Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on August 1, 2016 and ended on June 30, 2017. During the tenancy rent of $2,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $1,000.00 as a security deposit. No move-inspection was offered or conducted by the Landlord. The Landlord received the Tenants' forwarding address on June 30, 2017. The Parties mutually conducted a move-out inspection however the Tenant disagreed with the Landlord's assessment and left without signing the inspection report.

The Landlord states that the Tenant damaged the drywall in the unit's hallway and that the Landlord made repairs. The Landlord states that the drywall is likely original to the house that is 65 years old. The Landlord claims $389.37 in materials and $700.00 in repairs. The Tenant states that the hole was caused by accident while moving furniture out of the unit. The Tenant states that they repaired the hole as best as possible.

The Landlord states that the Tenant damaged the kitchen cabinets and claims $205.67 for materials and $150.00 for the repairs that have not been done. The Landlord states that the kitchen cabinets are original to the house. The Tenant states that there were only small holes that were filled and patched by the Tenants at the end of the tenancy.

The Landlord states that the Tenants failed to leave the carpets clean. The Landlord states that the carpets were in the house when the Landlord purchased it in 2011. The Landlord does not know the age of the carpets. The Landlord claims the carpet cleaning costs of$135.45 and provides the receipt. The Tenant states that they did clean the carpets by shampooing them. The Tenant states that they could not remove one stain caused by the entrails of an exploded mouse where the poison had been left.

The Landlord states that the Tenants failed to clean the outside lower windows and inner screens and failed to wash down the outdoor steps. The Landlord states that they paid the incoming tenants $80.00 for the labour to clean these items. The Landlord provides the receipts. The Tenant states that the windows were never opened during the tenancy as there were rat nests outside the unit and mice were entering the unit. The Tenant states that the Landlord was informed and only provided traps. The Tenant states further that the screens could not be removed for cleaning. The Tenant states that the outdoor stairs were swept regularly during the tenancy and that it would only take about 5 or 10 minutes to sweep these clean as there were only 6 or 7 steps and a small square at the landing.

The Landlord states that the tenancy agreement addendum provides that the Tenants will not park on the driveway unless it is completed. The Landlord states that at the outset of the tenancy the driveway was not completed but that it was covered with asphalt and completed on September 1, 2017. The Landlord states that the Tenants were informed that the driveway could be used by October 15, 2017. The Landlord states that the Tenants did park a car on the driveway prior to October 15, 2017 but that they moved it the next day after request from the Landlord. The Landlord states that the Tenants damaged the driveway thereafter by shovelling snow off the driveway that had oil leaks caused by the Tenants' two cars that were parked on the driveway. The Landlord states that the oil leaks caused the asphalt to be loose and the shovelling caused the asphalt to fall out. The Landlord states that the asphalt would have degraded more had the Landlord not removed the oil. The Landlord states that the Tenants were required to maintain the yard but were not told that they could not shovel the driveway. The Landlord provides photos of the driveway and states that there were two separate areas where the oil leaks were concentrated under the areas where the cars were parked. The Landlord claims $389.37 for the costs of materials and $700.00 for the Landlord's labour of 28 hours at $25.00 per hour.

The Tenant states that neither of their cars leaked oil and that one car was only there for one day. The Tenant argues that the photos do not show scale as they were all zoomed photos and only show splatter marks. The Tenant argues that there is no photo that shows a concentrated area where oil would leak from a parked car. The Tenant states that the Landlord never said anything about oil leaks during the tenancy.

Analysis

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and the landlord must complete a condition inspection report and provide a copy to the tenant in accordance with the regulations. Section 24 of the Act provides that the right of a landlord to claim against a security

deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Based on the undisputed evidence that the Landlord did not offer and move-in inspection and none was completed I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

> Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Given that the Landlord's right to claim against the security deposit was extinguished and as the Landlord did not have any claims beyond damage to the unit, I find that the Landlord's only option at the end of the tenancy in relation to the deposit was to return it within 15 days receipt of the end of the tenancy or receipt of the forwarding address. The Landlord retained the right to make its claim for damages to the unit. As the Landlord received the forwarding address and did not return the security deposit I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **$2,000.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for

damage or loss that results. Policy Guideline #40 provides that the useful life of drywall is 20 years, that the useful life of kitchen cabinets is 25 years, and that the useful life of carpets is 10 years. Given the Landlord's evidence that the drywall and kitchen cabinets are original to the building that is over 65 years of age I find that there was no longer any value left to these items and consequently no value available to be lost. I find that the Landlord has therefore not substantiated the loss claimed and I dismiss the claims in relation to the drywall and cabinets. Given the unknown age of the carpets and considering that they were present at the time of purchase I consider that the carpets were likely older than 10 years. Further I accept that the Tenant cleaned the carpets at the end of the tenancy and left them as reasonably clean as could be expected from an aged carpet and rodent poison. I find therefore that the Landlord has not substantiated that the Tenants failed to leave the carpets reasonably clean except for reasonable wear and tear and I dismiss the claim for carpet cleaning.

Given the photos I find on a balance of probabilities that the driveway asphalt was left damaged by oil spots. I do consider that the Landlord incurred reasonable costs and acted to mitigate costs for the repair of the entire driveway with its own labour. However given the Landlord's evidence that the Tenants were not given any instructions in relation to shovelling the and as I do not consider such measures as common knowledge I find that the Landlord has not substantiated on a balance of probabilities that the Tenants could foresee the likelihood of damage by shovelling and negligently caused that damage to the asphalt. As a result I find that the Landlord has only substantiated a portion of the costs for the repairs to the oil spots. Given the photos of the damage to the lifted asphalt and the area of spots I find on a balance of probabilities that the Tenants caused half the damage to the driveway and that the Landlord is therefore entitled to half the costs claimed for both labour and supplies in the amount of **$544.69** ($1,089.37/2).

Policy Guideline #1 "Landlord & Tenant – Responsibility for Residential Premises" provides that a landlord is responsible for cleaning the exterior of windows. Outdoor

decks and stairs are not included as items that a tenant is responsible for cleaning. As the Landlord claims costs for cleaning items that are not the Tenants'' responsibility and as there is no way to determine the costs incurred for screen cleaning, and I note that the inability to remove the screen for cleaning was not disputed, I find that the Landlord has not substantiated the cleaning costs claimed and I dismiss this claim.

As the Landlord's application has had some merit I find that the Landlord is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$644.69.** Deducting this amount from the **$2,000.00** owed to the Tenants leaves **$1,355.31** to be returned to the Tenants forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$1,355.31**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 19, 2018

Residential Tenancy Branch