim $2000.00 *for 'inconvenience due to landlord's neglect',* which the tenant claims manifested by the house being 3 degrees colder than usual for a 4 month period, despite their attempt to heat it.

The tenant withdrew all other claims. The tenant was advised they could not request to recover a filing fee for a previous application, having been factored by a previous determination, thus *res judicata*.

Analysis

I have reviewed and considered all of the relevant evidence in this matter. The onus is on the respective parties to prove their respective claims. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Landlord's claim

It must be noted that The Act *Regulations* state, in relevant part, as follows:

Evidentiary weight of a Condition Inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Effectively, unless a party can sufficiently prove otherwise, the particulars of the CIR stand as the condition of the rental unit at the time of the inspection.

I find that there is no mention in the landlord's CIR that the carpeting, a broken window, and additional claims listed on the landlord's invoice of work on the residential property, were matters which the landlord identified as deficiencies attributable to the tenant. In the absence of a *move-in* CIR the landlord failed to address why the tenant would be now responsible for such things as re-adjusting sliding doors, or re-hanging wall partitions. Effectively, the landlord did not address how the actions or neglect of the tenant somehow contributed to these losses by the landlord.

It must further be noted that Residential Tenancy Policy Guidelines for the useful life of building materials states that *carpeting* has a useful life of 10 years. I find that the absence of a *move-in* CIR, and the landlord's limited knowledge respecting the age of the carpeting lends greater credibility to the evidence of the tenant, that the carpeting likely was older than 10 years. Even if it were accepted that the tenant is somehow responsible for carpet replacement versus cleaning – upon mitigation / depreciation due to the carpet's age, would render the landlords' residual entitlement at 0% of their claim, or $0.00. Regardless, the landlord has only advanced evidence the carpeting was 'dirty'. I find that the absence of a *move-in* CIR does not support the landlord's claim that the tenant is accountable for a broken window in the basement and the parties disagree on how the damage occurred. None the less, the landlord is responsible to prove their claims and as the landlord has not provided sufficient evidence for any of the above claims, I'm unable to find the landlord entitled to compensation. As a result of all the above, **I dismiss** the landlord's claims for:

- carpets and underlay in all upper floor areas & 2 rooms in basement (.....) $4200.00,
- replace broken window in basement $750.00,
- re-hang dining room and living room partition wall panelling $500.00,
- re-adjustment of all sliding glass doors $400.00.

All without leave to reapply.

I find that the tenant's disagreement with the landlord's CIR does not extend to the landlord's many references within the CIR of the rental unit being *dirty* or in need of *cleaning*. As a result, I find that I prefer the landlord's overall evidence that the rental unit was left unclean. However, I am not satisfied by the landlord's limited evidence that the rental unit required the magnitude or degree of cleaning represented by their claim for cleaning of $3650.00 (+ 12% management fee = $4088.00). It must be noted that it

was pointed out to the landlord in the hearing that in the absence of additional evidence for such a claim, the amount, standing on its own, and unsupported by additional proof – renders the claim plainly extravagant. I find the landlord's limited evidence does not support such a claim. None the less, I accept that the landlord was required to conduct some cleaning of the unit. Therefore, as a result of all the above, I grant the landlord a nominal amount set at **$600.00** for all interior and exterior cleaning.

Tenant's claim

I find that in the absence of a move-in CIR, or agreed oral or written agreement respecting the outdoor Jacuzzi, it is reasonable for a tenant to expect a feature such as a Jacuzzi, on a residential property for which they are paying rent, to function and bring value to the tenancy agreement. In this matter the tenant provided evidence they alerted the landlord 9 months later to repair the Jacuzzi but this did not occur. I find the tenant's claim of compensation for lack of use of the Jacuzzi to be reasonable. I find the tenant's claim of 5% of all rent paid over every month of the tenancy seems extravagant considering the tenant's evidence they first realized the Jacuzzi's inoperative condition 9 months into the tenancy. I find that reasonable compensation for lack of use of the Jacuzzi is a reduction of paid rent for 4 summer seasons, in the amount of $500.00 per season, in the sum of **$2000.00**.

I find the tenant's claim of compensation for the lack of use of 2 of 5 bedrooms of the rental unit for 4 months, as a result of an ingress of water to be reasonable and as a result I grant the tenant's claim of a reduction in the value of the tenancy agreement in the sum of 20% of the rent paid for this period: **$2640.00.**

I find the tenant's premise logical that a broken window opening – albeit covered by the tenant – can contribute to an amount of thermal loss and a resulting additional cost for heating. I find the tenant's formula for assessing the resulting additional cost to the tenant less credible. I find the tenant's formula effectively concludes that the broken basement window and only the broken window resulted in the additional cost in heating. I find the tenant has not provided sufficient evidence excluding all other possible factors contributing to loss of heat, need for heat, heating rates, heat settings – which are attributable to the landlord. On balance of probabilities, I find a reasonable amount to compensate the tenant for heat loss attributable solely to the broken window is $35.00 per usage period x 3 – or in this matter, **$105.00,** and this amount is granted to the tenant. Ancillary to the above claim, in spite of additional gas usage by the tenant to offset or otherwise compensate for the heat loss from a broken window, I find the tenant has not provided sufficient evidence to support, what negligence or breach of the Act by the landlord resulted in the rental house remaining 3 degrees colder than usual for a 4

month period. As a result, **I dismiss** this portion of the tenant's claim, without leave to reapply.

***Calculation for Monetary Order*.** Both parties are entitled to their filing fees. The security deposit is factored and offset.

Total of landlord's award	$600.00
Tenant's agreed deduction from deposit - to landlord	150.00
Filing fee	100.00
Minus security deposit held in trust by landlord	*- 1600.00*
Remaining balance of tenant's security deposit	(750.00)
Total of tenant's award	$4745.00
Balance of tenant's security deposit	750.00
Filing fee	100.00
Monetary Order to Tenant	**$5595.00**

Conclusion

The parties' respective applications, in part, have been granted. The balances of their respective claims have been **dismissed**, without leave to reapply.

I Order that the landlord may retain only a total of $750.00 from the tenant's security deposit. **I grant** the tenant a Monetary Order under Section 67 of the Act, inclusive of the balance of the security deposit, in the amount of **$5595.00.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: March 10, 2014

Residential Tenancy Branch