



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The parties appeared, gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

At the outset of the hearing, the landlord stated that evidence provided to the Residential Tenancy Branch, which was received later than the time provided for in the *Residential Tenancy Act*, regulations and the Residential Tenancy Rules of Procedure was served on the tenants by way of email. The tenants opposed consideration of that evidence, and therefore, that evidence is not considered in this Decision. All other evidence has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy started on December 1, 2009, expired on May 1, 2010, and continued on a month-to-month tenancy until the tenants vacated on May 27, 2010.

Rent in the amount of \$3,455.00 was payable in advance on the 1st day of each month, and there are no rental arrears. On November 27, 2009 the landlord collected a security deposit from the tenants in the amount of \$1,727.50 as well as a pet damage deposit in the amount of \$1,727.50, for a total of \$3,455.00. The parties agree that no move-in condition inspection report was completed, but a condition inspection report was completed when the tenants vacated the rental unit.

The landlord testified that the unit was immaculate when the tenants moved in. They were very happy and the landlord was going to have the unit repainted. The tenants wanted to choose colors for the new paint and wanted to move in their own washer and dryer, to which the landlord agreed.

The landlord further testified that the tenants had pets, and the dog damaged the plants on the front patio and made vertical scratch lines on the entry door. He further testified that there were a lot of scratches on the hardwood floor throughout the 1st floor of the unit caused by the tenants' dog.

The landlord further testified that he attended the unit with a repair person after the tenant had called him about a broken bedroom blind. When he arrived, he stepped into pet vomit and threw his socks away when he got home.

He testified that the carpets are natural fibre which holds stains. The tenants cleaned the carpets but the color came out. Further, the master bedroom had stains, another bedroom had huge yellow marks, and another bedroom was acceptable. The tenant offered to cut out pieces from the closets and patch the stains, but the landlord replied that it was not acceptable for a million dollar condominium in order to get \$3,500.00 per month for rent. The landlord wants the unit returned to the condition that it was in when the tenants originally rented it, including matching carpets of a similar quality.

The tenants showed the unit to the new renters, who told the landlord that the carpet needed attention. The landlord replied that the tenant had promised to fix the problem. The tenant tried, but could not find the same carpet. The cost to replace it is approximately \$2,250.00.

The landlord further testified that the tenant repainted the entire 2nd floor a dark color without permission, and the landlord had to have it repainted. The new tenant had the painting completed which was billed back to the landlord, and the actual cost was \$252.00 for labor. In addition the landlord also provided a copy of an invoice dated May 30, 2010 for paint in the amount of \$209.66 @ \$62.00 per gallon. He also stated that the parties discussed costs, the tenants had agreed that the landlord should recover \$134.44 for scratches to the floor, but did not agree to the cost of \$134.40 for scratches on the entry door.

The landlord provided a copy of an undated letter to the tenants from himself stating that the tenants had agreed to \$1,100.00, but he felt the deductions should be \$134.40 to fix the scratches on the entry door, \$134.40 for labor only to replace the hardwood because he already had the wood, and \$1,200.00 being 50% of the carpet. The landlord returned the sum of \$1,986.20 to the tenants from the security deposit, and then told the tenants not to cash the cheque. The original cheque was provided to the Residential Tenancy Branch by the tenants as evidence for this hearing.

The tenants testified that their dog caused the large yellow stains on the carpet in the bedroom. They discussed the issue with the landlord and suggested patching it with carpet from the closet as one option. Another was to pay for replacement at \$650.00 which was 28% of the square footage, and also stated they were willing to agree that the landlord retain \$1,100.00 of the security deposit. They stated that the bedroom was 28% of the whole carpet, and the rest was reasonable wear and tear.

With respect to painting the 2nd floor, the female tenant testified that the landlord had told her to treat the home as if it were her own and she took that to mean that she could paint the 2nd floor. She used the same paint that the landlord had purchased for the main floor.

Analysis

Firstly, the landlord failed to require a move-in condition inspection, contrary to the *Residential Tenancy Act*. The *Act* also states that the landlord's right to retain the security deposit or pet damage deposit or both for damage to rental property is extinguished if the landlord fails to complete the move-in condition inspection report. Therefore, the landlord's application to retain the security deposit and pet damage deposit in partial satisfaction of the claim must be dismissed.

Further, the condition of the unit upon moving in cannot be known by an independent third party after the fact without the evidence of a move-in condition inspection report. The tenants have admitted that their dog caused the damage to the carpet and the hardwood. I have no evidence before me to prove what the condition of the door was at the time the tenants moved in other than the verbal testimony of the landlord, which is disputed by the tenants.

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

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of the damage or loss;
4. what efforts the claiming party made to reduce the damage or loss.

I find that the landlord has failed to establish that the dog is responsible for the scratches on the door or the potted plants at the front patio.

The tenants admitted that the dog caused the scratches to the hardwood and the stains in the carpet, and I find that the landlord has established that the amount for the hardwood floor is \$134.40. I further find that the tenants are responsible for the stains to the carpet, the landlord has failed to prove the amount, and I find that \$1,100.00 was offered by the tenants and is justified in the circumstances. With respect to the painting, I have viewed the photographs provided by the tenants and find that the tenant did not paint all walls a dark color, however, I also find that the tenants were not given

permission to paint that level of the rental unit. The landlord has provided a receipt for the paint in the amount of \$209.66.

As for the monetary order, I find that the landlord has established a claim for \$1,444.06 in damages. The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damages is hereby allowed at \$1,444.40 and \$50.00 for the filing fee.

The landlord's application for an order permitting him to retain the security deposit and pet damage deposit are hereby dismissed without leave to reapply.

Pursuant to my authority under Section 72 of the *Residential Tenancy Act*, I order that the landlord's monetary order be set off from the deposits currently held in trust, and I order that the landlord retain the sum of \$1,494.40 and comply with Section 38 of the *Act* as it relates to the balance of the security deposit and pet damage deposit.

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 04, 2010.

Dispute Resolution Officer