Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application, as amended, for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to keep the security deposit and/or pet damage deposit. All parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

This hearing involved a highly unusual situation where one landlord (the property owner) amended the application already served and subsequently amended by another landlord (the property management company); and, the landlords were not in agreement with events that took place between them. Further, the agent for the property management company was unaware that the owner had amended their application and was unaware that the owner would be present at the hearing. The owner also indicated she was uncertain as to whether the property management company would appear at the hearing. It was undisputed that throughout the tenancy the tenants dealt with a property management company (herein referred to as CRPM).

CRPM filed an Application for Dispute Resolution on July 15, 2014 and filed an amended monetary claim on October 9, 2014. All of the documentation filed by CRPM was served upon each tenant by registered mail using the tenants' forwarding address. The tenant confirmed receipt of CRPM's documentation.

At some point in time after the tenancy ended the property management contract with CRPM was terminated, although neither the agent for CRPM nor the owner could state with any certainty as when this occurred. Initially, the owner testified that the property management contract was terminated before CRPM filed on July 15, 2014; however,

the owner testified at a later point during the hearing that the property management contract ended in late July 2014. The agent for CRPM was uncertain as to when the property management contract was terminated but questioned the owner as to when the property management contract for the new property managers came into effect and the owner testified that she believed that was in August 2014.

The owner filed an amended application which was received by the Branch on October 28, 2014 to change the name of the landlord to her own, change the landlord's service address to her own, and increase the monetary claim against the tenants.

The owner testified that she sent her amended application to the tenants using the forwarding address they had provided on October 28, 2014 using a courier service and both copies of the amended application were in a single envelope. Service of the owner's amended application was non-compliant with the requirements of the Act since the landlord did not serve the tenants personally or by registered mail as is required and did not serve each respondent separately. Further, where a party chooses to mail their amended application they should allow five days for the other party to receive it as provided under section 90 of the Act. The owner submitted that she purchased a "next day delivery" courier service so as to meet her service deadlines; however, purchasing "next day delivery" does not necessarily mean service will occur the next day as it would depend upon the recipient being available to receive the package the next day. Thus, I also found service of the owner's amended application was late.

Nevertheless, the tenant testified that they had received the owner's amended application as it was forwarded to him electronically approximately one week prior to the hearing. The tenant also sent evidence in response to the owner's amended claim that was received by the Branch on November 10, 2014. The owner also confirmed receipt of the tenant's evidence very shortly before the hearing date.

Although the owner failed to serve the tenants with the amended application in a manner that complies with the Act, since mail sent to the forwarding address was being forwarded to the tenants electronically based upon the tenants' decision to receive their mail in that way, I am satisfied that sending the amended applications in a single envelope did not have a significant impact on the tenants ultimately receiving the amended applications. With a view to resolving this dispute, insofar as it involves the tenants and disposition of the tenants' security deposit, I permitted the owner's amended monetary claim. However, since the amended application of the owner was received late, out of fairness, I have also accepted and considered the tenants' late evidence.

Both CRPM and the owner requested authorization to retain the security deposit and/or pet damage deposit; however, the agent for CRPM and the owner were in disagreement as to which party holds the security deposit and/or pet damage deposit. Further, both CRPM and the owner included some of the same claims. The tenant clarified that they had already received a refund of the pet damage deposit but nothing of the security deposit.

Under the Act, the definition of "landlord" is inclusive meaning more than one party may meet the definition of landlord. The definition provides that a landlord includes the owner of the residential property, an agent of the owner who carries out the obligations of a landlord on behalf of the owner, and a former landlord when appropriate. Both CRPM and the owner meet the definition of landlord given the landlords' overlapping claims and dispute concerning possession of the security deposit, I find it appropriate to name both CRPM and the owner as landlords in this decision and the order that accompanies it. It shall remain up to the owner and CRPM to apportion any liability to the tenants among themselves in the appropriate forum.

It should also be noted that the owner of the property often referred to what she saw as CRPM's failings to represent the landlord's interests and I cautioned the owner a number of times that this dispute resolution hearing was not the appropriate forum to deal with a dispute between and the owner and CRPM.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation for the amounts claimed?
2. Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

On April 26, 2011 the tenants and CRPM executed a tenancy agreement for a tenancy set to commence June 1, 2011. After a fixed term of six months the tenancy converted to a month-to-month basis. The tenants paid a security deposit of $812.50 and a pet damage deposit of $812.50. CRPM prepared a move-in inspection report and provided a copy to the tenants.

The tenancy ended June 30, 2014. The tenants and an agent CRPM participated in a move-out inspection together. CRPM prepared a move-out inspection report and included a copy of it with the evidence sent to the tenants on July 15, 2014. The tenants authorized a deduction of $120.00 "toward cleaning" on the move-out inspection

report. The pet damage deposit was refunded to the tenants but no part of the security deposit has been refunded to the tenants.

Below, I have summarized the claims made against the tenants by CRPM and the owner and the tenants' position.

