Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kekuli Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The hearing did not conclude on its first scheduled day and was adjourned for a continuation of testimony. An agent for the landlord company and both tenants attended both scheduled days of the hearing, and each party called one witness. The parties provided evidentiary material to the Residential Tenancy Branch and to each other in advance of the hearing. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the landlord's agent disputed the testimony of the tenants' witness stating that the landlord was not given notice of a witness. The tenants submitted that the landlord did not give the tenants notice of a witness, so if the witness for the tenants should not be considered, nor should the witness of the landlord. In the interest of fairness, I consider the testimony of both witnesses.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy commenced on June 1, 2013 and expired on May 31, 2014 at which time the tenants moved out of the rental unit. Rent in the amount of $2,000.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $1,000.00 as well as a pet damage deposit in the amount of $250.00. A copy of the tenancy agreement has been provided and it specifies that at the end of the fixed term, the tenancy may continue on a month-to-month basis or another fixed length of time.

The landlord's agent further testified that a move-in condition inspection report was completed at the beginning of the tenancy but a move-out condition inspection report was not completed by the parties at the end of the tenancy. He testified that he didn't know the tenants were moving out until about 1st weekend of May. A month before that they said they were moving but didn't. The owner of the rental unit called the landlord's agent and said the tenants were moving and a moving truck was at the rental unit. Around the 20th of May the tenants called the landlord's agent saying they wanted to clean. The landlord's agent agreed, and then told the tenants he would return to look and make sure the rental unit was clean. They didn't call and when the landlord's agent returned, the tenants were gone and keys were on the counter. The tenants didn't give notice to move out.

During cross examination, the landlord's agent corrected his testimony stating that the events above occurred in April, 2014, not May. He further testified that the tenants requested a move-out condition inspection at the end of April, but the landlord already had contractors working in the rental unit.

The landlord sent to the tenants a cheque in the amount of $296.00 and then discovered and error and re-sent an additional $75.00, for a total return of $371.00 of the deposits. The tenants did not cash either cheque. The first cheque was sent on or about June 5, 2014 and the second about a week later.

The landlord claims damages for cleaning the rental unit at the end of the tenancy for 8 hours at $20.00 per hour, or $160.00 and testified that the tenants did not leave the rental unit reasonably clean.

The landlord also claims $444.00 from the tenants to repair and have re-built 3 bi-fold closet doors that fell apart. A copy of an invoice has been provided for labor and costs for wood, as well as for a patio door screen.

The landlord also claims $200.00 for 2 dump runs and the landlord's agent testified that the owner of the rental unit charges for the use of his truck, gas and time. The landlord had to do 3 dump runs in actuality, but the landlord's agent stated that he's only claiming 2 because he's a nice guy.

The landlord's agent further testified that he hired someone to clean dog droppings in the yard and fixing holes. For that he paid $75.00 and claims that amount against the tenants.

The landlord's agent also testified that the tenants have not provided a forwarding address in writing, only orally when the landlord's agent called the tenants on May 2, 2014. He was not aware that the address on the tenant's rent cheques was the tenants' forwarding address, but received it in writing in a letter of the tenants dated May 16, 2014.

During cross examination, the landlord's agent testified that he was present when the holes in the back yard were repaired and the tenants were still in possession of the rental unit, but does not know where the worker got the dirt to fill in the holes.

The landlord's witness testified that he is part owner of the company that owns the property. The further testified that the tenants told him that they were moving but it became month after month. Then the witness saw a moving truck at the rental unit in mid-April and called the property manager, the landlord's agent in this hearing.

The witness further testified that each of the dump runs cost a fee of $10.00 and the witness charges tenants for his truck use and time. He also paid the property manager $160.00 for cleaning, and paid another fellow $75.00 cash for yard clean-up and got him to sign a receipt. The witness does not know where he got the dirt from, nor did the fellow provide an invoice to the witness for the dirt. The witness does not believe the fellow actually purchased any dirt, but charged the witness for his time only.

New tenants have moved into the rental unit, having paid rent for the month of May, 2014.

The first tenant testified that there was no damage to the rental unit. There were 3 small holes in the yard that were filled with dirt taken from the flower bed of the apartment next door. The tenant sent a letter to the landlord on May 16, 2014 stating that $75.00 for taking a bucket of dirt from the neighbor's yard was excessive.

