Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; 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 landlord and one of the tenants attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other respecting the testimony and evidence 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.

The landlord raised a concern at the commencement of the hearing that only one of the tenants attended. The Rules of Procedure allow parties to have others represent them.

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 unpaid rent or utilities?
- 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, and more specifically for aggravated damages and other relief?
- 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 testified that this fixed term tenancy began on July 1, 2015, and the tenants moved out of the rental unit on February 28, 2016. Rent in the amount of

$1,200.00 per month was payable in advance on the last day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $600.00 as well as a pet damage deposit tin the amount of $600.00, both of which are still held in trust by the landlord. The rental unit is a basement suite on acreage, and the landlord resides in the upper level of the home.

The landlord further testified that although the tenancy agreement, a copy of which has been provided, states that the fixed term expires on July 1, 2016, the parties had a verbal agreement that the tenancy would be fixed for 3 years, ending on July 1, 2018. The tenancy agreement states: "for a fixed length of time, 1 year, ending on 01 July 2016. At the end of this fixed length of time, the tenancy may continue on a month-to-month basis or another fixed length of time," and is initialed by the landlord and a tenant. The words, 'another fixed length of time' are underlined, and the landlord testified that the parties agreed to a 3 year fixed term.

The tenants had applied for Arbitration, and a hearing was conducted by the director, Residential Tenancy Branch on February 2, 2016. A copy of the resulting Decision has been provided. The parties agreed to end the tenancy effective February 28, 2016 and the tenants agreed to pay $2,400.00 to the landlord as compensation for releasing the tenants from the fixed term tenancy agreement. The Decision also directs the parties to deal with the security deposit and pet damage deposit in accordance with the *Act* at the end of the tenancy.

The tenants wanted out of the fixed term agreement because they purchased a house, and instead of assigning or subletting, the tenants reported to the City that the rental unit is illegal. The landlord cannot re-rent as a result of the fraudulent report, and the City has fined the landlord $1,000.00 every 2 weeks but has never told the landlord what's illegal about it. Copies of by-law infractions have been provided which show, "Permit use contrary to zone," and, "carry on business without a license." The landlord is disputing the tickets with the City, and testified that she has rented the suite out for many years without any problems from the City.

At the February 2, 2016 hearing, the landlord was basically told that if the landlord didn't agree to end the tenancy, the landlord would stand a chance of not getting anything from the tenants, which would have forced the landlord into bankruptcy. The rental is the only source of income for the landlord and can no longer rent it. In addition, the landlord's safety and that of her family are at risk because having renters is added security for the landlord, and the tenants knew that.

The landlord also testified that a move-in condition inspection report was completed at the beginning of the tenancy, but the tenants did not attend for a move-out condition

inspection despite being given opportunities by the landlord. Numerous emails have been provided, and the landlord testified that she contacted the Residential Tenancy Branch and was advised that the landlord should not go into the rental unit until the final inspection was completed. On March 3, 2016 the landlord sent a Final Opportunity to Schedule a Condition Inspection to the tenants' forwarding address scheduling the inspection for March 10, 2016. The tenants did not attend, and the landlord had a friend complete the move-out condition inspection report, who wrote what she saw.

The landlord located the keys to the rental unit and a forwarding address of the tenants when the landlord entered the rental unit on March 10, 2016.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- $1,200.00 for the tenant's failure to participate in the move-out condition inspection, and their right to the deposits is extinguished;
- $250.00 for replacement of towels and other cloths;

The landlord and the tenants shared laundry facilities in a common area, and the landlord is missing a load of towels and no one else has access to the laundry area. The landlord asked the tenants to return them in an email and testified that she cannot afford to replace them and the cost is at least $250.00.

- $120.00 for cleaning the rental unit;

The landlord testified that the floors, cupboards were dirty at the end of the tenancy and refers to the inspection reports.

- $300.00 for repairing a clogged sink;

The landlord testified that she called plumbers who said to fix the drain would cost around $300.00 but to get an estimate would cost about $50.00, so no written estimate has been provided.

- $445.98 for replacement of a bedroom window;

The tenancy agreement states that the tenants are not permitted to have anything stored on the property or a gazebo, which they put up near the window. Rain damaged it, and photographs have been provided. The window is swollen and doesn't work right, and the landlord told the tenants when they started to complain about the window leaking that it was caused by a lot of rain pouring onto the gazebo which directed the water onto the window. A series of emails have been provided.

