Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF
MNSD, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; 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 tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord.

The landlord and one of the tenants attended the hearing, and each gave affirmed testimony.

At the commencement of the hearing the tenant (JR) advised that although a second tenant (LR) is named as an applicant in the Tenant's Application for Dispute Resolution, the second tenant (LR) did not apply. The tenant (JR) advised that he alone has applied and wrote the second tenant's name (LR) into the application because the second tenant's name (LR) appeared on the tenancy agreement.

The landlord testified that the Landlord's Application for Dispute Resolution was served on each of the 2 tenants individually by registered mail on June 23, 2017, and has provided copies of a Canada Post cash register receipt bearing that date and 2 Registered Domestic Customer Receipts addressed to each of the tenants.

The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution by registered mail on November 14, 2017.

I find that all parties have been served in accordance with the *Residential Tenancy Act,* and I amend the Tenant's Application for Dispute Resolution to remove the name of the tenant who did not attend the hearing (LR). The frontal sheet on this Decision reflects that amendment.

The *Residential Tenancy Act* and Rules of Procedure require that any evidence that a party wishes to rely on must be provided to the other party and the Residential Tenancy Branch. The landlord testified that the tenant has not provided all of the evidence to the landlord, and the tenant did not dispute that. Therefore, I decline to consider the tenant's evidence.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit and interest?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 1, 2000 and expired on July 31, 2001 thereafter reverting to a month-to-month tenancy which ultimately ended on May 5, 2017. Rent in the amount of $875.00 per month was payable on the first day of each month, was never raised during the tenancy, and there are no rental arrears. On July 7, 2000 the landlord collected a security deposit from the tenants in the amount of $437.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is half of a duplex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was not completed at the beginning of the tenancy, but the landlord has provided a typewritten report that was taken from the previous tenancy. The parties conducted a move-out condition inspection on May 5, 2017, a copy of which has also been provided for this hearing. It is not dated or signed by either party, and the landlord testified that the tenant refused to sign the report. At that time the tenant gave the landlord a note with the tenant's forwarding address, the landlord wrote it on the report, but wrote it incorrectly. The tenant sent the landlord a letter containing the forwarding address again which the landlord received on June 5, 2017.

The landlord claims the following in damages:

- $1,075.64 for purchasing new flooring for the kitchen and bathroom;
- $423.75 for installation of flooring;
- $52.97 to replace the damaged front door
- $140.00 for installation of the new door;
- $67.19 lock for the same door;
- $588.00 to paint 2 bedrooms;
- $178.12 to replace glass in a bedroom window;
- $42.51 to replace a baseboard heater;
- $336.00 for cleaning not done by the tenants.

The landlord's total claim is $3,004.18 including recovery of the $100.00 filing fee.

The landlord has provided photographs of the rental unit and testified that the bathroom floor was significantly stained with hair dye, and the kitchen floor has a scrape which appears to be from dragging a metal cabinet. The floors would have been brand new in 1993.

The landlord further testified that the front door was badly damaged and the tenant told the landlord that someone kicked it in, but it had not been reported at the time. The tenant installed some rubber and a deadbolt to enable usage, and as a result, the landlord didn't have a key. The landlord has replaced it with a used door and the landlord's husband installed it. The $140.00 claim for installation is estimated at $35.00 per hour, and it took the landlord's husband significant time to fit it right and to fix where the lock goes into the frame. Also, the deadbolt installation was a mess.

The tenant had painted 2 bedrooms a significant blue color without the landlord's permission or knowledge. A copy of an invoice has been provided for this hearing and the landlord testified that the contractor had to clean up spillage caused by the tenant's paint on valances, light fixtures, light switch and baseboard heater. The rental unit was last painted in 1993.

The landlord also testified that the tenant had told the landlord that a branch hit the window, but the tree is some distance away, and the tenant didn't notify the landlord of the damage.

The baseboard heater was left with significant rust all over it. A towel rack sits above it.

The landlord also testified that the tenants did not leave the rental unit reasonably clean, and the landlord has provided a detailed invoice from a cleaner in the amount of $336.00. The tenants didn't clean window frames, tracks or coverings, light coverings, stove, baseboard heaters were left dusty inside and outside, kitchen and bathroom drawers and cabinets were not cleaned, and significant mold was left on the shower surround.

The tenant testified that the parties completed the move-out condition inspection on May 5, 2017, and the tenant had a forwarding address written down and handed it to the landlord. The landlord transferred it to another document and gave the note back to the tenant. The tenant didn't check to see if the landlord wrote it down correctly. The tenant agrees that the landlord received the tenant's forwarding address again on or about June 5, 2017.

