



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, O

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlords and the tenant. The landlords have applied for a monetary order for damage to the rental unit, and the tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The parties each called a witness, and the parties as well as the witnesses gave affirmed evidence and were subject to cross examination on their evidence.

Issues(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on February 1, 1993 and ended on August 31, 2008. Rent was payable on the 1st day of each month in the amount of \$1,100.00 and there are no rental arrears. A security deposit in the amount of \$550.00 was paid to the landlords by the tenant on March 6, 1993 and was returned to the tenant, including interest, once the tenancy had ended.

The landlord testified that at the beginning of the tenancy, the tenant did some work in the house without the landlord's consent, and then deducted the cost of those repairs from the rent that he paid and produced receipts to the landlords for those repairs. Soon the landlord told the tenant that he could not continue to do such repairs and that if repairs were required, it was up to the tenant to advise the landlords.

On July 1, 2008 the landlords served a 2 month notice to end tenancy for the landlord's use. Their son moved into the house in September and moved out at the end of March, 2009. The son eventually bought the house in July, 2009 and still owns it as rental property. A copy of the notice to end tenancy was provided in advance of the hearing, being an old form, however it states that:

"a sale agreement for the residential premises has been entered into, the conditions precedent have been satisfied, the purchaser intends to occupy the residential premises and has requested in writing that this Notice to End a Residential Tenancy be given."

The tenant also provided a copy of a property search, which is dated February, 2010 and shows that the house is owned by the witness, the son of the landlords.

The landlords testified that there was damage done to the house, such as a hole in the ceiling in the living room. They also provided photographs in advance of the hearing which show a hole in the front door covered with plywood, holes in 2 walls that had been covered with paint but not properly patched, a small dent in the fridge, a broken window in the basement, ripped carpeting covered up with tape on the stairs, damaged carpet in another room, dents in the garage door, and chips in the corners of drywall. They also provided a receipt dated September 8, 2008 for drywall repair and painting at \$2,300.00 and \$150.00 for cleaning. Both of those items appear on one invoice, showing that the amount paid totalled \$2,450.00. Another receipt was provided dated September 12, 2008 in the amount of \$1,200.00 for living room and dining room carpet replacement.

The tenant testified that when he moved into the house the washer and dryer hook-ups had been moved to outside under the porch, and the landlords had turned the laundry room into a bathroom. The tenant had his own washer and dryer, but didn't want to do laundry outside. The landlords told him he could change it back if he wanted.

The tenant further testified that he did not see a hole in the ceiling in the living room. He stated that he and his wife did a walk-through of the house with the landlord upon moving out and the landlord had told him that it looked good, thanked him for having the place clean and ready for paint. No painting had been done since 2005 except in the living room. The tenant had painted the house, basically one room at a time.

The tenant also feels that the landlord did not carry out the good faith intentions as set out in the 2 Month Notice for Landlord's Use of the property, in that the tenant visits a friend frequently in the neighbourhood of the house. He stated that the landlord's son, who was the purchaser drove a Chrysler 300 and a Hummer and those vehicles were never at the residence. He did see a 1985 Chevy, and claims that he knows the vehicles that frequented the residence. He also testified that he did not get a month of rent for free as required under the *Residential Tenancy Act*.

The tenant's witness was the wife of the tenant and they married after the tenant had moved into the residence, but before moving out of the residence. She stated that both landlords went into the house while she was mopping the floor at the end of the tenancy. They walked through the entire house and the landlord thanked the tenant's wife for the cleaning done, the garbage taken away, and the carpets had been cleaned professionally. The tenant also provided a receipt dated August 29, 2008 in the amount of \$130.20 for carpet cleaning by a carpet cleaning company. When she went to the landlords' house to retrieve the security deposit, the landlords again told her how grateful they were. She also testified that at that time the landlord told her that his son's management company had bought the house and was going to rent it out for a higher rent. She further stated that there were no holes in the living room ceiling; they had purchased a special primer and repainted the ceiling in 2005.

The landlords' witness, being their son, further testified that he does not drive a Chrysler or a Hummer, and that he does not own a management company. He stated that he bought the house himself.