- $566.00 for replacement of laminate;

The landlord testified that the tenants and their pets damaged the laminate floor, leaving dents, water damage and urine damage from pets. Photographs were taken on March 12, 2016, and the amount claimed is what it originally cost the landlord to have the flooring installed in 2010. The claim is for the living room, between the living room and kitchen, hallway, entry and 2 bedrooms.

- $450.00 for parking for 3 additional unauthorized vehicles;

The tenancy agreement provides for parking for 2 vehicles. The tenants also parked a truck, horse trailer and camper on the property. The parties mutually agreed that if they parked on the property for free, they would help move debris to the landfill, but when the landlord asked them to do so, they removed their vehicles instead after 3 months of parking. The tenants had told the landlord that if they parked where their horses are, they would have to pay $50.00 per month per vehicle, and the landlord claims that amount from the tenants for 3 months.

- $4,000.00 for by-law infractions;

The landlord is disputing the by-law infractions with the City, but currently owes $5,000.00 as a result of the tenants making false accusations to the City about the rental unit.

- $1,522.75 for window/vehicle damage;

On December 23, 2015 the landlord had company and the tenant texted the landlord asking the landlord to return a cookbook borrowed weeks prior, by putting it on the dryer in the common laundry room. The landlord didn't see the text until after her company left, and 3 windows in the landlord's vehicle were smashed. Since then, the landlord's car has been vandalized. Even if the tenants didn't do it, they put the landlord at severe danger.

- Loss of rental income and aggravated damages, to bring the total claim to $25,000.00;

The landlord testified that she is claiming aggravated damages for the tenants fraudulently reporting the rental unit as illegal and evidence that they provided at the February 2, 2016 hearing to get out of the lease was fabricated. The tenants falsified documents and evidence by leaving out parts of emails and relying on those at Arbitration.

The tenant testified that the tenancy agreement has options, and the landlord checked the box saying that at the end of the 1 year fixed term, the tenants had to move out. The tenant changed it to show that it may continue. The tenant's spouse had a conversation while the tenant did the walk-through of the rental unit. To say that the parties agreed to stay for 3 years is an exaggeration. The general discussion was that the tenants may want to stay longer than 1 year, but the lease is for 1 year and there was no verbal agreement to any specific additional length of time.

With respect to the move-out condition inspection, the tenant sent an email to the landlord, a copy of which has been provided, suggesting that the parties meet on February 27, 2016, but the landlord refused. The landlord did not make any contact with the tenants about it on February 27, even though the landlord arrived at the home around noon. Then the landlord suggested February 29, 2016 by email and then cancelled it. The tenant told the landlord she was required to give 2 specific times, and the landlord offered March 4 or 5 at noon. The tenant accepted March 4, then the landlord said that only the tenant's wife could attend, and the landlord threatened to call police for trespassing if the tenant attended on the property. The landlord also said she would not be there unless the tenant's wife made the appointment.

The tenants had a trip planned to Mexico and left on March 5, 2016 and didn't receive the Notice of Final Opportunity to Schedule a Condition Inspection. The landlord accused the tenants of fraud with respect to the forwarding address provided in writing because the mail was returned to the landlord while the tenants were in Mexico.

The tenant also testified that the landlord only raised the idea of parking fees after the tenant's wife told the landlord that the tenants were buying a house.

The tenant went to the City to enquire about isolated electrical plugs because there was only 1 plug on the kitchen counter and breakers were blowing. The kitchen and bath shut down due to whatever the landlord was doing upstairs. The by-law officer told the tenant that a letter was written to the landlord stating that the landlord had to bring the suite up to code or decommission it, but the landlord totally ignored the letter so the City started fining her. An officer called the tenant asking if the landlord was home because she didn't answer the door. The by-law fines are the landlord's own fault for failing to respond to the letter from the City or any of the fines.

The tenant denies taking the landlord's towels. The landlord also has daughters and had house guests. There is no evidence that the tenants took them.

The tenants paid the landlord $2,400.00 as agreed to at the February 2, 2016 hearing. The tenant left a forwarding address in writing with the keys in the rental unit on

February 29, 2016. The landlord knew that the tenant had been there because the landlord texted the tenant saying that she knew he had. Also, as per the February 2, 2016 Decision, the landlord could go in anytime after 1:00 on February 28, 2016 because that's when the tenancy ended. The tenant doesn't deny that the landlord got information from the Residential Tenancy Branch but questions what the landlord asked.

There is no evidence about damage to the landlord's vehicle. The tenant called police and they said there was no evidence.

