



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call to deal with an application filed by the landlord for a monetary for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application.

The landlord appeared at the conference call hearing with an interpreter. One of the named tenants also attended. The parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

A hearing was held by a Dispute Resolution Officer on February 9, 2011, and the landlord applied for a review of that Decision. The Dispute Resolution Officer who considered the application for Review ordered that the Decision made on February 9, 2011 stands, but also found that the landlord's application was not heard due to an administrative oversight. A new hearing was granted to hear the landlord's application, and this Decision is a result of the new hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Background and Evidence

This month-to-month tenancy began on February 15, 2010 and ended on July 30, 2010. Rent in the amount of \$1,100.00 per month was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$550.00. The landlord received the tenants' forwarding address on July 30, 2010 and returned the full security deposit to the tenants the same day. The rental unit is a house with 2 rental units, and these tenants lived in the upper unit.

The landlord testified that the tenants left the unit with pencil markings and children's drawings on the walls. He stated that in the tenants' culture, the tenants use extra water to cleanse themselves, and pour water from a jug. The excess water ran down the heat vents into the suite below and damaged the walls in the bathroom of the unit below. The landlord was called by the tenants in the lower unit to complain, and the landlord spoke to the tenant who said that a pipe must be broken. The landlord contacted a plumber who saw that water was coming from the heat vent, not a pipe. He stated that the tenant had a guest from Pakistan who had plugged the toilet and it overflowed. When the landlord inspected, he found overflowed water, feces and urine. He stated that the tenants or guests used excess water to cleanse which caused damage to the unit.

The landlord is claiming \$3,971.20 for the damage to the walls and to the ceiling and walls of the lower level rental unit. In support of the claim, the landlord provided a copy of an invoice dated August 26, 2010 in that amount for painting, replacing the bathroom floors and repairing water damage to the basement suite with drywall and drywall mud. Attached to the invoice is a letter from the tradesperson stating that the damage was caused by the tenant in the upper unit, in his opinion. The landlord also provided 3 photographs showing water damage to a ceiling and walls.

The tenant testified that the landlord's description of their culture is incorrect. She stated that neither she nor her guests damaged the unit or the unit beneath theirs.

On July 30, 2010 the tenants returned to the rental unit after the landlord had requested that the tenants do more cleaning. The tenants did so and the landlord returned the security deposit. Further, on August 20, 2010 the tenants received \$62.00 from the landlord for the final utility bill. There was no claim by the landlord about damages until the tenants filed their claim. The tenant stated that the landlord is not new to being a landlord, and knows the system.

The tenant also testified that there are no marks on the walls, the toilet never overflowed during the tenancy, and the landlord has not provided photographs or evidence to substantiate the claim.

No move-in or move-out condition inspection report was completed.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy 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 *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What steps the claiming party took to mitigate, or reduce such damage or loss.

In this case, the landlord has not provided any evidence of pencil markings or drawings on the walls. Further, I have reviewed the photographs, the invoice, and the letter provided by the person who completed the repairs, and find that the repair person is making assumptions in his letter. The repair person was not called as a witness to substantiate the letter he wrote, and was not available for cross examination by the tenant, and therefore little weight can be given to that evidence. I find that the landlord has failed to satisfy element 2 of the test for damages. I further find that the landlord had opportunity to discuss the damage with the tenants on July 30, 2010, but did not do so, but asked the tenants to do more cleaning, which they did, and has therefore failed to satisfy element 4.

I further find that in the absence of a move-in and move-out condition inspection report, and due to the fact that the damage claimed by the landlord is disputed by the tenant, the landlord is unable to prove that any damage to the rental unit of the tenants was not present when the tenants moved in. The *Act* and the regulations place the onus on the landlord to complete the inspections.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: April 7, 2011.

Residential Tenancy Branch