

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlords, their legal counsel and witness and by the tenants, their legal counsel and two witnesses.

During the hearing the landlords' legal counsel raised the issue of credibility of the male tenant's testimony and evidence. Counsel referred to court documents from an Alberta Provincial Court decision regarding the male tenant.

Both parties made presentations of their side of the dispute, responded to questions from the other party. Each party had witnesses who provided testimony and each party was provided an opportunity to ask the witness any questions relevant to this dispute.

The documents had been provided to the landlords in the evidence provided by tenants to the landlords. The documents had not been provided to me prior to the hearing. I ordered legal counsel for the landlord's to provide a copy of the documents at the end of the hearing, the documents were received by fax at 3:40 p.m. July 6, 2010.

Issues(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to the rental unit; for non-pecuniary damages and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A summary of the landlords' case;
- A list of witnesses with phone numbers'
- A Statement of Account providing a breakdown of the landlords' financial claim for compensation for the repair of damages to the rental unit in the amount of \$1,637.00;
- Copies of receipts from a local home improvement store for supplies such as paint, epoxy, dry set cement and epoxy thinner;
- A copy of a receipt from a local locksmith for rekeying the locks at the rental unit;

- A letter from the landlord's contractor indicating that he had completed work at the rental unit with the landlord between May 3, 2009 and May 8, 2009 including a time sheet for a total of 26.5 hours at \$20.00 per hour for a total of \$530.00;
- A letter dated August 7, 2009 from the contractor who built the rental unit stating that he checked the damage "when the tenants left" and indicating the damage included scratch marks on bottom of bathtub; damage to walls by using nails to hang pictures; replace one missing oak shelf in the laundry room; acid stains on the floors of the rear deck; scratches on antique door and trim and on the backdoor and trim. The contractor indicates he inspected the work after completion and "was impressed";
- A copy of an unsigned note from a plumbing contractor indicating the tub could be scratched by any sharp object;
- A copy of a letter dated May 8, 2009 from previous tenants of the rental unit for the period between November 1, 2007 to June 4, 2008 stating that they left the rental unit in excellent condition including the bathtub not being scratched, no staining on the back deck and no bleach marks on the laundry room shelf;
- An copy of an undated note from the tenant in the lower rental unit stating he moved in on May 1, 2009 and the landlord showed him a picture with his vehicle in his assigned parking spot and that there is a blue dodge parked next to him in the picture with Alberta plates;
- A copy of a letter from the landlords' mortgage broker dated August 18, 2009 stating that she had order appraisals on the address including upon completion of the upper and lower rental units;
- A copy of a previous Residential Tenancy Dispute Resolution Services decision regarding a dispute between these two parties and a handwritten note indicating the landlord has not yet paid the tenants as ordered to do so from the previous decision; and
- Copies of 12 photographs that had been submitted by the tenants and the landlord's interpretation of the photographs. Pictures include damage to the deck of what appears to be a white paint overspray; the interior of the bathtub with repair work in progress ; the exterior of the bathtub post repair; scratches to the front door, prior to repairs; 7 photos of cabinetry; fridge, stove, floors, back door all noted as after work complete on May 12, 2009.

The tenant submitted the following additional documentary evidence:

- A statement of the tenants, addressing each of the landlord's damage claims;
- A copy of a tenancy agreement signed by the parties on June 29, 2008 for a 12 month fixed term tenancy starting on July 15, 2008 for a monthly rent of \$1,500.00 due on the 1st of the month with a security deposit of \$750.00 and a pet damage deposit of \$750.00 paid;
- A copy of an agreement signed by both parties on April 1, 2009 to end the tenancy effective April 30, 2009;
- A copy of a letter dated May 29, 2010 from the tenants' first witness indicating that she had helped clean the entire rental unit, including the cabinetry, fridge

stove, oven, floors, the bathroom and the deck and that she had seen a red jeep parked at the rental unit in the last days of April 2009;