With respect to the landlord's claim for damage to the laminate floor, the move-in condition inspection report shows damage to laminate, and the landlord told the tenants that a previous tenant had allowed the tub to overflow, and the landlord did renovations, such as plywood and moldings, herself. The landlord had also told the tenants that damage in the kitchen was from a previous tenant hoarding.

With respect to the landlord's claim for cleaning costs, the tenants have provided 2 photographs, which the tenant testified illustrate very old windows. The tenant also testified that the yard is weed-ridden gravel and dirt. There is no lawn, but a garden by the bathroom, and when the wind blows, dirt blows in. The tenants left a corner of a window open which has an insect catcher, and the landlord waited several days after the tenancy ended to go into the rental unit.

The tenant also testified that the landlord told the tenants at the beginning of the tenancy that the kitchen drain was slow, but it got slower as it got cold outside. The tenants used Liquid Plumber on several occasions and told the landlord by email that it was getting slower. The clogged drain was not caused by the tenants.

It was not rain that caused the window to leak, but leaking and broken gutters. There was a steady stream of rain water coming off the roof. It was reported to the landlord twice, and on both occasions the tenants cleaned it up and put plastic on the window to prevent damage. There was a puddle on the floor, but no damage because the tenants cleaned it up in a timely manner.

The landlord was happy with the gazebo because it looked good in the yard and even offered to help the tenant put it up.

The tenant also denies that the landlord ever asked the tenants to move debris to the landfill. In mid-October, 2015 the landlord asked the tenants for $450.00, plus 20% interest.

The tenant further testified that the landlord made it impossible to conduct the move-out condition inspection, so the tenant's right to claim against the deposits should not be extinguished.

Analysis

Firstly, with respect to the security deposit and pet damage deposit, the *Residential Tenancy Act* specifies that a landlord must ensure that move-in and move-out condition inspection reports are completed, and the regulations go into detail how that is to happen. A landlord must suggest a date to a tenant, and if the tenant is not available, the landlord must offer a second opportunity different from the first. The tenancy agreement contains the names of both tenants, and I see no reason for the landlord to ensure that only one of the tenants attended. I have also reviewed the emails, and it's clear that the landlord told the husband tenant that if he attended to do it, the landlord would call the police for trespassing. The *Act* states that the landlord and the tenant must complete the inspection together, and the regulations permit a tenant to appoint an agent. The landlord may not turn the tenant away, and therefore, I find that the landlord has not complied, and the tenants' right to the deposits is not extinguished.

The landlord testified that the first time she entered the rental unit after the tenancy ended was on March 10, 2016, however she also testified that she sent the Notice of Final Opportunity to Schedule a Condition Inspection to the tenant's forwarding address on March 3, 2016. That testimony is contrary to itself, considering that the landlord didn't have the forwarding address until she entered the rental unit. I am not satisfied that the landlord has complied with the *Act* or the regulations, and the landlord's right to claim against the deposits for damages is extinguished.

However, the landlord's right to make a claim against the deposits for unpaid rent is not extinguished, nor is the landlord's right to make a claim for damages. In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4 elements in the test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists because 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 claiming party made to mitigate any damage or loss suffered.

The tenant denies taking the landlord's towels, and there is no supporting evidence to satisfy me that they did. There is also no evidence of the cost to replace them, other

than the landlord's testimony that it will cost at least $250.00 to replace them. I find that the landlord has failed to establish elements 2 and 3 in the test for damages.

I have reviewed the emails provided by the parties, and considering the undisputed testimony of the tenant that the kitchen drain was slow at the commencement of the tenancy and worsened over time, I am not satisfied that the landlord has established that the tenant's breached the *Act* or the tenancy agreement causing the drain to be clogged.

I have also reviewed the photographs, and I am satisfied that the bedroom window was very old at the commencement of the tenancy. The landlord testified that the damage was caused by the tenants' gazebo which is contrary to the tenancy agreement. However, the tenant testified that the landlord liked it because it looked good in the yard and even offered to help put it up. I find that the landlord failed to mitigate by allowing it to be erected contrary to the tenancy agreement. I also refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of windows at 15 years, and I am not satisfied that the window was newer than that. Any award for damages must not put the landlord in a better financial position than the landlord would be if the damage or loss during this tenancy hadn't existed. To order the tenants to purchase a new window when there wasn't a new window there to begin with would put the landlord in a better financial position, and therefore, the landlord's claim for replacement of the window is dismissed.

