



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC, O, FF

Introduction

These hearings dealt with cross Applications for Dispute Resolution by the landlord and the tenants. Both parties sought monetary orders.

The hearings were conducted via teleconference with the first hearing held on July 22, 2010 and the second on August 6, 2010. Both hearings were attended by the landlord and the tenants, while three of the landlord's witnesses attended the July 22, 2010 hearing and the landlord's fourth witness and the tenants' witness attended the August 6, 2010 hearing.

After the close of the second hearing I determined that I had some additional questions for the landlord in this matter so a third hearing was reconvened on August 17, 2010. I requested that the landlord clarify what matters he wanted resolved through this hearing. Both parties attended this hearing and were given opportunity to respond to issues raised out of the questions I had asked.

Specifically, the landlord had made his application for a claim of \$25,000.00 damage or loss but had submitted an itemized list totalling \$35,539.99. I requested the landlord determine what items he did not want considered in this hearing that would reduce his claim by \$10,539.99 to \$25,000.00.

I advised the landlord that should I proceed in adjudicating this matter without his input on this issue that I could only determine the dispute to a maximum of \$25,000.00 and any damage or loss over and above that would be dismissed without leave to reapply and he would not be able to pursue the remaining matters through any other court.

The landlord acknowledged that he understood these ramifications and identified two items to be removed from his claim list: Door Parts of \$301.41 and Property Value Reduction of \$2,500.00 totalling \$2,801.41. The landlord requested that I determine which matters would make up the remaining claim.

I therefore find the landlord accepts that portions of his claim will be dismissed without leave to reapply based solely on the dollar amount of the claim and not on the merits and/or the evidence he has presented throughout all three of the hearings.

At the outset of the first hearing the tenants noted that the matter of the return of the security deposit had been dealt with at a previous hearing and therefore is considered *res judicata*.

Res judicata is the doctrine that an issue that has been definitively settled by a judicial decision cannot be brought forward a second time for the same claim. As a result, the landlord's Application was amended to exclude the matter of retaining the security deposit.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to the rental unit; for money owed or compensation for damages or losses under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 67 and 72 of the *Act*.

In addition it must be decided if the tenants are entitled to a monetary order for compensation for the submission of photographic evidence and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on March 1, 2008 as a month to month tenancy for a monthly rent amount of \$1,200.00 due on the 1st of the month with a security deposit and pet damage deposit paid. The tenancy ended on August 1, 2009.

The landlord has provided into evidence the following documents:

- Correspondence between the landlord and tenant;
- Written statements from the landlord's witnesses and agents;
- Copies of receipts, bills and letters confirming costs incurred by the landlord totally \$25,823.66;
- A copy of a Condition Inspection Report completed on move in (February 24, 2008) and on move out on July 31, 2009 noting the tenants refused to sign on both July 31, 2009 and on August 1, 2009; and
- 123 photographs of the interior and exterior of the rental unit date stamped between July 31 and September 3, 2009.

As noted above, I have determined the landlord's claim to be as follows by starting at the top of his list until reaching a maximum of \$25,000.00:

Description	Amount
Curtains	\$2,926.56
Doors	\$1,571.84
Plumbing	\$469.57
Carpet Cleaning	\$195.00
Carpet and flooring	\$7,797.15
Cleaning	\$588.75
Labour and parts for house repair: (includes baseboards, repairs to basement walls, ceilings and floors, dining room wall, fireplace hearth, upstairs bathroom, doors, yard clean up)	\$10,200.00
Decking	\$899.00
Glass Repair (claim \$440.54 reduced to dollar maximum)	\$352.13
Total	\$25,000.00

The tenants have provided 86 undated photographs of the interior and exterior of the rental unit.

The landlord and his witnesses provided testimony regarding the condition of the rental unit at the end of the tenancy and work that was undertaken as a result of that condition.

Through that testimony the landlord's position is that all the curtains were stained and chewed. The landlord states the curtains were 4 years old. The landlord contends the carpet, that was less than a year old at the start of the tenancy, was destroyed due to pet urine smells that could not be removed.

