



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for an order permitting the landlords to retain a portion of the security deposit to satisfy a claim for damages, and to recover the filing fee from the tenants for the cost of this application.

Both landlords and both tenants attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence.

At the outset of the hearing, the landlords applied to amend the application to include a claim for damage to the unit, site or property. The amendment is allowed.

All testimony and evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property?
Are the landlords entitled to retain any portion of the security deposit to satisfy the claim?

Background and Evidence

This fixed term tenancy began on August 15, 2009 and ended at the expiry of the fixed term, being August 31, 2010. Rent in the amount of \$1,875.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$937.50 as well as a pet damage deposit in the amount of \$937.50. The landlords returned the pet damage deposit to the tenants. A move-in condition inspection report was completed at the outset of the tenancy, and a move-out condition inspection report was completed after the tenants had removed their belongings.

The landlords are claiming \$610.40 for damage to the hardwood floor, \$22.81 for missing light bulbs (including pot lights), \$40.77 for a cracked shelf in the fridge, \$55.99 to replace the filter in the fridge, which is supposed to be replaced every 6 months, and

\$33.60 for a torn screen on a door. The landlords testified that another \$35.00 for bulbs was noticed after the move-out condition inspection report was completed. Also, they stated that they couldn't inspect all of the pot lights during the move-out condition inspection because they didn't have a ladder. They also provided a copy of a quote for the hardwood floor repair, a receipt for the torn screen, and a receipt totalling \$108.37 for the fridge shelf and filter. No receipts were provided for the light bulbs.

The landlords testified that the house was brand new when the tenants moved in. The tenants did not attend for the move-out condition inspection but sent the female tenant's father to do the inspection with the landlords. They stated that he argued every point and didn't want to stay long. The parties took about an hour to conduct that inspection. The tenants' agent returned some time later and left pot lights on the step but they didn't fit any that were burned out.

The tenants agree with the torn screen and the shelf in the fridge, but do not agree that any marks on the hardwood are more than normal wear and tear. They pointed out that the photographs provided by the landlord are enlarged to make the marks more prevalent, and provided their own photographs of those areas.

The tenants also raised the issue of not having a ladder to inspect the pot lights during the move-out condition inspection; to ensure the lights were working, the landlords merely had to turn on the light.

Analysis

In order to be successful in a claim for damages the onus is on the claiming party to pass the 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 tenancy agreement or the *Residential Tenancy Act*;
3. The amount involved;
4. What efforts the claiming party took to mitigate, or reduce the damage or loss.

The tenants did not dispute the torn screen, fridge shelf or filter. I find that the landlords have established a claim for those items.

I have examined the photographs provided by both parties as well as the documentation provided, including the tenancy agreement and addendum. I find that the landlords in this case have taken measures to ensure that care was taken in the rental unit to minimize any damage or loss that could have resulted from the tenancy, including, but not limited to care while cleaning the hardwood floors, and, "sharp spikes or dirt or

gravel embedded in shoes can do damage to the floors. As well, make sure you use furniture glides or felt pads to avoid scratching the finish.” I also find that the tenants took care to ensure that the finish was protected by placing furniture guards under the legs of furniture. I have also examined the quote for repairing the hardwood provided by the landlords which states, “looks as if boards were damaged by the moving of furniture without felts (dents and scratches).” As a result, I can only conclude that the dents and scratches were as a result of moving the furniture out of the rental unit. In the circumstances, I find that the landlords have established the claim for the repair of the hardwood floors.

The landlords have provided no evidence of the cost for replacing light bulbs.

Conclusion

For the reasons set out above, I find that the landlords have established a claim for \$751.97 in damages. The landlords are also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain \$801.97 from the security deposit currently held in trust in full satisfaction of the claim and I order that the landlords return the balance due of \$135.53 to the tenants.

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 10, 2011.

Residential Tenancy Branch