



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for cause; for a Monetary Order for damage to the unit, site or property; for a Monetary Order 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 from the tenants for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

Both parties agree that a previous hearing took place on November 25, 2011 when the tenants applied to cancel the One Month Notice to End Tenancy for cause. At that hearing the tenants were successful and the One Month Notice was cancelled.

Therefore the landlord is not entitled to now seek an Order of Possession based on the reasons given in that One Month Notice. In this matter I find that the principle of res judicata applies, meaning that the matter has already been decided and is therefore final and binding on the parties. I do not have the authority to over-rule or make an alternate finding in regards to the determination made in the previous decision.

Consequently this portion of the landlord's application is dismissed without leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on October 01, 2010. Rent for this unit is now \$1,330.00 per month and is due on the first day of each month in advance. No move in condition inspection was completed at the start of the tenancy.

The landlord testifies that the tenant has stained the carpets. The landlord testifies that the tenant agreed at the previous hearing that their dog caused this staining and although the tenant has said he cleaned the carpets the stain has remained. The landlord seeks to recover the cost for carpet repair to the sum of \$542.75

The tenant testifies that his dog did have an accident on the carpet in this area. The tenant states they rented a carpet cleaning machine to clean this carpet and agrees some faint staining is still evident. The tenant states all the carpets will be professionally cleaned to ensure this stain is removed at the end of their tenancy.

The landlord testifies the tenants have left oil stains on the drive way. The landlord testifies that since December 01, 2011 more oil stains have appeared in the tenants' parking spots. The landlord states the tenant has also caused damage to the asphalt with the kickstand of his motor bike. The landlord states the tenants provided a

photograph showing one hole when in fact there are three holes which the landlord's photographs can attest to. The landlord states he has obtained an estimate for the repair to the asphalt and for cleaning the oil from the tenants' parking spots. This estimate is for \$280.00 and the landlord seeks a monetary order from the tenants to pay for this work.

The tenant states that there were oil stains on the driveway and in their parking stalls when they moved into the property. The tenant states he did attempt to clean up some oil stains that were caused by their vehicles and this is normal wear and tear. However the tenant states he does intend to ensure any oil stains caused by their vehicles will be removed at the end of their tenancy.

The landlord testifies that at the last hearing he spoke about some oil which had been dumped by the fence. The landlord states he has no evidence that the tenants dumped this oil but at the last hearing the tenant did state he had cleaned the oil up. The landlord testifies when he was at the property cleaning some leaves he found the tenant had not cleaned up the oil but had simply kicked some stones over it. The landlord has not specified a monetary amount for this oil spill.

The tenant maintains that he did not dump this oil by the fence but did attempt to clean it up as stated at the previous hearing. The tenant states the landlord simply wants them to move out as he has lost the use of his illegal suite.

The landlord states the tenant used sand from the backyard to disperse down the driveway. The landlord seeks to recover the sum of \$56.00 to clean up the rock and sand.

The tenant states he did put some sand/rocks on the driveway as it became icy to prevent their vehicles slipping on the steep drive.

The landlord also seeks to recover the sum of \$315.72 to repair scratches in the cork flooring he states were caused by the tenants; \$392 plus HST to replace and paint a door for damage caused by the tenants; and \$56.00 for chips to the kitchen cabinetry caused by the tenants.

The landlord testifies that utilities were covered in the tenants rent. The utility bill was in the landlords name for both properties. However as there is now no tenant living in the basement suite the landlord would like the tenants to pay for their own utilities.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a landlord seeks to recover the cost for damage to the unit, site or property and for money owed or compensation for damage or loss the landlord must meet the burden of proof that this damage was caused by the tenants. I have applied a test used for damage and 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 landlord has established that the tenants dog has caused some staining on the bedroom carpet however the landlord has not established that the carpet needs to be replaced and I find the tenants are responsible to have the carpet cleaned at the end of their tenancy. Therefore, I find the landlord is premature in filing his claim for damage to the carpet but is at liberty to reapply at the end of the tenancy if the tenants fail to ensure the carpet is left in a reasonably clean condition.

I further find the landlord has established that the tenants have caused some damage to the driveway asphalt with oil stains and indentations from the tenant's motor bike. However as the landlord did not complete a move in condition inspection report and the tenant has testified that some of the oil stains were already on the drive way at the start of the tenancy the landlord has not met the burden of proof that the tenants are solely responsible for all the oil stains. I further find the indentations to be minor and the tenants have a responsibility to ensure these are repaired at the end of the tenancy. Consequently, I find the landlord is premature in filing his claim for damages to the driveway as the tenants still have opportunity to repair these before the end of the tenancy. The landlord is at liberty to file a new application in the event the tenants do not clean the oil stains caused by their own vehicles and repair the indentions caused by the tenant's motor bike.

With regard to the remainder of the landlords claim I find the landlord has provided insufficient evidence to support his claim that the tenants dumped oil in the yard, that the sand and stones required the landlord to clean them up and not the tenants, that the tenants have caused damage to the cork flooring, a door or chips in the kitchen cabinetry. Consequently it is my decision that the landlord has not met the burden of proof in these matters and his application for damages in connection to these items are dismissed without leave to reapply.

With regards to the landlords request to have the utilities put into the tenants name. When a tenancy agreement is entered into which states utilities are included in rent; a landlord is not entitled to alter the terms of this tenancy agreement without the consent of the tenants. Therefore the landlords request in this matter is denied.

Conclusion.

The landlord is at liberty to reapply for damage to the carpet and driveway at the end of the tenancy in the event the tenants do not rectify any damage. The remainder of the landlords claim 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: December 13, 2011.

Residential Tenancy Branch