Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package, including the Notice of Hearing and the landlord's application for dispute resolution, as well as a copy of the landlord's written evidence, by way of an email sent to the tenant on July 21, 2015. This email was served to the tenant by the landlords in accordance with a decision of Arbitrator EN on April 28, 2015, allowing for substituted service by the landlords to the tenant in this manner. In accordance with sections 88, 89(1) and 90 of the *Act*, I find that the tenant was duly served with the above documents.

The tenant testified that he was out of town for most of the summer and did not check his emails until it was too late to locate and submit evidence in the form of a video he kept showing the condition of the rental unit at the end of this tenancy. Given that the tenant received notice of this application over two months before the hearing and did not submit any evidence, I proceeded to hear the landlord's application on the basis of the written and photographic evidence provided within the time frames established by the Residential Tenancy Branch (the RTB's) Rules of Procedure.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Are the landlords entitled to recover the filing fee for this

application from the tenant? Should any other orders be issued with respect to this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, including the landlords' photographs, miscellaneous documents, invoices and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

On September 10, 2013, the landlords and the tenant signed a Residential Tenancy Agreement (the Agreement) for a fixed term tenancy that was to commence on September 15, 2013 and last until August 31, 2014. Although a second tenant was identified in the Agreement, only the tenant/Respondent signed the Agreement. He signed on behalf of the other tenant, who was not named as a Respondent in the landlord's application. According to the terms of the Agreement, both parties agreed that this tenancy was to end on August 31, 2014, by which time the tenant had to vacate the rental unit. Monthly rent was set at $1,850.00, payable in advance on the first of each month, plus hydro and heat. The landlords continue to hold the $925.00 security deposit paid by the tenant on September 10, 2013.

The tenant testified that he vacated the property on September 2, 2014; the landlord testified that this happened on September 5, 2014. The landlord provided confusing testimony with respect to how this tenancy ended. He testified that he issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on or about August 22 or 23, 2014. Both parties confirmed that the tenant paid the outstanding rent for August, within five days of receiving the 10 Day Notice. The landlord testified that he subsequently sent the tenant a notice to end tenancy for unpaid rent because the tenant had been late paying his rent on three separate occasions. The tenant checked his emails and gave undisputed sworn testimony that the 10 Day Notice was given to him on August 19, 2014, seeking an end to this tenancy on August 31, 2014. The tenant said that no formal notices to end tenancy were given to him by the landlord; all notices he received were by email and not on the required RTB forms. The landlord denied this allegation, but could not locate any Notices to End Tenancy on RTB forms. At any rate, the tenant agreed that he vacated the rental unit a few days later than the scheduled August 31, 2014 end date to his fixed term tenancy Agreement. He also confirmed that he did not pay any rent for September 2014.

The parties agreed that they conducted a joint move-in condition inspection at the beginning of this tenancy. Although the landlord said that he issued a report of this

inspection, providing a copy to the tenant, he did not enter into written evidence a copy of that report. The landlord testified that he sent the tenant emails to arrange a joint move-out condition inspection of the rental unit at the end of this tenancy, but the tenant refused to undertake this inspection. The tenant denied having received these requests for a joint move-out condition inspection. The landlord said that he conducted his own move-out condition inspection on September 5, 2014. He also testified that he prepared a report of that inspection. He did not enter into written evidence a copy of any such move-out condition inspection report, and confirmed that he has never provided the tenant with a copy of that report. At one point during the course of the hearing, the landlord referred to the photographs he took of the condition of the rental unit at the end of the tenancy as his move-out "report." The landlord provided no other evidence that a move-out condition inspection report was prepared.

The landlords' application for a monetary award of $8,501.00 included the following items:

Item	**Amount**
Unpaid Rent (September 1, 2014 to October 15, 2014 – 45 days)	$2,775.00
Landscaping	975.00
Repairs and Cleaning	4,751.00
Total of Above Items	**$8,501.00**

At the hearing, the landlord testified that the rental unit in this 21-year old rental home was newly renovated when the tenancy began. He testified that the premises were newly painted shortly before the tenancy started. The tenant disputed this statement, alleging that there was unsanded drywall in the living room and spackling paste covering a wall in another area.