Replacement of microwave handle – $177.14 plus tax

The landlord submitted that at the end of the tenancy the microwave handle was broken. The landlord explained that a new microwave was provided to the tenants in February 2012 and the former microwave also had a broken handle. The landlord suggested that two broken handles is indicative of abuse.

In support of the landlord's claim, the landlord provided a photograph of the microwave; and, a copy of an invoice from a sub-contractor who charged for time to order and pick up the new microwave handle and replace the microwave handle for a cost of $177.14 plus tax.

The tenant denied any abuse of the microwave. Rather, he acknowledged that the microwave was used a lot by a family of five. The tenant submitted that he discovered the first microwave had a cracked handle shortly after the tenancy commenced and he informed the landlord of it but it was not noted at the time of the move-in inspection. The tenant explained that the former microwave was still useable and the family continued to use it until a new one was provided in February 2012. The tenant pointed out that the microwave was replaced with the same type of microwave and that the handle cracked in the same place. The tenant also brought the cracked handle of the second microwave to the landlord's attention. The tenant suspects the cracked handle was due to a manufacturer's defect.

Replacement of toilet seat - $67.48 plus tax

The landlord submitted that a toilet seat had yellow discoloration and a dull finish at the end of the tenancy. The owner testified that the toilet seat was new in 2005.

In support of the landlord's claim for a new toilet seat, the landlord provided a copy of an invoice from a sub-contractor who charged for time to measure the toilet seat, purchase a new toilet seat and replace the toilet seat for a total cost of $67.48 plus tax.

The tenant testified that the toilet seat was discoloured at the start of the tenancy and was noted on the move-in inspection report. At the start of the tenancy the discoloured

toilet seat was in the main bathroom so the tenant moved it to a different bathroom in the rental unit where it would be less visible.

Cleaning - $100.00

The landlord seeks to recover $100.00 paid for general cleaning. The tenant was in agreement with this claim, pointing out that he had already authorized a deduction of $120.00 for cleaning at the time of the move-out inspection.

Filing fee and registered mail costs

I dismissed the landlord's claims for registered mail costs summarily as costs associated to participating in a dispute resolution proceeding are not recoverable except for the filing fee. The tenant submitted that he believed his authorization to deduct $120.00 from the security deposit reflected all of the costs for which the landlord would hold him responsible. I have considered the landlord's request to recover the filing fee in the analysis section of this decision.

Below, I have summarized the owner's claims against the tenant that are in addition to the above claims.

Carpet cleaning – $168.00

The owner submitted that CRPM did not obtain a copy of the carpet cleaning receipt from the tenants. The owner was of the position that this was a term of the tenancy agreement. The agent for CRPM testified that obtaining a copy of a carpet cleaning receipt was determined to be unnecessary as the carpets were clean at the end of the tenancy.

In support of her claim, the owner submitted that she attended the unit in September 2014 and noticed a stain on the carpet. The owner claimed that the current tenant informed her that the stain was there when she moved into the rental unit. The owner proceeded to obtain a quote to support the amount claimed.

The tenant testified the carpets were clean at the end of the tenancy and has a carpet cleaning receipt.

Flea treatment - $236.25

The owner submitted that CRPM did not obtain documentation from the tenants to show they had the unit treated for fleas at the end of the tenancy, as provided in the tenancy agreement.

In support of her claim, the owner submitted that when she attended the rental unit in September 2014 the current tenant informed her that she saw fleas on her dog. According to the owner, the current tenant informed the owner that she saw fleas before she obtained a puppy. The owner obtained a quote for flea treatment in support of the amount claimed.

The tenant testified that their dog was on a flea treatment program and pointed out that the dog had travelled over international borders and treating for fleas was necessary for that purpose. The tenant also stated that the incoming tenant had a dog before getting a puppy.

Tenants' documentary evidence

The tenants provided copies of an "Interim Property Inspection Report" prepared by CRPM on April 16, 2014. The interim inspection report shows all rooms to be in good condition and there is a section that describes the concerns raised by the tenants including the missing microwave handle. Also provided by the tenants was a copy of a carpet cleaning receipt dated June 28, 2014 in the amount of $229.95 for cleaning of 4 bedrooms, stairs, hallway and living room.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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. Verification of 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 case, the landlords bear the burden of proof. The burden of proof is based on the balance of probabilities; however, 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 fails.

The Residential Tenancy Regulations provide that the condition of a rental unit recorded on a condition inspection report is the best evidence of the condition of the rental unit unless there is a preponderance of evidence to the contrary.

The Act provides that a tenant must leave the rental unit reasonably clean and undamaged. The Act also provides that reasonable wear and tear is not damage. Since awards for damages are intended to be restorative, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item to reflect the natural aging and deterioration of the original item due to time and use. In order to estimate depreciation of a replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Upon consideration of everything presented to me, I provide the following findings and reasons.