Analysis

Dealing firstly with the tenant's application, the tenant is claiming compensation for damage or loss under the *Act*, regulation or tenancy agreement in the amount of \$3,300.00 for not receiving one month free of rent, and for the landlord's actions in not carrying out the good faith intentions as set out in the Notice to End Tenancy. The relevant sections of the *Residential Tenancy Act* state:

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5), or (6) by giving notice to end the tenancy effective on a date that must be

- a) not earlier than 2 months after the date the tenant receives the notice,
- b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(5) A landlord may end a tenancy in respect of a rental unit if

- a) the landlord enters into an agreement in good faith to sell the rental unit,
- b) all the conditions on which the sale depends have been satisfied, and
- c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

52 In order to be effective, a notice to end a tenancy must be in writing and must

- a) be signed and dated by the landlord or tenant giving the notice,
- b) give the address of the rental unit,
- c) state the effective date of the notice,
- d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- e) when given by a landlord, be in the approved form.

Although the landlords have given a notice that is in the form previously used, I find that the form of the notice complies with Section 52. Further, from the testimony of the landlords and witness, as well as the property search provided, the son of the landlords clearly purchased the residence, but not until July, 2009. Further, I have no evidence before me that the purchaser had asked the landlord in writing to give notice to end the tenancy because he intended in good faith to occupy the house. The witness also testified that he resided there from September 10 or 11, 2008 until the end of March, 2009. The notice to end tenancy states that the conditions of the sale had been finalized, and they had obviously not been satisfied at the time the notice was issued. Therefore, I find that the tenant has proven beyond a reasonable doubt that the good faith intentions of the landlords are questionable. The purchaser lived in the unit from September until March, but did not purchase it until much later. Therefore, I find that the tenant's application for double the amount of the rent is justified.

With respect to the tenant's right to compensation, the *Act* goes on to say that:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that the landlord did not provide to the tenant the equivalent of one month's rent, and therefore, the landlord is required under the *Act* to reimburse the tenant \$1,100.00.

With respect to the landlords' claim for damages to the unit, the onus is on the claiming party to prove 4 elements in a claim for damages:

- 1) that the damage or loss exists
- 2) that the damage or loss exists as a result of the actions of the other party
- 3) the amount
- 4) what actions the claiming party took to mitigate, or reduce such losses.

I must also take into consideration the amount of time that the tenancy was in effect. The tenant moved into the residence on February 1, 1993 and lived there for just over 15 years. The *Residential Tenancy Act* places the onus on the landlord to provide and maintain residential property in a state of decoration and repair that complies with safety and housing standards and that make it suitable for occupation by a tenant. The tenant is not required to make repairs for reasonable wear and tear, but is responsible for repairing damage caused by the actions or neglect of the tenant or guests during the tenancy. Further, when the tenant vacates a rental unit, the tenant is not required to leave it in the condition it was when it was rented, but is required to leave the unit reasonably clean and undamaged except for reasonable wear and tear. The legislation that was in effect at the time that this tenancy commenced may not have had a provision respecting move-in and move-out condition inspection reports, although that legislation does exist today. I do not have either inspection report, however, in the absence of such evidence, it is difficult for a landlord to prove that the condition of the unit was clean and undamaged at the time the tenant moved in compared to the condition when the tenant moved out.

The Residential Tenancy Policy Guidelines set out the useful life of items in rented premises. Carpets have an expected useful life of 10 years, and it's clear the tenant resided there much longer than that. The landlord's claim for new carpets is therefore dismissed. The useful expected life of interior painting is 4 years, and therefore, the landlord is not entitled to claim damages back from the tenant for chipped walls and painting. The useful expected life of a garage door 10 years, and windows 15 years. Therefore, in the absence of any evidence that the windows or garage door had been replaced during this 15 year tenancy, I must dismiss those claims in that they ought to have been replaced in any event. The useful life of a door is 20 years, and I have no

evidence before me that the door had been new at the time the tenancy began or how old the door actually is, however the landlord has failed to provide me with any evidence of how much it cost to replace or repair that door. Therefore, I cannot award any amount in favour of the landlords for the door repaired with plywood. I also find that the small dent in the fridge is reasonable wear and tear.

Conclusion

For the reasons set out above, I hereby dismiss the landlord's application in its entirety without leave to reapply.

I grant the tenant a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,300.00. 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: June 23, 2010.

Dispute Resolution Officer