



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages to the unit;
3. For a monetary order for money owed or compensation under the Act;
4. To keep all or part of the security deposit; and
5. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to monetary compensation for money owed?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to double the return of the security deposit?

Background and Evidence

The parties agreed that they entered into a verbal tenancy agreement that began on November 2012. Rent in the amount of \$550.00 was payable on the first of each month. The tenancy ended on February 28, 2014.

Landlords' application

The landlords claim as follows:

| | | |
|----|-------------------------------|------------------|
| a. | Unpaid rent for February 2014 | \$ 100.00 |
| b. | Carpet cleaning | \$ 175.00 |
| c. | Lock change | \$ 36.92 |
| d. | Filing fee | \$ 50.00 |
| | Total claimed | \$ 361.92 |

Unpaid rent for February 2014

The landlord through their assistant testified that the tenant only paid \$500.00 towards February 2014 rent, leaving a balance of unpaid rent in the amount of \$100.00. The landlord stated that in November 2013, that the rent was increase from \$550.00 to \$600.00 verbally.

The tenant through their assistant testified that they landlord increased the rent and also took away services. The tenant stated that is why they only paid the amount of \$500.00

Carpet cleaning

The landlord through their assistant testified that the tenant did not steam clean the carpets at the end of the tenancy and the estimated cost is \$175.00. Filed in evidence is an estimate dated June 26, 2014.

The tenant through their assistant testified that they vacuumed the carpets at the end of the tenancy. The tenant stated that they did not have the carpets steamed cleaned at the end of the tenancy, however, disagree that the landlord has incurred any costs as the carpets have not been steamed cleaned since the tenancy ended in February 2014. The tenant stated that the amount claimed is also unreasonable as the cost of carpet cleaner and supplies are \$40.00.

Lock change

The landlord through their assistant testified that the tenant returned the keys at the end of the tenancy. However, they were told they could change the locks and have the tenant pay for the cost.

Tenant's application

The tenant claims as follows:

| | | |
|----|-----------------------------|------------------|
| a. | Double the security deposit | \$ 550.00 |
| b. | Filing fee | \$ 50.00 |
| | Total claimed | \$ 600.00 |

Double Security deposit

The tenant through their assistant testified that they provided their forwarding address in writing on February 28, 2014. The tenant stated that this transaction was witness by the bylaw officer. Filed in evidence is an email from the bylaw officer which supports the tenant's position.

The tenant through their assistant testified that they paid the landlord a security deposit in the amount of \$275.00 at the start of the tenancy which was half the monthly rent. The tenant stated that this was paid by cash and that the landlord did not issue a receipt.

The landlord through their assistant testified that the tenant only paid \$100.00 in cash at the start of the tenancy. The landlord confirmed receipts for cash payments were not provided to the tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the each party has the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlords' application

Unpaid rent for February 2014

The evidence support the tenant did not pay the full amount of rent under the term of the verbal tenancy agreement made on November 2012.

In this case the landlord seeks to recover unpaid rent in the amount of \$100.00. However, the evidence supports the landlord issued a rent increase on November 2013, which does not comply with Part 3 - What Rent Increase Are Allowed.

Under Section 43(5) of the Act, if a landlord collects a rent that does not comply with the Part, the tenant may be deduct the increase from rent or otherwise recover the increase.

As a result, I find the landlord has failed to prove rent was owed or a violation of the Act by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Carpet cleaning

Under section 37 of the Act, the tenant is required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the evidence supports that the tenant did not steam clean the carpet at the end of the tenancy as required by the Act as the tenancy exceeded one year. I find the tenant has breached section 37 of the Act, when they failed to clean the carpets.

However, the evidence supports that landlord has not incurred any cost as the carpets have not been steam cleaned since the end of the tenancy which was approximately six

months prior. I find the landlord has failed to prove step three of the test. Therefore, I find the landlord is not entitled to compensation for the carpets cleaning.

Lock change

Under section 37(2)(b) of the Act, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the of the Act.

In this case, the evidence of the landlord was that the tenant returned the keys at the end of the tenancy.

As a result, I find the landlord has failed to prove the tenant has violated the Act. Therefore, I dismiss this portion of the landlords' claim.

As the landlords have not been successful with their application, I find that the landlords are not entitled to recover the cost of the filing fee from the tenant.

Tenant's application

Double Security deposit

The parties agreed that the landlord received the tenants forwarding address on February 28, 2014, which was the end of the tenancy. The landlords' application for dispute resolution was filed on March 26, 2014.

Under Section 38 of the Act, the landlords must within 15 days of the tenancy ending or the date the landlords received the tenant's forwarding address whichever is the later, must do one of the following. Repay any security deposit to the tenant or make an application for dispute resolution claiming against the deposit.

In this case, the landlords filed their application on March 26, 2014, which was outside the time limited required by the Act. I find the landlords have failed to comply with section 38(1) of the Act.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

In this case, each party has provided a different version as to the amount of the security deposit paid by the tenant at the start of the tenancy. The evidence of the tenant was that he paid the equivalent of half of one month's rent payable under the terms of the tenancy agreement. The evidence of the landlord was that the tenant paid \$100.00.

I accept the tenant's version over the landlords because under the Act the landlord must prepare in writing every tenancy agreement, in which the amount of the security deposit is required to be stated. Further, the landlord failed to keep ledgers or copies of

receipts, I find the landlord has insufficient evidence to show the tenant did not pay the usual, statutory amount of the deposit; this is the equivalent to half a month of rent. Therefore, I find on the balance of probability that the tenant paid a security deposit of \$275.00.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlords pay the tenant the sum of **\$600.00**, comprised of double security deposit (\$275.00) on the original amounts held and as the tenant has been successful with their application the tenant is entitled to recover the \$50.00 fee.

The tenant is given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The landlords' application is dismissed.

The tenant is granted a monetary order for the return of double the security deposit.

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 15, 2014

Residential Tenancy Branch