- A copy of a letter dated May 29, 2010 from the tenants' second witness indicating that she had helped clean the entire rental unit, including the cabinetry, fridge stove, oven, floors, the bathroom and the deck and that she had seen a red jeep parked at the rental unit in the last days of April 2009;
- A copy of a letter dated April 30, 2009 from the tenants to the landlords providing the landlords with the tenants forwarding address and requesting reimbursement of the security and pet damage deposits;
- A copy of a Residential Tenancy Dispute Resolution Services order dated November 17, 2009 regarding a separate issue between the parties;
- A copy of a demand letter from the tenants to the landlords requesting payment based on the above noted order;
- A copy of a written statement from the male tenant dated June 14, 2010;
- A copy of a written statement from the female tenant dated June 14, 2010;
- Phone records for each of the tenants' phones from April 26, 2010 to May 4, 2010;
- Several documents relating to the tenants' complaints to local police regarding the distribution of "false, threatening, and embarrassing letters"; and
- Copies of 41 photographs with an explanation provided for each picture. The tenants have indicated on each picture that they were taken on April 30, 2010.

The landlords testified the rental unit was completed in 2007 and their first tenancy went from November 2007 to June 2008 and that after that tenancy ended the rental unit was in perfect condition.

The landlord noted that no move in condition inspection report was completed at the start of this tenancy and no move out condition inspection report was completed at the end of the tenancy. The landlords also confirmed that they took no photographs of the condition of the rental unit prior to completing repairs.

The landlord stated the male tenant refused to come into the rental unit to complete a move out inspection and that the female tenant came in and brought the keys in and that he tried to point out damage to the female tenant but she turned and ran out. The female tenant testified that the landlord tried to point out the scratches in the tub to her but that they couldn't find them when they looked.

The landlord contends the front entry door and casings were damaged by the tenants' dog scratching on the door. The tenants do not dispute this claim but state they had offered to repair the door but the landlord said he would do it and not charge them anything to do so. The landlord also notes there were scratches to the back door and casing.

The landlord states there were numerous holes in the walls that the tenants used to find studs for hanging pictures. The tenants contend that they used proper picture hanging

hooks and nails and that there were some large hooks and nails already in the walls at the start of the tenancy.

The landlord testified that the bathtub was scratched by the tenants' dog's claws when they bathed their dog in the acrylic bathtub. The tenants dispute that there was any damage to the bathtub at all.

The landlord states there is a missing shelf from the oak cabinet above the washer and dryer and the rest of the shelves have acid stains. The tenant stated the one shelf was and as far as he knows still is on top of the cabinet and that there had been bleach left in the cabinet by the previous tenants that they left there when they vacated the rental unit and that the bleach must of caused the staining.

The landlord contends that there were stains on the back deck caused by the tenant. The tenant contends the damage to the deck resulted from the landlord spraying a primer on the railing of the deck. The photographs of the deck show a white coloured spray pattern on the deck. The landlord and his labourer both testified that the primer they used was green in colour.

The landlord noted that no move in condition inspection report was completed at the start of this tenancy and no move out condition inspection report was completed at the end of the tenancy. The landlords also confirmed that they took no photographs of the condition of the rental unit prior to completing repairs.

The landlord submits that the photographic evidence submitted by the tenants were pictures taken after the tenancy ended. The landlord alleges the tenants made a copy of the rental unit entry key and sometime on or after May 1, 2010 when the landlord was not home. The tenants referred to the photographs that show the landlord's vehicle was present when the photographs were taken.

The landlords' assertion is primarily based on one of the tenants' pictures that show the vehicle belonging to a new tenant in the lower unit, who started his tenancy on May 1, 2010. The tenants testified that the new tenant was there on April 30, 2010 moving things into his rental unit.

The landlord confirms he reported this to police who indicated that since he did not see the tenants enter the rental unit, the police would not investigate, no incident or file number was provided to the landlord.

Both witnesses for the tenant indicate that they participated in helping the tenants clean the rental unit. The female witness indicated that they had spent a couple of hours cleaning and included the cupboards, fridge, floor, bathtub without any scratches. She noted that she didn't notice any damage other than the usual holes for putting pictures.

