



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MND, MNR, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The applicants had originally requested an Order of Possession however the tenants have already vacated the rental unit and return possession to the landlord.

The applicant is also requesting a monetary order for \$11,697.16 and recovery of the \$100.00 filing fee.

A portion of this claim however is outside my jurisdiction. The landlords are claiming \$600.00 for a security deposit and \$1200.00 for April 2010 rent; however both of these were the subject of a previous dispute resolution hearing and the decision was made regarding the security deposit and the April 2010 rent. I have no authority to change that decision and rehear the matter.

I will deal however with the remainder of the claim.

Background and Evidence

The agent for the applicant testified that:

- In the tenancy agreement the tenant agreed to take care of the yard, including watering the plants however at the end of the tenancy there were numerous plants that had died and had to be replaced. It is their belief that these plants died due to insufficient watering.
- There was a leak in the bathroom in the rental property that leaked down into the kitchen area and cause substantial damage and as a result the landlord has had significant repair costs and plumbing costs. It is their belief that this damage would not have occurred if it were not for tenant negligence. They believe the tenant did not inform them when the leak first occurred.
- When the tenants moved into the rental unit there was some minor staining on the dining room carpet, however at the end of the tenancy there were numerous holes in the dining room/living room carpet and as a result the carpet had to be replaced. They chose to replace the carpet with laminate flooring.
- When the tenants moved into the rental unit there was a stacking washer and dryer in place and the tenants are instructed to ensure that they only used small loads. During the tenancy the stacking washer dryer broke and they believe it was due to the tenants overloading the washer and dryer. They therefore believe the tenant should pay for the replacement washer and dryer.
- There is a gravel driveway at the rental property that was in good condition at the beginning of the tenancy, however at the end of the tenancy it was left badly rutted and they believe it's due to the tenants negligence by spinning their tires on the driveway when the driveway was wet or covered in snow.
- The tenants also failed to pay the water and sewer utilities, as required on the tenancy agreement, and therefore the landlord has had to pay those utilities.

They are therefore requesting an order as follows:

Replace dead plants	\$242.69
Replace kitchen floor damaged by flood	\$873.32
Replace dining room/living room carpet	\$3837.87
Plumbing invoices	\$278.38
New washer and dryer	\$1876.98
Material to repair driveway	\$182.34
Unpaid water and sewer utilities	\$1086.43
Money pay to restoration company after flood	\$1519.15
Filing fee	\$100.00
Total	\$9997.16

The respondent testified that:

- They took good care of the garden at the rental property and watered it on a regular basis and they are not aware of any dead plants at the end of the tenancy.
- The flood which occurred at the rental property was not the result of any negligence on their part. They informed the landlords as soon as they noticed that there was water leaking through the ceiling from the upstairs bathroom. At no time did they allow water to continue leaking without informing the landlord of the problem.
- At the beginning of the tenancy there was no proper move in inspection done and report issued and had a proper report been done it would have been noted that there were already numerous holes in the carpet. This was an old carpet and was in poor condition when they moved in. They left the carpet in the same condition at the end the tenancy as it was in the beginning.
- They were informed when they moved into the rental unit that they should only do small loads in the washer and dryer and that is what they did. The washer

and dryer broke under normal use and not as a result of any overloading or negligence on their part. This was normal wear and tear.

- They did not abuse the driveway at all nor did they spin their tires in the driveway. They had a very wet and snowy winter and as a result the gravel on the driveway became very soft and it rutted under normal use, not as a result of any negligence.
- They did not pay the water and sewer bill, because when she went into the City to inquire about the bill she was informed that the water and sewer were in the landlords name and therefore she believed it was the landlords responsibility to pay the water and sewer bills. When she spoke to the landlord about it the landlord said she would look into it, and she never heard anything more from the landlord.

She therefore requests that the landlord's full claim be dismissed.

Analysis

It is my decision that the landlord has not met the burden of proving the majority of the claim.

The landlords failed to meet the requirements of the Residential Tenancy Act and Regulations with regards to doing a move-in and move out inspection report, and as a result there is very little information available as to the condition of the rental unit at the beginning of the tenancy or at the end of the tenancy.

Further, although the landlord claims there are significant damages to the rental unit and rental property, the landlord has supplied little or no evidence in support of those claims, and therefore is basically just the landlord's word against that of the tenants.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

The landlords claim that there were numerous dead plants in the garden at the end of the tenancy, however the landlord has supplied no evidence in support of this claim and therefore it is just the landlord's word against that of the tenants.

The landlord claims that there were numerous holes in the dining room/living room carpet however it again has supplied no evidence in support of this claim and therefore again it is just the landlords word against that of the tenants.

The landlord also stated that it is their belief that the damage caused by the leak was a result of negligence on the part of the tenant however again they have provided no evidence in support of this claim. The tenant claims that they reported the leak as soon as they saw it and the landlords have not proven otherwise.

The landlords have also provided no evidence to show that the damage to the stacking washer and dryer unit was a result of any negligence on the part of the tenants.

The landlords have provided no evidence to show that the ruts in the driveway were the result of any negligence on the part of the tenants.

The landlord has shown that the tenants were responsible under the tenancy agreement for the water and sewer utilities however, and therefore I will allow that portion of the landlords claim in the amount of \$1086.43

I also allow one half of the claim for the filing fee, because the overall amount of the claim that I have allowed is below the \$5,000.00 limit where the fee jumps from \$50.00 to \$100.00.

Conclusion

I declined jurisdiction over the claims for the \$600.00 security deposit and the \$1200.00 April 2010 rent.

I have issued an order for the tenants to pay \$1136.43 to the landlord. The remainder of this claim is dismissed in full 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: October 06, 2011.

Residential Tenancy Branch