The landlord testified that the rental unit was left in such poor condition at the end of this tenancy that he could not show the premises to prospective renters until repairs were completed and the property was properly cleaned. He said that he began advertising the availability of the rental unit in early August 2014, expecting the rental unit to become available by August 31, 2014. He said that he always ensures that rental units are freshly painted and in good condition before he allows new tenancies to commence. He said that considerable garbage, debris and personal possessions were left behind at the end of this tenancy. He testified that much cleaning was required. He said that six or seven hay bales were left by the tenant on the rental property.

The tenant disagreed, stating that everything on the inside of the rental unit was left in clean condition at the end of the tenancy. Some of the delay in handing over possession of the rental unit arose as a result of the tenant's attempts to ensure that the interior of the rental unit was properly cleaned. The tenant testified that he left one bundled hay bale on the property at the end of the tenancy.

The landlord claimed that the tenant was responsible for breaking the toilet bowl during the course of this tenancy, which resulted in the leakage of waste material including sewage on the flooring of the rental unit. The parties gave conflicting accounts as to the extent to which the tenant was responsible for damage stemming from the toilet problem that occurred near the end of this tenancy. The landlord also held the tenant responsible for removing drywall in the garage where leakage from the bathroom had occurred. The tenant admitted breaking the handle on a pedestrian door, damaging the garage door and making some small holes in walls.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Section 57(3) of the *Act* also allows a landlord to claim compensation from an overholding tenant, defined as a tenant who continues to occupy a rental unit after a tenancy has ended.

There is undisputed evidence that the tenant did not pay any rent for September 2014, and remained in the rental unit for at least two days and as many as five days after the end of his fixed term tenancy. While I accept that some work was likely necessary to restore this rental unit to rentable condition following the end of this tenancy, the landlord also gave sworn testimony that as a matter of practice he ensures that new tenants obtain freshly painted premises. I find little evidence other than the landlord's sworn testimony to support the landlord's claim that the rental unit was not "safe" for prospective showings for a considerable period after the end of this tenancy. Under these circumstances, I find that any cleaning and removal of debris for which the tenant is responsible could have restored the rental property to a state whereby it could have been accessed and shown to potential renters by at least the end of the first week of September. I also find that the tenant is not responsible for delays in undertaking such work or completing repairs for which the landlord has failed to demonstrate the tenant is responsible. I accept that the delay in the tenant's surrender of vacant possession of

the rental unit likely did set back the landlord's plans to prepare the rental property for re-rental. However, I find little evidence to support the landlord's entitlement to a full reimbursement of lost rent from September 1 until October 15, when new tenants took possession of the rental unit. I allow the landlord to recover overholding rent and loss of rent equivalent to the first ten days of September 2014. This results in a monetary award of $616.66 ($1,850.00 x 10/30 = $616.66) for these items.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I have also considered the evidence related to the landlords' application for a monetary award for the recovery of landscaping costs. An Addendum to the Agreement, initialled by the tenant, agreed that the tenant was to maintain at his own cost the grounds around the house, and to look after keeping the grass cut, watered and weeded and to look after the garden, and to ensure that "all trees, plants and flowers" were "preserved and properly maintained." The landlord said that these costs were incurred to mow the lawn and to trim trees which had been allowed to grow unimpeded during the course of this tenancy. He also said that the six or seven bales of hay needed to be removed from the rental property. To support this aspect of the landlords' application, the landlord provided a single photograph of the lawn which clearly needed to be mowed, but which revealed little else. While the tenant admitted that he left one full hay bale on the property at the end of this tenancy, he said that he looked after the rest of the exterior of the property during the course of his tenancy.

