Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for damage to the rental unit; to keep the Tenants' security and pet damage deposits, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee from the Tenants.

An agent for the Landlords (the "Landlord") appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. Both Tenants appeared for the hearing with their legal counsel who made submissions and presented written evidence on behalf of the Tenants. No issues were determined in relation to the service of the Landlords' Application and the parties' written evidence served to each other prior to the hearing.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- Should the Landlords be compensated for damages to the rental unit?
- Are the Landlords entitled to keep the Tenants' deposits?
- Are the Tenants entitled to return of double the amount of the deposits?

Background and Evidence

This tenancy started in May, 2012 for a fixed term of one year. A written tenancy agreement was completed and provided in written evidence and rent was established in

the amount of $2,950.00 per month. The Landlord and Tenants signed a new tenancy agreement starting on June 1, 2013 for a fixed term of one year and rent under this new agreement was established in the amount of $2,850.00 payable on the first day of each month. The written tenancy agreement shows that the term of the tenancy was a fixed term for one year after which it was to continue on a month to month basis.

The Tenants paid $1,475.00 as a security deposit and $1,475.00 as a pet damage deposit on May 2, 2012, which the Landlord still retains. The Landlord completed a move in Condition Inspection Report (the "CIR") with the Tenants on May 14, 2012, and a move out CIR was completed on May 31, 2014 which was the date the Tenants vacated the rental suite.

The Landlord was asked to explain the nature of her monetary claim against the Tenants and testified that she was reducing the monetary claim as disclosed on the Application served to the Tenants.

The Landlord explained that the Tenants had already consented to a deduction of $301.35 from their security deposit at the end of the tenancy. This was confirmed by the Tenants' legal counsel.

The Landlord testified that the owner had made an insurance claim for $6,000.00 of restoration work that had to be completed on the unit for water damage alleged to be caused by the Tenants. However, the Landlord only seeks to recover $1,000.00 from the Tenants as this was the owner's deductible that had to be paid for the repair claim. The Landlord also seeks to recover the cost of a plumber who dealt with the initial alleged damage in the amount of $194.25 as supported by an invoice which the Landlord explained was not covered by the owner's insurance company.

When the Landlord was asked to explain why she was seeking to recover the above costs from the Tenants, the Landlord testified that the Tenants had left a hose pipe on the deck of the property, which was connected to an outside tap, during the winter period. In this time, the residual water in the hose pipe froze and caused a crack in the internal tap pipes that lead to water damage which had to be repaired by the owner for a cost of $6,000.00. The Landlord submitted written invoices and estimates in relation to these costs.

In support of this allegation, the Landlord testified that the Tenants were required to keep the deck area free of garden tools and equipment and that it was reasonable to expect that the Tenants would have to remove the garden hose from the external tap and put it away for the winter season. The Landlord also referred to the invoice provided

by the plumber who was called out on June 3, 2014 to examine the damage on which the plumber wrote:

"Old tap was split, due to leaking tap house on over the winter".

[Reproduced as written.]

The Landlord submits that this indicates that the Tenants had caused this damage. The Landlord was asked to explain when this damage came to her attention. The Landlord testified that after the Tenants had moved out on May 31, 2014 and after the move out CIR was completed, the new renter who had moved into the unit discovered water damage to the rental suite and alerted the Landlord to it. The Landlord attended the property on June 3, 2014 and at that point contacted the plumber who provided the diagnosis; restoration was undertaken by the owner subsequently which involved repair of damaged dry wall, removal of carpets and restoration of the basement.

The Landlord confirmed that there was no damage being claimed by the Landlords that related to damaged caused by the Tenants' pets.

Legal counsel for the Tenants disputed the testimony and evidence of the Landlord. Legal counsel provided lengthy written submissions prior to this hearing, but I only refer to the relevant submissions that relate to the Landlord's monetary claim in this hearing.

Legal counsel pointed to the fact that the damage being claimed was not at any time indicated on the CIR and that the CIR can be used as evidence as to the state of repair of a rental suite unless a party can provide a preponderance of evidence otherwise. Legal counsel submitted that the damage was realized well after the Tenants had vacated the rental suite and during a time period when the rental suite was being occupied by a new renter. Therefore, it was highly likely and probable that the alleged damage was caused by the new renter and the Landlord now seeks to recover the loss from the Tenants.

Legal counsel submitted that the plumber's opinions noted on the invoice provided by the Landlord in written evidence were hearsay and that the plumber should have been made available for questioning to ascertain his qualifications and whether he had the expertise to make this opinion.

Legal counsel requested that the Landlord's Application be dismissed and that the Tenants be awarded double the amount of their deposits as; no damage was being claimed by the Landlords from their pets, the Landlord had failed to make the Application within the time limits set out by the Act, and that the Tenants should be

awarded relief for a fraudulent Application that had no merit. Legal counsel also made a number of submissions based on the validity of the written evidence provided around the costs associated with the alleged restoration work.
Legal counsel explained that there was no term in the written tenancy agreement that required the Tenant to specifically put away the hose during the winter season and that it is the Landlords that were responsible for the maintenance of the property.