Both witnesses testified that they had seen a red “jeep” as they understood the new tenant for the lower rental unit was moving in the same day. The tenants’ male witness noted the rental unit was as good as or better than when the tenants moved in.

The landlords’ witness testified that he had provided labour services to the landlord for repairs to the upper rental unit including repairing the front door; the scratched up bathtub; the outside floor and railings on the deck. The witness testified there were 10 to 20 holes.

Analysis

When one party makes a claim for loss or damage under the *Act*, regulation or tenancy agreement, the burden of proof of the loss or damage lies with the applicant. In order to be successful in such a claim the applicant must prove:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. That the applicant took all reasonable steps to mitigate that loss.

As the matter of return of the security deposit has been dealt with in a previous hearing, the requirement for the landlord to complete a move in (Section 23) and a move out (Section 35) inspection and the consequences, outlined in the *Act*, for not completing the inspections are not relevant to this proceeding. However, had the landlord completed these inspection reports they would have provided valuable evidence in this hearing.

In regards to the photographs that both parties relied upon, despite the landlord’s assertion that the tenant came in after the end of the tenancy to take the photographs, he has not provided any evidence that supports this claim.

In reviewing the notations the landlord has made on the photographs I note the landlord suggests some of the photographs were taken during the repairs and then some were taken after May 12, 2010 when all work was complete. The landlord did not allege in his testimony that there were multiple break-ins as would be required if the photographs were taken at different stages of repairs.

As a result, I find, based on the balance of probabilities, the photographic evidence submitted by the tenants was taken prior to or on the day the tenancy ended.

I accept the testimony and documentary evidence from the landlord’s labourer and former contractor that damages to the rental unit existed. However in the former contractor’s letter he indicates there were scratch marks on the bottom of the bathtub, he does not indicate the cause of the marks but he does note the cause of the scratches on the front and back doors of the rental unit as being from a dog’s claws.

The contractor also states only that there is a missing shelf in the laundry room but does not indicate any problems with acid stains on the other cabinetry in the laundry room. He notes there are acid stains on the deck, yet the photographic evidence and testimony from the parties imply a paint overspray. While the contractor notes there is damage to the walls because of using 2" common nails, there is no comment on the extent of the damage.

As such for the bathtub, the stains to the cabinetry in the laundry room and the stains on the deck I cannot determine if these damages resulted from a violation of the *Act*, regulation or tenancy agreement.

In addition, in the absence of any specific requirement in the tenancy agreement regarding how the tenant may hang pictures in combination with the lack of clarity of the extent of the nail hole damage, I cannot determine that this damage is a violation of the *Act*, regulation or tenancy agreement.

As to the landlord's claim to change the locks, there is no evidence submitted to support his claim the tenant's had retained any keys or in fact that they had broken in to the rental unit after the tenancy.

Section 25 of the *Act* states that should a *new* tenant request the locks be changed when they move in the landlord must pay all costs associated with the request, unless the landlord has already changed the locks. I therefore find the landlord is responsible for changing the locks at the rental unit.

I accept that both parties acknowledge that the tenants are responsible for the damage caused by the tenants' dog to the front door, however, as the parties both agree the landlord had originally offered to repair at no cost, I accept the tenants' position that the landlord cannot later remove that offer.

One final note in relation to the damage in the rental unit I note the landlords' claim is in the amount of \$1,637.00 and yet the estimate submitted by his previous contractor indicates a cost of \$1,200.00 as such, the landlord has failed to adequately mitigate these losses.

As per the Residential Tenancy Policy Guidelines, a Dispute Resolution Officer may award aggravated damages as an award or augmentation of an award of compensatory damages for losses such as grief, humiliation, mental distress. However, I find the landlord has not provided any evidence supporting his claim for non-pecuniary damages in the amount of \$3,000.00.

On the issue raised by the landlords regarding the male tenant's credibility and the submission of the Alberta Provincial Court documents, I find it unnecessary to comment on the tenant's credibility, as I have not relied on the male tenant's testimony specifically in this decision.

Conclusion

As a result of the above analysis, I dismiss the landlord's application in its entirety, without leave to reapply.

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: July 07, 2010.

Dispute Resolution Officer