



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site, or property, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

Background and Evidence

Each party confirmed receipt of evidence submitted by each other. It was noted that the Tenants did not send the Landlord a copy of the Landlord's real estate flyer in evidence however they provided a copy of it in their evidence that was submitted to the *Residential Tenancy Branch*.

The Landlord asserted that a move-in condition inspection report form was completed and the Tenants signed a copy of it on December 30, 2010. He acknowledged that the report indicated everything was brand new as the unit is located inside a 1911 character house that had been 95% reconstructed to create five separate suites were created in this house. Occupancy permits were granted in August 2010 however these Tenants were the first to occupy unit B when they took possession on February 1, 2011.

The Tenants confirmed that they received a copy of the move-in condition report that was previously completed; however they do not recall doing an actual inspection nor do they recall signing the form. Neither party submitted a copy of the condition inspection report into evidence.

The parties acknowledged they attended dispute resolution on March 19, 2012 and both parties made reference to the March 23, 2012 decision, which was provided in the Tenants' evidence. Both parties confirmed the tenancy ended January 31, 2012 and no move out condition inspection was conducted despite the Tenants' attempt to schedule one. The rental unit keys were returned to the Landlord on February 2, 2012.

The Landlord has filed seeking compensation for damages as listed below and stated his photos that were provided into evidence were taken approximately February 8, 2012.

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| \$100.00 | To repair nail holes left in the wall. The Landlord argued his tenancy agreement addendum indicated the Tenants needed to request permission to put nails in the walls so he could instruct them how he wanted it done to prevent damage. The Landlord completed the work over a period of approximately 4 ½ hours in February 2012. |
| \$542.68 | To replace 12 boards in the hardwood floor which were scratched and dented. When asked which room the damage was located as indicated in the photos the Landlord advised it was all in the living room. The work has not been completed and this claim is based on an estimate provided in evidence. |
| \$5.00 | To replace a bulb over the fireplace. No evidence was provided in support of this claim however the Landlord stated he replaced the bulb with one he had in stock. |
| \$140.00 | To replace the bottom of a bathroom vanity drawer from the master bedroom ensuite. A photo was provided of something spilled in the drawer which the Landlord stated was a solidified product. He confirmed this drawer has not yet been repaired and it remains in place in the unit. |
| \$625.30 | To replace the stainless steel refrigerator door. The Landlord provided photos of scratches on the door and a quote to have the door replaced. This has not been completed as of yet. |
| \$65.00 | To cover the cost of the Tenants using some vinyl flooring product the Landlord had left in the Tenants' storage room. The Landlord asserts this product cannot be replaced as it is no longer made and that this was leftover material from the vinyl product that was purchased during the renovation of the house which the Tenants used without his permission. |
| \$2,082.24 | To properly repair the vinyl deck that was damaged by the Tenants. This amount includes \$1,542.24 for the cost to remove and reinstall the vinyl deck covering, \$420.00 for a carpenter to remove the siding and re-install it after the deck vinyl is replaced. The vinyl decking is installed a few inches up the wall under the siding as a waterproofing measure so to |

install new flooring the siding must be removed and re-installed. This also includes \$120.00 which is an estimated amount for contingency just in case the siding is damaged or needs additional caulking and or repainting once it is re-installed. The Landlord asserted this work is critical and an absolute necessity as it will discredit his warranty however he confirmed this work has not yet been completed.

\$40.00 For the Landlord's time cleaning the unit which included wiping out the rim of the dishwasher, wiping a spot up off the floor and a scuff on the wall.

The Landlord acknowledged that most of these repairs are not completed because he cannot afford to have the work completed. He has re-rented this unit effective April 1, 2012.

The Tenants advised that they do not agree with anything the Landlord is claiming. They confirmed that they reviewed the tenancy agreement addendum with the Landlord when they signed it and noted that they asked the Landlord permission to hang pictures on the walls to which the Landlord agreed and said they must use proper picture hanging hooks. The Tenants advised they did use picture hooks, as instructed, and that they left them hanging in the walls when they moved out. They argued that the walls did not look as they do in the Landlord's photographs as there are no hooks displayed in these pictures.

The Tenants asserted that they were not aware of any damage to the hardwood floors however they did state there could have been some minor scuff marks but nothing to the extent that is displayed in the photos. The Tenants questioned the validity of the photographs as it appeared there were different types or coloring of flooring provided in the Landlord's photos. They pointed to photo #18 and advised that their rental unit floor was that color and not the flooring that is displayed in the other photos.

The Tenants deny leaving a burnt out light above the fireplace and stated they checked all lights and they were working at the end of their tenancy.

The Tenants deny leaving something stuck in the bathroom vanity drawer. They do not recall this and have no idea how this would have happened.