Legal counsel also pointed to the fact that if damage had been occurring as a result of neglect caused by the Tenants during the winter period then it would have been likely that this damage would have been evident to the parties either during the tenancy or at the end of the tenancy when the CIR was completed.

The Landlord denied that her Application was being made fraudulently and with malice towards the Tenants. The Landlord explained that they did do maintenance to the property but this was limited to tree pruning and landscaping, and this did not involve putting gardening tools away for the Tenants.

The Landlord explained that she did not feel it necessary for the plumber to appear for the hearing to provide testimony as he was a licensed professional and was in a position to draw such conclusions.

The Landlord explained that they did not notice the damage at the time the move out CIR was being completed, but it was noticed a short period of time after the Tenants had vacated the rental suite. The Landlord submitted that a Landlord is still able to discover damages after a CIR and make a claim for them within the 15 day time period allowed by the Act.

Analysis

In dispute resolution proceedings, Section 21 of The Residential Tenancy Regulation states that a CIR 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.

Based on the foregoing, I find that the CIR did not reference or make note of the alleged water damage to the hose pipe or rental unit. Therefore the Landlord is required to provide a preponderance of evidence to suggest that the Tenants were responsible for the damage claimed.

In addition, a party that makes an application for monetary relief against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in Sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenants.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail.

Based on the foregoing, I have determined that the Landlord has failed to provide sufficient evidence to show that the Tenants were directly responsible for the alleged damage caused by the frozen hose.

There is insufficient evidence of the actual damages that are alleged and that this was caused as a result of the Tenants' negligence. While a Landlord can still discover and claim from a Tenant latent damage caused to the rental suite after a move out CIR has been completed, the burden of proof is higher in these circumstances and relies on the Landlord to provide a preponderance of evidence to suggest that the Tenants were responsible for the damage claimed beyond what was recorded in the move out CIR.

However, I find that it would have been likely that if the Landlord claimed for damages that amounted to an excess of $6,000.00 there would be a high probability that these would have been observed and noted during the tenancy or at the time the move out CIR was completed, since the damage was alleged to have been caused during the winter season and the tenancy ended several months later.

I also accept legal counsel's submission that it is equally as probable that the alleged damages were caused by someone other than the Tenants.

In this case, the Landlord relies on the plumber's receipt as evidence that the Tenants caused damage. The Tenants had disputed the opinion of the plumber in written submissions which were provided to the Landlord prior to this hearing and therefore it would have been prudent for the Landlord to have provided the plumber to give testimony for this hearing so that he could be cross examined on his evidence.

In conclusion, I find that the Landlords have not presented sufficient evidence to show that the Tenants caused the alleged damage to the rental unit.

Therefore, I dismiss the Landlords' Application for the deductible insurance claim and the plumber's costs. As the Landlords have not been successful in proving the Application, I also dismiss their claim for the filing fee.

In relation to the Tenant's return of their deposits, I make the following findings.

The Tenants consented to the Landlord in writing to keep $301.35 from their security deposit for carpet cleaning costs pursuant to Section 38(4) (a) of the Act. Therefore, this leaves a balance of $1,173.65 of the Tenants' security deposit (1,450 – 301.35).

Legal counsel argued that the Landlord should have to pay double the security deposit because the Landlord did not make the Application within the time limit stipulated by Section 38(1) of the Act and that the Landlord's Application was fraudulent and an abuse of process.

However, the doubling provisions of Section 38(6) of the Act apply if the Landlord fails to make the Application within 15 days or has made an Application and has extinguished their right to make a claim because they have failed to meet the reporting requirements of the Act.

The Landlord did make the Application within the 15 day time limit imposed by the Act and did complete a move in and move out CIR. The doubling penalty provided by Section 38(6) of the Act is not dependant on the Landlord making a valid claim or a finding that a Landlord's claim made within the time limits is to be dismissed.

Therefore, in relation to the Tenants' return of their security deposit, I find that the Landlord must now return $1,173.65 back to the Tenants and the doubling penalty in this case does not apply.

In relation to the Tenants' return of their pet damage deposit, I refer to Policy Guideline 31 to the Act relating to pet damage deposits. The policy guideline explains that a Landlord may apply to an Arbitrator to keep all or a portion of the pet damage deposit **but only to pay for damage caused by a pet**. In this case, I find that the Landlord was

not making a claim for damage caused by the pet and therefore had no authority to retain the Tenants' pet damage deposit or make a claim under the Act for this deposit.

The policy guideline continues to explain that if a Landlord is required to return a pet damage deposit and fails to do so, the Tenant may apply to the Arbitrator for an order for double the amount of the deposit.

Therefore, it is my finding that as the Landlords were required to return the pet damage deposit at the end of the tenancy because there was no damage caused by the Tenants' pets, the Tenants are now entitled to return of double the amount totalling $2,950.00.

As a result, the total amount awarded to the Tenants is $4,123.65 (2,950 + 1,173.65).

Conclusion

For the reasons set out above, I grant the Tenants a Monetary Order pursuant to Section 67 of the Act in the amount of **$4,123.65**. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlord fails to make the payment.

The Landlords' Application is dismissed without leave to re-apply.

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: October 23, 2014

Residential Tenancy Branch