



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This matter dealt with an application by the landlords to obtain a Monetary Order for damage to the rental unit and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenants on October 04, 2010. The tenants confirmed receipt of this.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

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 a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this tenancy started on February 01, 2009. This was a fixed term tenancy for the first six months and then reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,100.00 per month and was due on the 1st of each month.

The landlords testify that the tenants did not thoroughly clean the rental unit at the end of their tenancy particularly the oven and fridge. The landlord testifies that the oven was purchased new at the start of the tenancy and the fridge was purchased new half way through the tenancy. The landlord has provided invoices for these appliances. The landlord has provided photographs of the unclean condition of the oven at the end of the tenancy. The landlord states they spent four hours cleaning the unit. The landlord seeks to recover \$105.00 from the tenants for cleaning at \$25.00 per hour.

The landlord testifies that the tenants did not clean the carpets at the end of the tenancy and the landlord hired a carpet cleaning machine and purchased carpet shampoo at a total cost of \$84.26. The landlord has provided receipts for this. The landlord states the tenants did have permission to have one dog at the rental unit but also kept a second dog without obtaining permission.

The landlords testify that a dog belonging to one of the tenant's guests got his paw stuck under the bathroom door. The landlord could hear the dog barking and after talking to the tenant she claims the tenant told her the door was damaged as they had to free the dog. The landlord has provided photographic evidence of the damage to the door and receipts for the cost of replacing the door and installation costs to the total sum of \$175.44.

The landlords testify that in March 2009 the tenants called to inform him that the toilet was leaking. The landlord states he went to investigate and found the toilet had cracked. The landlord states the female tenant told him at the time that she had been standing on the toilet fixing something to the wall when the toilet cracked in half. The landlords state the toilet was new in 2008 when they purchased the property and had been used successfully by their family prior to this tenancy commencing. The landlord had to replace the toilet and seeks to recover this cost from the tenants at a sum of \$224.33. The landlord has provided a receipt for the new toilet.

The landlords testify that the unit had been newly renovated prior to the tenancy starting and as such they did not conduct a move in condition inspection. However, the landlord has provided photographs of areas of the unit he states were taken at the start of the tenancy.

The female tenant agrees that she forgot to clean the oven at the end of the tenancy but testifies that she did clean the fridge. The tenants dispute the landlord's claims for carpet cleaning. They state the carpets were not cleaned at the start of the tenancy and they had them cleaned about a month before they moved out. The tenants have not provided a copy of their carpet cleaning receipt in evidence.

The tenants testify that the bathroom door was old and hollow with rough edges at the bottom. She states a friend's dog came to the unit and managed to get his paw stuck under the bathroom door because the bottom of the door was uneven and loose. She states the door did become damaged when they freed the dogs paw but as the bottom of the door was already damaged they are not responsible for the cost of replacing the door.

The female tenant testifies that she was not standing on the toilet when it cracked. The female tenant states as the ceiling is low in the bathroom she would not have been able to stand on the toilet. She states she was sitting on the toilet and leaned back when it cracked but as she only weighs 150 pounds she could not have put undue pressure on the toilet when she leaned back.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on

the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

It is my decision that the landlords have provided some evidence that the oven was left in an unclean condition at the end of the tenancy, however the landlord has not provided any evidence to show the tenants did not clean the fridge or other areas of the unit. Consequently I find in partial favor of the landlords cleaning costs and award them the sum of **\$50.00** for cleaning the oven pursuant to s. 67 of the *Act*.

With regard to the landlords claim that the tenants left the carpets in an unclean condition at the end of the tenancy; The Residential Tenancy Policy Guidelines #1 refers to the landlords and tenants responsibilities for carpet cleaning. This states that the landlords are expected to provide the tenants with clean carpets at the start of a tenancy and the tenants may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged. The tenants argue that the landlord did not provide clean carpets at the start of the tenancy however the landlord's photographic evidence shows that the carpets were clean. Consequently as the tenants have not provided any corroborating evidence to show that they had cleaned the carpets before the end of the tenancy and because they had pets I find the landlord is entitled to recover the sum of **\$84.26** from the tenants pursuant to s. 67 of the *Act*.

With regard to the landlords claim for a replacement door and instillation costs for this; the tenants agree that a friend's dog did get his paw caught under the door which resulted in the damage to the door. The tenants are responsible for their guests which would include any pets of those guests. I do not accept the tenant's argument that the door was uneven and loose as they have provided no evidence to support this claim. Consequently it is my decision that the landlords have established their claim for a replacement door and the costs of installing it to the sum of **\$175.44** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for a replacement toilet; in this instance I find the landlord has not established that the toilet cracked due to the tenant standing on it. While I accept a porcelain

toilet would be a difficult to crack without some force or external pressure the landlords do have the burden of proof to establish that it was the actions or neglect of the tenants that caused this damage and not a fault in the toilet itself. Consequently, it is my decision that the landlords have not met the burden of proof in this matter and this section of their claim is dismissed.

As the landlords have been partially successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the Act. A Monetary Order has been issued for the following amount:

Partial cleaning costs	\$50.00
Door and instillation	\$175.44
Subtotal	\$309.70
Plus filing fee	\$50.00
Total amount due to the landlords	\$359.70

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$359.70**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlord's application is dismissed 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: February 03, 2011.

Residential Tenancy Branch