



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for cleaning and repairs to the rental unit and to recover the filing fee for this proceeding. The Landlord provided an evidence package in advance of the hearing which included a document authorizing a named person to attend the hearing as his agent. The oral hearing via teleconference started as scheduled at 9:00 a.m. however, by 9:10 a.m. neither the Landlord nor his agent had dialled into the conference call and as a result, the hearing proceeded in the Landlord's absence. The Tenant said she served the Landlord with her evidence package by registered mail on February 21, 2011 and that the Canada Post online tracking system indicated that the Landlord received it on March 3, 2011.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?

Background and Evidence

This tenancy started in October 2003 and ended on October 28, 2010 when the Tenant moved out. Rent was \$560.00 payable in advance on the last day of each month.

The Tenant said a move in condition inspection report was completed at the beginning of the tenancy but the Landlord never provided her with a copy of it. The Tenant said she asked the Landlord to complete a move out condition inspection report at the end of the tenancy but the Landlord initially declined and said the rental unit was in good condition. The Tenant said that the Landlord then presented her with a document proposing that she release any interest in her security deposit. The Tenant claimed that the document submitted by the Landlord and entitled, "Offer to Settle," was not the same document he presented to her on October 28, 2010 during the move out inspection. The Landlord also submitted as evidence 2 pages of a 4 page move out condition inspection report. The Tenant claimed that the Landlord started to complete this document when she refused to give him permission to keep the security deposit and added items to it after she signed it. The Tenant said she has not received a complete copy of the move out condition inspection report.

The Landlord sought to recover repair expenses for alleged damages to linoleum flooring, for holes in the walls for water damage to a wall, for a missing bathroom vanity faucet, for broken blinds, for damage to stucco on the exterior of the rental unit and for 40 hours of cleaning.

The Tenant admitted that she caused some of the damages to the linoleum flooring but argued (among other things) that the linoleum flooring was old and damaged at the beginning of the tenancy. The Tenant also claimed that it was the Landlord who put holes in the walls when he installed a new living room floor with the Tenant's and her spouses' assistance during the tenancy. The Tenant denied that her air conditioner caused water damage to a wall and she argued that even if it had, the Landlord had not made any repairs to it but rather simply painted over the area on or about October 24, 2010 (to prepare for new tenants). The Tenant admitted that she removed a bathroom vanity faucet but claimed that she purchased it during the tenancy and the Landlord installed it for her and took the old faucet. The Tenant claimed that window coverings were not included in rent on the tenancy agreement and even if they were, any damage to them would have been the result of reasonable wear and tear. The Tenant also argued that there was no evidence that she caused damages to the stucco on the exterior of the rental unit. The Tenant further argued that her photographic evidence shows that the rental unit was reasonably clean at the end of the tenancy.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

As this is the Landlord's application, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant was responsible for damages that were not the result of reasonable wear and tear and that the rental unit was not reasonably clean at the end of the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that the Tenant was responsible for some of the damages to the linoleum flooring, however, I also find on a balance of probabilities that by the end of the tenancy the flooring had exceeded its useful lifetime of 10 years (see RTB Policy Guideline #37, Table 1) and therefore had no economic value. In other words, I find that the Landlord is not entitled to be compensated for the cost of new flooring to replace old, worn flooring that would have had no economic value at the end of the tenancy even if it wasn't damaged by the Tenant.

The Landlord provided no evidence of the condition of the rental unit at the beginning of the tenancy. The Landlord also provided an incomplete move out condition inspection report which does not satisfy the requirements of a condition inspection report under s. 20 of the Regulations to the Act and therefore I find that it is of no evidentiary value in these proceedings. Given the Tenant's contradictory evidence and in the absence of any reliable, corroborating evidence from the Landlord to resolve the contradiction, I find that there is insufficient evidence to support the Landlord's claim for compensation for repairs of damages alleged to have been caused by the Tenant.

Furthermore, RTB Policy Guideline #1 at p. 8 says that a Tenant may remove ornamental and domestic fixtures they have installed provided that those fixtures or chattels can be removed intact and do not cause injury to the rental property. Given the evidence of the Tenant on this point and in the absence of any corroborating evidence from the Landlord, I find that there is insufficient evidence to conclude that the Tenant is responsible for replacing a faucet that she removed at the end of the tenancy and I specifically find that the Landlord retained the original faucet that he removed.

I also find that the Landlord has provided no evidence to support his claim for 40 hours of cleaning (or for any cleaning). In summary, I find that there is insufficient evidence to support the whole of the Landlord's claim and it is dismissed without leave to reapply.

The Tenant claimed that she paid a security deposit of \$262.50 at the beginning of the tenancy which was denied by the Landlord in his written submissions. The Landlord's application in this matter does not include a claim to keep a security deposit. RTB Policy Guideline #17 at p. 2 states that a Dispute Resolution Officer may order the return of a security deposit only if the Landlord's application to keep it is dismissed or if the Tenant's application for its return is granted. In the absence of an application by either party *in this matter* for the return of a security deposit alleged by the Tenant to have been paid, I cannot make an order for the return of it. Instead, that matter will be dealt with pursuant to an application for dispute resolution (for double the security deposit) filed by the Tenant and currently scheduled for hearing on **June 7, 2011 at 9:00 a.m.**

Conclusion

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: March 07, 2011.

Residential Tenancy Branch