Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

In the first application, issued March 10, 2015, the landlords seek a monetary award for unpaid rent or loss of rental income, the costs of cleaning and repair and postage and courier costs.

In the second application, issued March 18, 2015, the tenants seek recovery of a security deposit doubled pursuant to the provisions of the *Residential Tenancy Act* (the "*Act*") and for damages for the landlords' alleged false allegations.

In the third application, issued April 14, 2015, the tenants seek compensation for alleged fraudulent landlord claims, for loss or reduction of cable and internet services and for inconvenience suffered during landlord renovations and furnace cleaning.

In their subsequently filed Monetary Order Worksheet, the landlords' appear to have attempted to amend their claim by adding claims for "stress," "slander," "invasion of privacy" and "disruption of use of property."

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that any of the parties are entitled to any of the relief claimed?

Background and Evidence

The rental unit is a one bedroom basement suite. The tenancy started in May 2014. At that time the landlord owners lived in the upper portion of the home. The rent was $850.00 per month, due on the first of each month, in advance.

There is a written tenancy agreement between the tenants and their original landlords. It shows that the tenancy was for a fixed term ending May 1, 2015 and then on a month to month basis. The agreement shows the tenants paid a $400.00 security deposit and a $250.00 pet damage deposit.

The applicant/respondent landlords purchased the property in late January 2015 and moved in to the upstairs portion of the home.

The tenants vacated the premises on or about March 2, 2015. They alleged they gave written notice and had the landlords' agreement to end the tenancy before the end of their fixed term.

No move in condition inspection was done at the start of the tenancy.

The parties conducted a move out inspection and a report was prepared. The tenants indicated in the report that they did not agree that it represented the state of the property at move out.

The landlord Ms. R.B. testifies that the premises needed cleaning and she hired a service to clean at a cost of $210.00.

She says that as the result of the tenants having kept a puppy, the carpets were urine stained and required considerable cleaning, costing $325.14.

She says there was baseboard damage and minor wall repair requiring a repainting of the interior. She obtained quotes for this work but the landlords ended up doing it themselves. They seek $500.00 compensation; a cost well below the quotes.

Ms. R.B. testifies that the professional cleaning still did not remove the smell and so the carpets were replaced. The cost to do so was $1000.00. The landlords seek $250.00 of that cost.

Ms. R.B. testifies that the premises were re-rented by April 24th and seeks $680.00 as 24/30ths of the April rent. It is apparent that her relatives have moved in but she testifies that they are paying rent.

Ms. R.B. also testifies that the tenants' barbeque obstructed the landlords' access to the back yard.

The tenant Ms. M.J. testified that she had been led to believe that the landlords' would conduct renovations and that their parents were moving in May 1st and that the tenants had to leave. She states that she "was fine with that."

She presented a number of photos of the premises said to have been taken at time of move in. They show that the carpet had "pulls" in it and that there was some wall damage.

She testifies that the previous tenants had a dog or dogs and that the carpet was not clean at move in.

She says that the landlords' three dogs used a side way to go the backyard and that it infringed on her right to quiet enjoyment of her premises.

In response, the landlord Ms. R.B. refers to a number of her own photos of the premises alleged to have been taken after these tenants moved out.

In response to that, the tenant Ms. M.J. testifies that the parties had signed a Mutual Agreement to End Tenancy in the form provided by the Residential Tenancy Office, effective March 2, 2015. The document was not produced.

The landlord Ms. R.B. denies the existence of any such document.

Analysis

I have considered all evidence produced during the hearing though I may not refer to it all in this decision.

Section 37(2)(a) of the *Act* sets out a tenant's obligation when leaving a rental unit and the standard to be met. It says that a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." That standard of cleanliness is to be met regardless of the state of the premises at move in. If the

premises are not reasonably clean at move in, a tenant has the opportunity of negotiating with the landlord or perhaps even making an application for compensation.

Understandably, what a landlord considers to be “reasonably clean” can differ greatly from what a tenant might consider. Having regard to the photographic evidence and leaving aside the issue of the carpeting, I find that the premises were not left reasonably clean. At the same time, I find that the level of cleaning engaged by the landlord was beyond the level expected of a tenant. In all the circumstances, I award the landlords $100.00 for suite cleaning.