The tenant also agrees that the landlord collected a security deposit from the tenants in the amount of $437.50 on July 7, 2000, and the landlord has not returned any portion of it.

With respect to the landlord's claim, the tenant testified that the home is a 1970s era, and no repairs had been completed by the landlord during the 17 year tenancy, nor did the landlord ever visit the property during that time. The landlord's claim is exaggerated, and although the tenant paid a lot of rent over the years, the landlord made no repairs except for a water heater which was replaced by the landlord about 2 years ago. The broken water heater sent a plume of water over the carpet in the dining room and the tenant couldn't shut if off, nor could the fire department, until

water to the entire residence was turned off. The landlord was notified the same day, but the water heater ought to have been replaced prior.

The door appeared as though someone had kicked it, and the tenant attempted a repair.

The property is sub-standard, and a lot of items appear to be 1970s. There are no double-glazed windows, and the rental unit is drafty.

The tenant's wife and daughter cleaned the rental unit before the tenant departed.

The tenant claims double the amount of the security deposit plus interest and recovery of the filing fee.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy 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.

A tenant is required to leave a rental unit at the end of a tenancy reasonably clean and undamaged except for normal wear and tear. A landlord is required to provide and maintain a rental unit in a manner that makes it suitable for occupancy by a tenant.

I also refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements which puts the life of flooring at 10 years. The landlord testified that it was brand new 17 years ago. Ordering the tenants to pay for flooring and installation would provide the landlord with brand new flooring again, when the landlord wouldn't have brand new flooring if it had not been stained with hair dye. Therefore, I dismiss the landlord's claims of $1,075.64 and $423.75 for the cost of purchasing and installing flooring.

The Policy Guideline also puts the useful life of an exterior door at 20 years. The landlord did not dispute the tenant's testimony that the landlord hasn't completed any repairs for 17 years, and I conclude that the door has not been replaced by the landlord during the tenancy or prior. Therefore, I find that the door has outlived its useful life and the landlord's claim for purchasing a replacement door and installation are dismissed.

With respect to the lock, the landlord didn't even know that the tenant had changed the lock, having not visited the rental unit during the 17 year tenancy. I find that the landlord has failed to mitigate any loss suffered for the lock, and I dismiss that portion of the claim.

The Policy Guideline also puts the useful life of interior paint at 4 years. Given the undisputed testimony of the tenant that the landlord has not done so in 17 years, I dismiss the landlord's claim for painting.

The useful life of windows is 15 years and I find that the landlord has failed to establish that the tenant ought to pay for a new window to replace an old window.

The same applies to the baseboard heater.

With respect to the landlord's claim for cleaning the rental unit I have reviewed the move-out condition inspection report, and I am satisfied that the landlord and the tenant who attended this hearing both participated in the inspection on May 5, 2017, although no one has signed the report. The *Act* specifies that the report is evidence of the condition of the rental unit. The legend of the report indicates that floors and walls had not been cleaned. Having found that the useful life for those items has expired, I do not accept that the tenants should pay for the cost of cleaning them. It also shows that light fixtures, windows and window tracks had not been cleaned, nor was the bathroom, baseboard heaters, and cabinets. The invoice of the cleaning contractor shows that more cleaning had been done, but that is not evident in the move out condition inspection report. I have also reviewed the photographs provided by the landlord. A tenant is required to leave a rental unit reasonably clean at the end of the tenancy, and considering the photographs, detailed invoice and move-out condition inspection report, I find that the landlord has established the $336.00 claim.

The landlord currently holds a security deposit in the amount of $437.50. The *Act* requires a landlord to return a security deposit in full with interest 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 or must make an application for dispute resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, the landlord received the tenant's forwarding address in writing and the tenancy ended on May 5, 2017. The landlord wrote the information incorrectly on the move-out condition inspection report, but agrees that the tenant gave it to her on that date. The landlord did not indicate whether or not the landlord attempted to locate the tenant once learning about the incorrect address. The landlord filed the application for dispute resolution and paid the filing fee on June 19, 2017. I find that the tenant did his part by providing it when the report was completed for the purpose of recovery of the security deposit, but the landlord did not comply, and the tenant is entitled to double recovery, or $875.00, plus interest in the amount of $33.66 calculated to the date of this hearing.

Having found that the tenant is owed $908.66 and the landlord is owed $336.00, I set off those amounts and I grant a monetary order in favour of the tenant for the difference in the amount of $572.66.

Since both parties have been partially successful, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $572.66.

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: November 30, 2017

Residential Tenancy Branch