The tenants contend that they had cleaned the carpet with their own carpet cleaner and there were no odours when they vacated the rental unit. The receipt submitted by the landlord's carpet cleaner dated August 10, 2009 states there over 60 pet stains in the carpeting and that the smell of urine may not come out, requiring replacement and painting of the subfloor.

The landlord claims the charges for plumbing was required to find a leak in the system and was completed while the bathroom had been demolished for the other repairs made. The tenants disagree with being required to pay for plumbing as they contend this had nothing to do with anything they did.

The landlord is claiming for 39 ¼ hours of cleaning at a cost of \$588.75. The tenants stated that they had cleaned the rental unit sufficiently and that after the first walk through with the landlord his agent provided them with a list of items to finish off, which they did.

The landlord has claimed \$10,200.00 for labour and parts for house repair and has broken that claim down as follows: baseboards – \$1,400.00; repair to basement ceiling, walls, paint and concrete floor – \$2,000.00; dining room wall parts/labour – \$1,200.00; fireplace hearth – \$800.00; upstairs bathrooms – \$4,000.00; door prep and installation - \$600.00; and yard cleanup - \$200.00.

The tenants suggest that they had made repairs to the basement ceiling, walls, and concrete floor and the dining room wall and should not be held responsible for the landlord redoing this work. The tenants also contend that bathrooms were original to the house and the laminate lifting from the countertops is normal wear and tear over that period of time. The landlord testified that he had put in used cabinetry in the bathroom 10 years ago.

The landlord is claiming to replace all the interior doors in the rental unit as there were holes and scratches in them. In particular, the master bedroom door had had a veneer patch placed over a large hole covering the bottom half of the door. The tenants acknowledge the damage to the master bedroom door but do not believe they should pay for the replacement of all the doors.

The landlord suggests the tenants damaged the hearth on the living room fireplace and believes the tenants must have tried to chopped wood on the hearth. The tenants deny causing any damage to the hearth.

The landlord has claimed the tenants had let water sit on the countertops and wet clothing on the floors of the upstairs bathrooms causing substantial damage that necessitated the complete demolition and reconstruction of the bathrooms. The tenants assert the bathrooms were original to the house and the condition results from wear and tear.

The landlord is claiming for the repairs required in the dining room resulting from the tenant's insertion of a "doggy door" and subsequent repair to the exterior wall. The landlord also is claiming for repairs to the wall, ceiling and floor in the basement in a location where the tenants had erected a wall during the tenancy and removed it by the end of the tenancy.

The tenants claim that they had received approval for the repairs to the doggy door from the landlord's contractor and therefore should not be responsible for additional repairs. The landlord's contractor testified that he told the tenants that if they had completed the repairs such that the support function of the wall was repaired that should be sufficient but that he in no way provided the tenants with an approval on behalf of the landlord for the repairs.

As to the basement repairs the tenants felt that they had sufficiently repaired the damage from the installing and then removing the wall they had built and do not feel they should be held responsible for any further repairs.

Analysis

When an applicant is making a claim for compensation for damage or loss under the *Act*, regulation or tenancy agreement the applicant must provide sufficient evidence to support the following factors:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the loss or damage; and
4. Steps taken by the applicant to mitigate any damage or loss.

Section 37 of the *Act* states that when vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. While the tenants did not sign the move out condition inspection report, I do accept the document as a record of the condition of the rental unit at the end of the tenancy.

For the landlord's claim of \$2,926.56 to replace the curtains in the rental unit, the landlord's testimony was that the curtains had been stained and chewed, the condition inspection report indicates only that they had not been cleaned.

While I accept, based on the photographic evidence that the curtains were poor shape the landlord has provided no evidence or testimony that any attempt was made to clean and repair the curtains, as such I find the landlord has failed to take any steps to mitigate any loss as is required under Section 7(2) of the *Act*. I dismiss this portion of the landlord's application.

