



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order permitting the landlord to keep all or part of the tenants security deposit; 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 tenant 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 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

A previous hearing on the tenant's application for the return of double the security deposit was held on March 30, 2012. During that hearing it was found in favour of the tenant for the security deposit to be returned to the tenant. S.77 of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings. The portion of the landlord's application relating to the request for an order to retain the security deposit is therefore dismissed as this matter has already been determined in the previous hearing.

Issue(s) to be Decided

- 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 August 01, 2011 and ended on February 01, 2012. Rent for this unit is \$1,200.00 per month and was due on the first of each month.

The parties agree that a move in and a move out condition inspection report was not completed at the start and end of the tenancy. The landlord testifies that she did do a walkthrough of the unit with the tenant at the start of the tenancy.

The landlord testifies that the tenant has caused damage to the wooden flooring in the master bedroom. The landlord states that the tenant's box spring was placed directly onto the wooden floor and this has caused bad scratches to the floor. The landlord testifies that the flooring is approximately four and five years old. The landlord agrees there were some other scratches on the floor caused by the previous tenants and as such the landlord is willing to accept a portion of the costs for the new flooring from these tenants. The landlord has provided a quote from a flooring company for the sum of \$1,064.00. The landlord testifies that she is unable to replace the flooring until she receives money from the tenant for this damage. The landlord has also provided photographic evidence of scratches on the floor. The landlord seeks to recover the sum of \$798.00 from the tenant.

The landlord testifies that a leak occurred from the tenants unit around Christmas, 2011. The landlord is unsure where the leak started but it caused water damage in the downstairs tenants unit. The landlord assumes that the tenant's washing machine flooded which has caused damage to the ceiling and drywall downstairs. The landlord seeks to recover the sum of \$543.20 for this work and has provided a quote in evidence from a contractor. The landlord has also provided photographic evidence of the damage to the downstairs unit.

The landlord testifies that the tenant said the pipes were leaking but when the landlord's plumber came to the tenants unit to look at the pipes he found the pipes were not leaking. The landlord testifies that the downstairs tenant informed the landlord that she went to notify the tenant that there was water leaking into her unit and the tenant's boyfriend told the downstairs tenant that the washing machine went out of balance. As no more flooding has occurred since this incident the landlord suggests that the water leak was caused by the actions or neglect of the tenant.

The landlord seeks to recover the sum of \$201.60 from the tenant for replacement kitchen taps. The landlord testifies that the tenant informed the landlord that the taps were not working and when the landlord went to the tenants unit the landlord found the taps were all loose and broken. The landlord testifies that the taps were approximately four years old and the tenant had put tape and elastic bands around them. The landlord has provided a receipt and photographic evidence showing the taps.

The landlord seeks to recover the sum of \$300.00 for cleaning the rental unit. The landlord has provided a receipt for the landlord's work, photographic evidence of the condition of the unit and a letter from the incoming tenant detailing the dirt and mess in the unit when she came to move in.

The landlord seeks to recover the sum of \$575.00 from the tenant. The landlord testifies that the tenants rent included Hydro, however the tenant used an excessive amount of Hydro resulting in much larger Hydro bills for the landlord. The landlord testifies that the tenant would leave windows open with the furnace running and the plastic sheeting the landlord placed over the windows to keep the heat in was ripped off. The landlord states that the tenant acted irresponsibly with the Hydro because the tenant did not have to pay the bill.

The tenant disputes the landlords claim. The tenant testifies that her bed was on nine castors which did not mark the floor. The tenant testifies that there were already scratches

on the floor from the previous tenant and the landlord commented on these when the tenant moved in.

The tenant disputes the landlords claim that they caused a water leak in the downstairs unit. The tenant testifies that whenever they had a bath or shower the water would leak downstairs. The tenant states the water pipe for the washing machine went right down the waste pipe and there was no evidence of a leak coming from the tenants unit. The tenant testifies that when they heard of the leak they moved the washing machine away from the wall and it was dry underneath. The tenant testifies that she was not in the unit when the landlord brought a plumber round so the tenant cannot comment on what the plumber found.

The tenant disputes the landlords claim that they caused damage to the taps. The tenant states the taps and pipes had a problem as whenever the tenant turned on the hot water tap the floor started rattling. The downstairs tenant also heard this noise. The tenant testifies that the reason the taps were taped and held in place with elastic bands was to prevent the tap from dripping. The tenant testifies that the downstairs tenant informed the tenant that there were some other taps in the house and the downstairs tenant came to help the tenant look for them. The tenant states the landlord is accusing the tenant of taking these taps which the tenant disputes. The tenant testifies there have always been problems with water drips and there was another drip under the kitchen sink when they moved in which the tenant put a bowl under. The tenant testifies that the taps had handles that screwed in. These screws had been stripped and the handles could not be screwed in. The tenant testifies that she informed the landlord of this problem many times.

The tenant disputes the landlords claim for \$300.00 for cleaning costs. The tenant testifies that her boyfriend did clean the unit at the end of the tenancy and the tenant steam cleaned the carpets and washed floors. The tenant agrees that some cleaning was not done but disputes the hours the landlord is claiming for.

The landlord argues that she cleaned the unit for 12 hours and seeks \$25.00 per hour. The landlord testifies that the walls also had to be washed as the tenant had been smoking in the unit.

The landlord argues that the taps were fine in January but when the landlord went back later that month the taps had been damaged. The landlord also argues that the tenant's bed could not have had castors as the box spring was right on the floor and there was no space between the bed and the floor.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim that the tenant damaged the floor, caused a water leak resulting in damage to the downstairs unit; and caused damage to the kitchen taps, 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 landlord has not met the burden of proof that this damage was caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. The landlord has provided some photographic evidence showing some damage;

however the landlord failed to complete a move in and move out condition inspection report at the start and end of the tenancy.

Sections 23 and 35 of the *Act* say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The tenant has disputed that she is responsible for this damage to the floor, taps and downstairs unit and the tenant has stated that the floor was already scratched when she moved into the unit. The landlord has provided insufficient evidence to show that the tenants actions caused the water damage or that the tenants actions have damaged the taps in the kitchen. Consequently, these sections of the landlords claim are dismissed.

With regard to the landlords claim for cleaning; I refer the parties to s. 32(2) of the *Act* which says a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. This also requires the tenant to ensure the rental unit is left to a reasonably clean standard at the end of the tenancy. It is my decision that the landlord has met the burden of proof in this matter concerning the condition the rental unit was left in and I am satisfied that the landlord spent 12 hours cleaning the unit. Consequently, I uphold the landlords claim for cleaning and the landlord will receive a Monetary Order to the sum of **\$300.00** pursuant to s. 67 of the *Act*.

As the landlord has been partially successful with her claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

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 **\$350.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: June 01, 2012.

Residential Tenancy Branch