The Tenants pointed to their evidence of a real estate flyer that was created with photos that were taken in mid January 2012 with their furniture still inside the unit. They pointed to the refrigerator and noted that there are no marks or scratches on it in mid January and that there were no marks or scratches on it at the end of their tenancy.

The Tenants confirmed using a piece of the vinyl floor product that was left inside their storage unit. They acknowledged that their deck floor suffered some damage from their BBQ and that they searched for product to have the vinyl repaired. They were not able to purchase any product as it is no longer available and they knew there was a piece of it in their storage unit. They took a piece off of the corner of this piece of vinyl, without asking the Landlord's permission as he was out of the country at the time. They hired a contractor from their church who conducted the repair on their deck.

The Tenants stated they disagree with the amounts the Landlord is seeking to have the entire vinyl decking replaced. They state there is no need to have it all replaced as it is a small portion which they were able to patch as displayed in the Landlord's pictures.

In closing the Landlord refuted the Tenants' statements and noted how the Tenants acknowledged there may have been some scuffs on the hardwood flooring. I began asking the Landlord questions about the real estate brochure that was created with pictures of the unit which included the Tenants' furniture. I noted how the Landlord began to be purposely evasive with his answers. He confirmed the photos were taken for this flyer in mid January 2012 and that the unit was listed for sale for February and March 2012. The Landlord continued to avert my questions and when the hearing time was about to expire I explained to the parties that given the Landlord's reluctance to answer my questions I would be considering the photos provided in this flyer in my decision and that I would be attaching a black and white photocopy of the brochure to the end of this decision to ensure the principles of natural justice are upheld.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, photographs, copies of estimates for work that has not yet been performed, the March 23, 2012 Dispute Resolution Decision, an e-mail issued by the Landlord on February 15, 2012, carpet cleaning receipt provided by the Tenants dated January 28, 2012, an invoice for cleaning services that were performed January 30, 2012, and the real estate flyer, pursuant to rule # 11.5 of the *Residential Tenancy Branch Rules of Procedure*.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and

2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The Tenants acknowledged there was damage caused by their bbq to the vinyl deck during a time that the Landlord was out of the country. After discovering that this vinyl product had been discontinued the Tenants utilized a small piece of vinyl off of a chunk of vinyl that was left inside their storage unit. The Landlord had not previously provided the Tenants any indication of the purpose of this chunk of vinyl that was left in their storage unit therefore they utilized a portion for repairs as it matched the discontinued vinyl that was installed on their deck.

After review of the above, I find the Tenants acted in a reasonable fashion, fulfilling their obligations to repair the damaged vinyl as required under section 32 of the Act. I further find that, in the absence of evidence to the contrary and based on a balance of probabilities, the chunk of vinyl was left inside the storage locker for the sole purpose of being utilized for future repairs. Therefore, I find it was reasonable for the Tenants to utilize the matching product in their repair rather than using a piece of vinyl that did not match the existing product.

Upon review of the Landlord's submission, considering the Landlord has taken no action in the last five months, I find there to be insufficient evidence to prove the deck repair was not done adequately or that it is critical for the entire deck vinyl to be replaced. Therefore I dismiss all items claimed relating to the vinyl and deck repair.

In this case the evidence supports the rental unit was brand new at the onset of the tenancy, no move out condition inspection report was completed by January 31, 2012, the unit was for sale in February and March, and the Landlord made no attempt to contact the Tenants until February 15, 2012, two weeks after the tenancy had ended.

The Tenants disputed all of the claims put forth by the Landlord and questioned the validity of the Landlord's photographs noting: (1) that there appears to be photos of different hardwood flooring as they only recognized one photograph which resembled the color of flooring that was in their unit; (2) the photo of dishwasher shows a white wall

when the walls in their unit were not white; and (3) they provided evidence which supports they paid to have professional maids clean the unit and a professional carpet cleaning company clean the carpets.

In this case I find the Landlord breached his statutory duty by failing to complete a move out condition inspection report as required by section 35 of the Act. The Landlord is seeking damages and has relied on photographs which were not taken until eight days after the tenancy ended, a time period that the rental unit was accessible by real estate agents and clients. I further note that the Landlord made no contact with the Tenants until seven days later, February 15, 2012 which leads me to question the actual date he inspected this unit.

Based on the aforementioned, in the absence of a move out condition inspection report, I find the disputed evidence submitted by the Landlord insufficient to prove the condition of the rental unit on January 31, 2012. Accordingly I dismiss the Landlord's claim for damages.

Conclusion

I HEREBY DISMISS the Landlord's claim in its entirety.

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 25, 2012.

Residential Tenancy Branch