Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications by both the landlords and the tenant. The landlords applied for a monetary order for damage to the unit, to retain part of the security deposit, and to recover their RTB filing fee. The tenant applied for a monetary order for the return of her security deposit, for money owed or compensation for loss or damage under the Act, Regulation, or tenancy agreement, and to recover her RTB filing fee.

Both the landlords and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit?
Is the tenant entitled to a monetary order for the return of her security deposit and for money owed or compensation for loss or damage under the Act, Regulation, or tenancy agreement?

Background and Evidence

The tenancy agreement signed by the parties on April 20, 2012 indicates the tenancy started on June 1, 2012 and the tenants were obligated to pay $1,700.00 rent monthly in advance on the first day of the month. The tenants also paid a security deposit of $850.00 and a pet deposit of $500.00.

The tenancy ended on January 31, 2014 and the $500.00 pet deposit was returned to the tenants on February 12, 2014. The tenant says she provided her forwarding address to the landlord in writing sometime in December 2013 (prior to moving out).

The landlord claims $100.00 for the cost of replacing a small area of carpet at the bottom of a linen cupboard. The landlord's evidence is that the carpet appears to have been eroded by some chemical and there is discolouration. The landlord says he and the tenant did a thorough walk-through at move-in and completed a Condition Inspection Report (CIR). Since they did not note the presence of a discolouration on the linen cupboard closet carpet on the CIR, the landlord says the discolouration must not have been there at that time.

The tenant agrees they did a walk-through at the beginning of her tenancy, but says it would have been difficult to see the discolouration since it was in a back corner of the closet floor. She says she remembers noticing the discolouration fairly soon after she moved in.

The tenant notes it say "staining on carpet" on page 2 of the CIR, in the tenant's writing, beside "Main Bathroom"; the word "upper" is written beside "Floor/carpet". The tenant did not specifically remember what staining she saw that caused her to make the note on the CIR.

The tenant also gave evidence that she paid for repairs to an area of carpet where a seam had come undone. She says that if she had caused the damage to the linen closet carpet, she would have had that repaired as well.

The tenant seeks the return of her security deposit and a retroactive rent reduction for a period of time when her dishwasher did not work. The tenant gave evidence that the dishwasher malfunctioned twice. The first time, the landlord had it fixed in about two weeks. The second time, she advised the landlord that the dishwasher wasn't working on May 20, 2013 and the landlord did not have repairs completed until approximately July 26, 2013. The tenant says the landlord got a friend to do the repair to save money. She claims a rent reduction of $75.00 per month for the two months she was without a dishwasher.

The landlord says they had to order a part for the dishwasher from the United States. It took three weeks to receive the part and then it was the wrong one. The landlords' evidence is that the tenant did not seem concerned at the time; he says the dishwasher was not working right but still working. The landlord's evidence is that his friend is qualified since he buys, fixes up, and sells appliances.

The tenant's evidence is that the dishwasher did not spray water while it was broken, and she entirely hand washed dishes for the two month period.

Analysis

I accept the tenant's evidence that she saw the discolouration on the linen cupboard floor carpet shortly after she moved in. During the hearing, she did not specifically remember why she wrote "staining on carpet" on the CIR, but she did appear to specifically remember that she first saw the discolouration shortly after she moved in. For that reason, I do not think the words "staining on carpet" on the CIR refer to the discolouration in the linen cupboard.

I accept the tenant's evidence that she repaired one area of carpet before she moved out. This supports her assertion that she would have repaired the linen floor carpet problem if she believed she was responsible for it.

Since I accept the tenant's evidence that she first saw the discolouration shortly after she moved in, I find it was present when she moved in and the parties overlooked it during the move-in inspection. The notations on a Condition Inspection Report (CIR) are important evidence. However, the absence of a notation on a CIR is not irrefutable evidence that a problem did not pre-exist the tenancy. In this case, it would have been helpful if the tenant had brought the problem to the landlords' attention as soon as she noticed it.

Since I find the linen cupboard carpet problem pre-existed the tenancy, I dismiss the landlord's application to retain $100.00 from the security deposit to replace that section of carpet. The tenant is therefore entitled to the return of her security deposit.

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, the tenancy ended on January 31, 2014. I find the landlords applied for dispute resolution within 15 days of the end of tenancy when they applied on February 10, 2014. A minor amendment was necessary before a Notice of a Dispute Resolution Hearing could be issued on February 24, 2014. However, the need for a minor amendment did not cause the landlords' application to be beyond the 15 day limit specified in Section 38. For that reason, I dismiss the tenant's claim for double her security deposit.

I accept the evidence of the tenant that the dishwasher was not useable for a period of about two months. I prefer the evidence of the tenant on this point since she was in a better position than the landlord to know whether it was working at all. Even if the landlord exercised due diligence in getting the dishwasher repaired (and I make no finding on that point), the fact remains that the dishwasher was not available to the tenant for that period. I find the tenant's claim for a rent reduction of $75.00 per month for two months, given a total rent of $1,700.00, for the inconvenience of not having access to the dishwasher is appropriate. The tenant is entitled to $150.00 as compensation for loss of use of the dishwasher.

The tenant is entitled to a monetary order for $1,050.00, comprised of $850.00 for the return of her security deposit, $150.00 for loss of use of the dishwasher, and $50.00 for her RTB filing fee. I grant the tenant an order under Section 67 for $1,050.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

The landlords' application is dismissed. I grant the tenant a monetary order for $1,050.00.

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: July 14, 2014

Residential Tenancy Branch