I have reviewed the move-in and move-out condition inspection reports, and I accept the testimony of the landlord that she had a friend complete the form objectively after the tenants had vacated. The tenant denies leaving the rental unit dirty, and a tenant's responsibility is to leave a rental unit reasonably clean and undamaged at the end of a tenancy except for normal wear and tear. It is not the responsibility of a tenant to leave a rental unit in a pristine condition that a landlord may want for future tenancies or for sale purposes, but reasonably clean. The tenants' written material states that because it took the landlord 10 days to enter the rental unit after the tenancy had ended, it's no surprise that the landlord found dirt and dust. The written material also suggests that the landlord's friend who completed the move-out condition inspection report noted every single mark and bump. I also note that on the report some things are marked as 'dirty' with a checkmark in the 'CODE' column indicating a 'good' condition, according to the legend on the form. The only portions of the report that I find to be the responsibility of the tenants that was not done, are window cleaning and the oven and cupboards. The tenants resided in the rental unit with pets for 8 months, and I accept the landlord's claim of $120.00 for cleaning windows and the kitchen.

With respect to the landlord's claim for replacement of laminate flooring, the move-in condition inspection report is not much different from the move-out portion with respect to floors. The landlord testified that laminate must be replaced in the living room, between the living room and kitchen, hallway, entry, and 2 bedrooms, but the move-out condition inspection report doesn't reflect that. I also consider the undisputed testimony of the tenant that at the beginning of the tenancy the landlord told the tenants that a previous tenant was a hoarder and another tenant caused water damage by allowing the tub to overflow. I am not satisfied in the circumstances that the landlord has established element 2 in the test for damages.

With respect to parking, I am not satisfied that the tenants ever agreed to pay $50.00 per month per vehicle. The tenancy agreement clearly says that parking for 2 vehicles is included in the rent, and if the landlord wanted to charge more money for more vehicles, that ought to have been an agreement in writing. The tenants may or may not have agreed to park them on the property given notification that there would be a cost associated with that. I am not satisfied that any loss to the landlord exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement.

With respect to by-law infractions, I am not satisfied that the tenants are responsible for the landlord's failure, as a landlord and home owner, to respond to a letter from the City, and the landlord's claim is dismissed.

With respect to the landlord's claim for window and vehicle damage, the landlord has no idea who caused the damage. The landlord testified that even if the tenants didn't cause the damage, they put the landlord in danger. It is not a responsibility of a tenant to ensure a landlord and a landlord's vehicles are safe and secure. The *Residential Tenancy Act* permits monetary compensation to be awarded to a party where the other party fails to comply with the *Act*, but there is nothing in the *Act* requiring a tenant to keep a landlord's property safe from vandalism. I fail to see how the tenants have failed to comply with the Act or the tenancy agreement with respect to damage to the landlord's vehicle and the application is dismissed.

With respect to the landlord's claim for loss of rental income and aggravated damages, the landlord testified that the tenants provided fraudulent material for the February 2, 2016 hearing. I see no evidence of that, however more importantly, the landlord agreed to settle the dispute upon receiving $2,400.00 from the tenants, and the landlord received it at the end of the tenancy. The landlord may not now come back to apply for more having settled the previous dispute. I find that the landlord is fearful not having tenants residing on the property, however, that is not the responsibility of the tenants. The tenants have vacated the rental unit, the landlord needs to deal with the City, and the landlord is at liberty to re-rent once clearance is received from the City.

With respect to the security deposit and pet damage deposit, the *Act* requires a landlord to either make an application for dispute resolution claiming against it or return it in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay double the amount. In this case, the tenancy ended on February 28, 2016 and I am satisfied that the landlord received the tenants' forwarding address in writing on March 3, 2016. The landlord filed the application for dispute resolution on March 24, 2016, clearly beyond the 15 days. Therefore, I find that the tenants are entitled to double the amount of the deposits, totalling $2,400.00.

I refer to Residential Tenancy Policy Guideline 17 – Security Deposit and Set-Off, which states, in part:

> The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
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> · a landlord's application to retain all or part of the security deposit, or
> · a tenant's application for the return of the deposit
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> unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.
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> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
>
> · If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the $100.00 filing fee.

Having found that the landlord is owed $220.00 and the tenants are owed $2,400.00, I set off the amounts, and I grant a monetary order in favour of the tenants for the difference in the amount of $2,180.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $2,180.00.

This order is final and binding and may be enforced.

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 18, 2016

Residential Tenancy Branch