Upon review of the photographic evidence provided by the landlord it is clear that there is damage to several of the interior doors of the house. However, many of the photographs show damage to the hollow core doors that appears to be made from the top hinges of the doors and not as a result of damage for the tenants' dogs or any other damage that has been attributed to the tenants.

I, therefore, accept the tenant's position that they cannot be held responsible for the replacement of all the doors and grant the landlord compensation for the purchase, preparation and installation of the master bedroom door in the amount of \$125.00.

In regard to the landlord's claim for plumbing repairs, I find the landlord has failed to provide any evidence that supports that these charges are related to any fault of the tenants and I therefore dismiss this portion of the landlord's claim.

While I accept the tenants' testimony that they cleaned the carpet before ending the tenancy I also accept the landlord's testimony and the testimony and evidence submitted by the landlord's witnesses and contractors that the house smelled of urine and find the landlord is entitled to compensation for re-cleaning the carpets in the amount of \$195.00 as supported by the landlord's receipt for this service.

I also accept that despite the landlord's efforts to mitigate his loss in regards to the carpeting that the smell was not removed from this cleaning and based on the landlord's testimony and the photographic evidence the carpets appear to be relatively new, I therefore accept that this then required the landlord to replace the carpeting.

I am not convinced, however, that there was a requirement to replace all the vinyl flooring in the house as a result of the urine smell. And while I find the tenant may have contributed to damage of the flooring in the bathrooms, the flooring in those rooms appears to be original to the house along with all of the other vinyl flooring and therefore dismiss this portion of the landlord's claim.

I accept the landlord has established that he spent \$7380.82 on all of the flooring replacement and based on his breakdown accept that the removal of existing carpeting and the purchase and installation of the new carpet is valued at \$5,606.42.

I also accept, based on the photographic evidence that the landlord has sufficiently support his claim for cleaning the rental unit in the amount of \$588.75.

In relation to the landlord's claim for labour and parts for house repair I find the following:

Description		Decision
Baseboards	\$1,400.00	No evidence provided to support need to replace baseboards – dismiss this portion of the landlord's application.
Repairs to basement	\$2,000.00	Sufficiently supported - \$2,000.00
Repairs to dining room wall	\$1,200.00	Sufficiently supported - \$1,200.00
Fireplace hearth	\$800.00	Insufficient evidence to support claim – condition is not noted on the move in inspection report and therefore no ability to compare conditions – dismissed
Upstairs bathroom	\$4,000.00	In sufficient evidence to support claim – I find the damage is due to wear and tear – dismissed
Doors	\$600.00	Dealt with above.
Yard clean up	\$200.00	Based on photographic evidence I accept the landlord's claim - \$200.00
Total	\$10,200.00	\$3,400.00

As to the landlord's claim for repairs to the decking, the landlord has established there was damage to the deck that has resulted from a breach of the Act (Section 37) but has failed to provide evidence supporting the value of the damage. The receipt submitted in the amount of \$899.00 lists that it is for supplying and installing gutters and downspouts.

On the issue of the glass repair, the condition inspection does identify no problems with windows at the start of the tenancy but does not identify any issues with the windows after the tenancy, except for missing plastic on windows. The receipt submitted by the landlord is for the replacement of sealed units that had been broken. As such, I find the landlord has failed to substantiate this claim.

As noted in the introduction of this decision, I dismiss the following items on the landlord's application without leave to reapply: Paint - \$200.17; Missing Windows - \$5,000.00; Engineers Report - \$50.00; rent for Aug 2009 - \$1,200.00, rent as a result of short notice to end the tenancy - \$1,200.00 Rent, and \$88.41 worth of glass repair.

In regard to the tenant's application for reimbursement of the photographs submitted into evidence, as this was a choice of the tenants on how to provide their evidence I dismiss without leave to reapply. As the tenant's were unsuccessful in their application for this reimbursement, I dismiss the application for recovery of their filing fee.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$10,015.17** comprised of \$9,915.17 in compensation as noted above and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: August 20, 2010.

Dispute Resolution Officer