On the evidence presented, I find that the carpets in the premises were urine stained by the tenants’ dog. The landlords were justified in hiring the professional carpet company to conduct a cleaning. Their reports show “strong odour” noted at the time of entering. I consider the carpet cleaning to have been justified and I award the landlords the full cost of the carpet cleaners, the amount of $325.14

I dismiss the landlords’ claim for recovery of a portion of the carpet replacement cost. The tenants’ photos show that the carpeting was damaged and stained at the time of move in. It has little if any value. To award the landlords any amount for further damage or staining to the carpet would be to put them in a better position than had the carpets been in the same condition at the end as at the start of the tenancy.

Regarding damage to the interior, it should be said that a landlord who fails to conduct a move in inspection and prepare a report, as required by the *Act*, puts herself in difficult position when attempting to argue that the premises have been damaged during the tenancy. The purpose of such a report is to avoid exactly the dispute here; what was or was not damaged during the tenancy. In this case the landlords came to the tenancy late. Obviously they were not in a positon to have conducted the move in report, but they are left at the same disadvantage.

The tenants’ photos are the best evidence of the state of the premises at move in. They show that the walls of the rental unit had damage at the time of move in. Various puttied over marks can be seen in the pictures. They admit to having caused damage to a corner.

I find that the damage caused by the tenants is restricted to the corner damage. That damage did not justify a repainting of the premises and so I dismiss portion of the landlords’ claim. I award the landlords $150.00 as a reasonable cost to have the admitted damage repaired.

I award the landlords $10.00 for bulb replacement.

I award the landlords $680.00 for April rent. The existence of a mutual agreement to end the tenancy has not been proven. The tenants are bound by the written tenancy agreement under which they agreed to rent the premises for the fixed term and month to month thereafter. Section 45(2) of the *Act* makes it clear that a tenant cannot unilaterally end a tenancy before the end of a fixed term.

The landlords, in their Monetary Order Worksheet also claim compensation for "significant stress" due to "slander" and for "invasion of privacy" and "disruption of usage of property." The evidence is minimal on these points. I see nothing to take the dispute beyond that of a landlord and a tenant disagreeing about who is responsible for doing what. The allegation that the location of the tenants' barbeque somehow greatly inconvenience them is not plausible. There is no evidence that they ever asked the tenants to move it. I dismiss these aspects of the claim.

Last, the landlords see to recover registered mail costs. My authority to award "costs and disbursements" incurred in this dispute resolution process is limited to awarding recovery of any filing fee, which I do in this case. The landlord's are entitled to recover their $50.00 filing fee.

The tenants claim compensation alleging that the landlords' claims were made "fraudulently." There is no evidence to substantiate that (very serious) allegation.

The tenants claim that they were without cable television for two months and that the internet service was inconsistent for awhile. There was little if any evidence presented in support of this claim and no evidence showing that damage resulted. I dismiss this item of the claim.

The tenants claim that they suffered loss of use or inconvenience as a result of the landlord's dogs using the side yard. I find that the evidence does not support the claim and that it is without merit.

The tenants also claim that they were inconvenienced by furnace cleaning and renovations. Little evidence was given about this. The "renovations" were not described at hearing, nor their length or effect. If the landlords caused the furnace to be cleaned during this tenancy it was likely as part of their duty to reasonably maintain the premises and tenants are generally expected to put up with any reasonable inconvenience associated with that maintenance.

Last, the tenants claim a doubling of their deposit money. Section 38 of the *Act* provides:

> **38** (1) **Except as provided in subsection (3) or (4) (a), within 15 days after the later of**
> **(a) the date the tenancy ends, and**
> **(b) the date the landlord receives the tenant's forwarding address in writing,**
> **the landlord must do one of the following:**
> **(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**
> **(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
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> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
> (a) the director has previously ordered the tenant to pay to the landlord, and
> (b) at the end of the tenancy remains unpaid.
>
> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
>
> (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
>
> (6) **If a landlord does not comply with subsection (1)**, **the landlord**
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

(*emphasis added*)

In this case the tenancy left on March 2, 2015. Even if that was the “end of the tenancy” the landlords applied eight days later, well within the 15 day period. The tenants are entitled to credit for their deposit money, but not to a doubling of it.

Conclusion

The tenants' claim is dismissed.

The landlords are entitled to a monetary award totalling 1265.14 plus the $50.00 filing fee. I authorize the landlords to retain the $650.00 deposit money they hold in reduction of the amount awarded. There will be a monetary order against the tenants for the remainder of $615.14.

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: August 14, 2015

Residential Tenancy Branch