The tenant further testified that she washed the walls and some of the paint may have been removed by that, and paint rolled off when the tenant cleaned the pantry with a damp cloth. The house was an older home and believes that the minimum amount of repairs to make it rentable had been completed before the tenant moved in. Floors were all scratched up downstairs, the cupboard in the kitchen was chipped, and the move-in condition inspection report shows that it had a piece missing as well as hole in a wall in the bathroom, neither of which was ever fixed. The doors were painted, but not great. The dishwasher needed a part replaced before the tenants moved in which was never fixed. The pool had a continuous leak and the landlord threw a hose over the fence to keep the pool topped up.

The tenant further testified that 8 hours is excessive for cleaning. She had agreed to a couple of hours and still does. The tenant did not clean the oven, but it's a self cleaning oven, and the tenant didn't clean behind appliances but they were not pulled out during the move-in condition inspection.

The tenant requested a move-out condition inspection on or about the 20th of April and again at the end of April. The landlord didn't respond either time. The first that the tenants saw the move-in condition inspection report was in the landlord's evidence package.

With respect to the photographs provided by the landlord, the tenant testified that the pin in the bi-fold door was not working properly and sat unused basically for the whole tenancy. The tenant wasn't even aware that the door looked like that until receiving the landlord's evidence. The tenant knew the louvers were loose, but the house is 30 years old or more, built in the 1960's and the doors have never been replaced. Another photograph provided by the landlord of a door did not look like that when the tenants moved out; there were no broken or missing slats. The tenants did not do any damage to the doors.

With respect to dump runs, the tenant testified that photograph 23 of the landlord's evidence contains the only garbage that the tenants left. The tenant understood that bins were taken out on garbage day. The tenants had 1 load to take to the dump and the landlord's agent agreed to take it for $50.00. The tenant didn't pay him because he didn't return the security deposit.

The second tenant testified that during the move-in walk-through, there were multiple things wrong that were not mentioned on the report, such as a continuous leak in the pool and numerous belongings remaining in the shed from previous tenants which remained there throughout the tenancy, the central air conditioning was dirty and didn't work properly; it only worked in the furnace room. The tenants told the landlord's agent about the leak in the pool and he said that the owner was aware of it. The tenants paid the water bill which was horrendous because the landlord's solution was to put the garden hose in it. Moisture caused the living room floor to move up about 1 ½ feet and the house was filthy when they moved in.

The tenant further testified that the state of the house at move-in was not something the tenant would rent to someone but the tenants were desperate. Their house had burned down, they lost everything, and they had dogs.

The tenant further testified that April 30, 2014 was the last day of the tenancy and garbage day was the next day. The tenants took the garbage to the curb before leaving. The landlord's claim for dump runs is highly inaccurate, and stated that they were likely because the landlord had to rip up flooring after the tenants moved out, which should have been done before they moved in.

The tenants physically moved out on April 5, 2014 and went back multiple times to clean. There were only 2 holes about the size of baseball in the yard and the tenants were there when it was repaired. The fellow that the landlord hired asked to borrow a bucket from the tenants, and the tenant saw him take the dirt from the property next door.

The tenants had asked the landlord's agent between the 10th and 20th of April about a walk-through, but he said he was busy and he'd contact the tenants later. The tenants were there every day so there were multiple times it could have been done, adding that the landlord states that he arrived on the 21st of April and saw the keys in a cup and assumed the tenants were completely done, but at that point the landlord had another 9 days to schedule the move-out condition inspection.

The tenant also testified that the tenants did not damage the closet doors at all. One was off the track, the tenant opened it and it popped out of the hinge almost falling on her. She told the landlord's agent about it and he said he'd fix it but didn't until mid-April, 2014. He didn't say anything about the tenants damaging it. She further testified that $444.00 for the doors is ridiculous. The tenant also pointed out that the landlord's invoice for the millwork on the closet doors is dated June 12, 2014 and the landlord deducted that same amount from the security deposit prior to that without having an invoice.

The tenant also testified that the landlord sent a cheque dated May 6, 2014 to the tenants in the amount of $296.00 and another for $371.00 dated May 30, 2014. The latter came with a letter dated June 2, 2014, and the tenants have not cashed it. The tenants returned the first cheque to the landlord with a letter dated May 16, 2014 stating that the tenants had agreed to pay reasonable cleaning expenses which should not exceed $100.00, and that the tenants expect a cheque in the amount of $1,150.00 of the $1,250.00 deposits paid, plus interest.