Microwave handle

It was undisputed that two microwaves suffered from cracked handles. The issue to determine is whether the tenants' actions or neglect caused the handles to crack. I was provided two possible reasons for the cracking: abuse and defect.

I note that cracks at the base of a handle in the door of over-the-range microwaves is not an uncommon occurrence and may be related to plastic construction of the microwave door and the location of the microwave over a heat source which is known to make plastic brittle. Thus, I find the tenant's submission that the broken handles were a result of a defect or design flaw coupled with frequent use by a family to be a reasonable explanation.

While it is possible that a microwave handle could be broken by abuse, I find it unlikely in this case given the overall good condition of the house and the tenants' being forthcoming in reporting maintenance issues to the landlord as reflected on the interim property inspection report.

I find I am not satisfied that the landlords have proven that the microwave handle was broken due to abuse or negligence on part of the tenants or the persons occupying the rental unit. Therefore, I dismiss this portion of the landlords' claim.

Toilet seat

The move-in inspection report demonstrates that the toilet seat in the main upstairs bathroom was stained at the start of the tenancy and at that time the toilet seat would have been only six years old. Now the landlord seeks to hold the tenants responsible for a stained toilet seat that is nine years old. I find it likely that the toilet seats are prone to staining and at nine years old to be at or near the end of their useful life. I find the replacement of the toilet seat was due to age and wear and tear and not damage and I am not satisfied the landlord suffered a loss due to actions of the tenants. Therefore, this portion of the landlords' claim is denied.

Cleaning

Since the tenant was agreeable to this claim during the hearing and as indicated on the move-out inspection report I award the landlord $100.00 for cleaning.

Carpet cleaning and flea treatment

The owner largely relied upon CRPM's failure to obtain a carpet cleaning receipt from the tenants and hearsay evidence from the current tenant in support of her claim for carpet cleaning. To establish an entitlement for monetary compensation from the tenant, it is insufficient to just point to a violation of the tenancy agreement. As outlined previously in this decision, the claimant must also demonstrate that they suffered a loss as a result of the violation. In order to determine whether the landlord suffered a loss related to condition of the carpets at the end of the tenancy or the presence of fleas due to the tenants actions or neglect, I have turned to the condition inspection reports as I find this document is the best evidence in the absence of a preponderance of evidence to the contrary. .

The move-out inspection report reflects that the majority of the flooring was in good condition and none of the flooring was marked as being dirty by the code "DT" as provided on the report. Some of the flooring had a notation of "same" where there were defects at the start of the tenancy; such as: the back bedroom that reflected the flooring as being "scuffed/stain" at the start of the tenancy. I note the room identified as being the lower living room had flooring that was "frayed" at the start of the tenancy and it had "light staining" at the end of the tenancy. I was not provided a photograph of the

carpeting in the lower living room to demonstrate the extent of the stain as it was at the end of the tenancy and as observed by the owner in September 2014. Although only one room appears to have some light staining for which the tenants may be responsible, the owner seeks compensation to clean the carpets of the entire house as reflected on the quote she obtained which describes the proposed job as being "to clean carpets 4 bedroom, liv room, complete". I find the landlord has not established an entitlement to recover the cost to clean the carpeting of the entire house from the tenants as "light staining" was only evident in one room. However, rather than dismiss this claim entirely, I award the landlord $20.00 to apply toward cleaning of the "light staining" in that one room. This amount represents the remainder of the amount the tenant authorized the landlord to retain for cleaning costs.

The move-out inspection report provides no indication that there were fleas in the rental unit at the end of the tenancy. I find the hearsay evidence provided by the owner insufficient to establish that there were fleas in the rental unit at the end of the tenancy or that the landlord has suffered a loss for which the tenants are responsible especially when I considering the complaint about fleas came a number of months after the tenancy ended and the current tenant has pets. Therefore, I dismiss this portion of the owner's claim against the tenants.

Filing fee and security deposit

As the landlord has failed to demonstrate any damages or loss in excess of the amount already authorized by the tenants on the move-out inspection report, I make no award for recovery of the filing fee paid for this Application for Dispute Resolution.

In light of all of the above, the landlords are entitled to retain $120.00 as already authorized by the tenants and the landlords' additional claims against the tenants are dismissed.

Pursuant to Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off*, having dismissed the landlords' claims against the security deposit I order the balance of the security deposit (after deducting the authorized $120.00 deduction) be returned to the tenants without further delay. To ensure payment I have provided the tenants with a Monetary Order for the balance of $692.50 to serve and enforce against the landlords, jointly and severally, as necessary.

Conclusion

The landlords' are entitled to retain $120.00 of the security deposit, as previously authorized by the tenants; however, the landlords' additional claims made against the tenants have been dismissed. The landlords are ordered to return the balance of the security deposit in the amount of $692.50 to the tenants without further delay. The tenants have been provided a Monetary Order in this amount to ensure payment is made.

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: November 27, 2014

Residential Tenancy Branch