I do not find that the Addendum to the Agreement required the tenant to look after major exterior maintenance work such as tree trimming. Based on the very limited photographic evidence and the sworn testimony of the parties, I find that the landlord is entitled to a nominal monetary award of $150.00 for the removal of the hay bale, plus some limited exterior maintenance to the yard.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be

issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy started as well as when it ended.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Without such reports it is very difficult to ascertain the extent of the repairs that became necessary as a result of the tenant's actions as compared to the condition of the rental unit when the tenancy began.

In this case, the landlord produced no copies of reports, and did not undertake a joint move-out condition inspection with the tenant. Conflicting evidence was provided by the parties to explain why this did not occur.

In addition to the lack of information, other than the landlords' photographs and an invoice for work performed to repair the rental property, there is conflicting evidence as to the extent to which the tenant was responsible for damaging drywall in the garage to reduce leakage and minimize the tenant's exposure to the landlords' losses. The tenant said that he removed only wet and mouldy drywall so as to protect the landlords' interests. The landlord attributed responsibility for this leakage to the tenant. Although the landlord provided written evidence that the leakage involved sewage that had leaked from the toilet bowl, he gave sworn testimony at the hearing that this leakage had emanated from the toilet tank behind the bowl. A leakage from the toilet tank would not involve contaminated water and would not necessarily result from any negligence on the tenant's behalf.

I find that the landlords' entitlement to a monetary award for damage is limited by the poor quality of the evidence he submitted and the lack of consistency in his account of what transpired. Based on a balance of probabilities, I find the tenant's description of damage more convincing. He admitted responsibility for some damage arising from this tenancy, including damage to a pedestrian door, the garage door, holes in walls, and some belongings left behind at the end of this tenancy.

I have also considered the landlord's claim for repairs and repainting, and the replacement of drywall in the garage, the replacement of door knobs, and the repair of tiles. I allow a nominal monetary award of $200.00 for these items, as I accept that the tenant has admitted to causing some damage during the course of the tenancy.

The RTB's Policy Guideline #40 establishes the Useful Life of various physical items in a rental property, which is used as a guide for Arbitrators considering damage claims. The useful life of a garage door is set at 10 years. As the garage door in this rental unit is the original one installed when the house was built, I make no award for the replacement of the garage door broken during the course of this tenancy. As toilets have a useful life of 20 years, and the landlord presented no evidence that the replaced toilet was newer than the structure, I dismiss the landlord's application for a monetary award for the replacement of the toilet without leave to reapply.

Based on the photographic evidence of the landlords and the sworn testimony of the parties, I allow the landlord a monetary award of $200.00 for cleaning. I do so as I find that the landlords have demonstrated entitlement to some allowance for cleaning, which I calculate on the basis of an eight-hour day at a rate of $25.00 per hour.

As the landlords have been partially successful in their application, I allow them to recover $50.00 from their filing fee from the tenant.

During the course of this hearing, the tenant confirmed that the tenant had not provided the landlords with his forwarding address since ending his tenancy in early September 2014. Based on this sworn testimony and in accordance with section 39(a) of the *Act*, I advised the parties that the tenant's failure to provide his forwarding address to the landlords within a year of ending his tenancy entitled the landlords to retain the tenant's security deposit. Although the issue of the security deposit was not part of the landlord's application, I am exercising the discretion provided to me pursuant to paragraph 62(1)(b) and sections 62(2) and 62(3) of the *Act* to order that the landlords retain the tenant's security deposit plus applicable interest as outlined in section 39(a) of the *Act*. No interest applies to this deposit.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords a monetary award to recover unpaid rent, loss of rent, damage and the filing fee for the landlords' application:

Item	Amount

Overholding and Loss of Rent	$616.66
Exterior Maintenance and Removal of Items	150.00
Repairs	200.00
Cleaning	200.00
Filing Fee	50.00
Total Monetary Order	**$1,216.66**

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I also order the landlords to retain the security deposit for this tenancy.

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 05, 2015

Residential Tenancy Branch