The tenants' witness testified that she has been in the rental unit in the summer and it appeared to be an older home. She did not see any damage or any evidence that the home was ill-treated. The witness has 6 rental properties which are older properties and testified that repairs are always required. The witness has seen the landlord's photographs and in her opinion they show only normal wear and tear.

The witness also testified that in her experience dump runs cost $6.00.

In rebuttal, the landlord's agent testified that there was no contact between the parties about the move-out condition inspection taking place on April 20, 2014. He also submitted that the testimony of the tenants' witness is irrelevant in that it is not corroborated by evidence and the witness is not an expert and has no idea of the costs.

The tenants submitted that the landlord had the tenants' address on the rent cheques and received it again in the tenants' letter of May 16, 2014, which was mailed that day. The second cheque written by the landlord is dated May 30, 2014, so the landlord received the tenants' forwarding address before then.

Analysis

Firstly, the *Residential Tenancy Act* places the onus on the landlord to ensure that a move-in and a move-out condition inspection report is completed at the beginning and end of the tenancy and that the tenant is provided with a copy. The *Act* also states that if a landlord fails to do so, the landlord's right to make a claim against the security deposit or pet damage deposit for damages is extinguished. The regulations go into great detail about how to ensure the inspections are scheduled; the landlord must provide the tenant with at least 2 opportunities. If the tenant is not available for the first opportunity, the landlord must provide a second opportunity different from the first by providing the tenant with a notice in the approved form. In this case, the landlord argues that the tenants never gave the landlord notice to move out, but knew for sure at least 9 days before the end of April, 2014. I find that the landlord did not provide any opportunities in writing or otherwise. Further, the tenant testified that a copy of the move-in condition inspection report was not provided to the tenants until the evidence

package for this hearing was delivered. The landlord did not dispute that testimony. Therefore, I find that the landlord's right to make a claim against the security deposit for damages is extinguished.

However, the landlord's right to make a claim for damages is not extinguished. In order to be successful in such a claim, the landlord must establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate such damage or loss.

The regulations also state that a landlord may complete a move-out condition inspection report without the tenant if the landlord has provided the 2 opportunities as set out above, and that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, the landlord did not complete the move-out condition inspection report so there is no report to compare the move-in report to.

The tenants and the tenants' witness testified that the house is a 1960s era and there is no damage beyond normal wear and tear. The tenants had agreed to a cleaning cost of no more than $100.00 because they didn't clean the oven or pull out the appliances to clean before departing, even though they were not inspected at move-in. The landlord did not dispute any of that testimony.

With respect to the doors, any award I consider must not put the landlord in a better financial position than the landlord would be in if no damage or loss had occurred during this tenancy. The tenant and the tenants' witness testified that that the doors were the original doors and the landlord did not dispute that testimony. I find that the doors were old and had depreciated to a value of little or nothing, and that ordering the tenant to replace the old doors at a cost of $444.00 is unreasonable.

I further find that the landlord's claim for $75.00 for hiring someone to move a bucket full of dirt borrowed from the tenant, from a neighbouring flower bed to the rental unit is not a tenant's responsibility. If the landlord cares to hire someone to do such a menial task and pay that amount, the landlord is free to do so, but I do not accept that the landlord has established a reasonable claim as against the tenants or element 4 in the test for damages.

With respect to the dump runs, a landlord may not charge a tenant an over-inflated amount. I am also not satisfied when the photographs were taken or if they were taken

on the same day, or that the landlord has established any of the elements in the test for damages.

With respect to the claim for cleaning the rental unit, one of the tenants testified that the tenants had agreed that the landlord could keep a reasonable amount for cleaning because the tenants hadn't cleaned the self-cleaning oven or pulled out the appliances to clean before departing. The tenant also testified that the appliances had not been pulled out at move-in and therefore there is no evidence that had the tenants pulled them out and cleaned behind and underneath them, that they would be in any better or worse shape.

The landlord's applications for a monetary order for damages and for an order permitting the landlord to keep a portion of the security deposit or pet damage deposit are hereby dismissed.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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 11, 2014

Residential Tenancy Branch