



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

The female tenant identified that she was incorrectly named on the hearing documents and landlord's Application for Dispute Resolution, with agreement from the landlord I have amended the landlord's Application to reflect the correct spelling of the female tenant's last name.

While the landlord had applied solely to retain the security deposit, I note the parties clarified in the hearing that the full security deposit was signed over to the landlord for different damage than is claimed for in the Application before me.

I also note that it is clear from the landlord's explanation in the details of dispute on the Application and from her evidence that she seeks compensation for damage to the unit. As such, I amend the landlord's Application to exclude the matter of the security deposit but to include an Application for a monetary order for damage to the unit, site or property.

Prior to the hearing the male tenant had submitted a letter dated July 15, 2012 requesting a re-scheduled hearing time as he would be out of the country for work purposes until August 17, 2012. There was no explanation in the letter regarding the female tenant's availability for the hearing.

In response to this request, when the male tenant attended the hearing, as he is now back in the country, I clarified with the tenants if they still sought an adjournment or if they were prepared to precede. The tenants requested an adjournment.

The male tenant testified that he had just returned over the weekend and that when he had left the country they had just moved into their new unit and had all of the relevant documents packed. He also testified that the female tenant had not been available as she had been in Halifax for training for 3 months and she had also not had an opportunity to prepare.

When asked if the landlord had an objection to an adjournment, the landlord testified she did because she had seen the female tenant in a local park horse riding in mid July 2012, and questioned whether she had been out of town.

The female tenant testified that she had been in training but it was provided locally but that she was focused on the training and was not able to prepare for this hearing. She also testified that all the pictures they had for their response had been in the male tenant's computer that he had taken with him out of the country.

The tenants went on to explain that the male tenant could not set up his personal computer within the confines of his employer's facility and the male tenant testified he never had an opportunity to access internet through his personal computer during the whole time he was away.

Residential Tenancy Branch Rule of Procedure 6.4 sets out the criteria I must consider for granting an adjournment as follows:

1. The oral and written submissions of the parties;
2. Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
3. Whether the adjournment is required to provide a fair opportunity for a party to be heard;
4. The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking adjournment; and
5. The possible prejudice to each party.

I considered the submissions of both parties and while I had no doubt that the adjournment might contribute to the resolution, I found the adjournment was not required to provide a fair opportunity for the tenants to be heard.

I also found that the need for adjournment arose, at least in part, out of the intentional actions or neglect of the tenants. As such, I dismissed the tenant's request for an adjournment. The hearing proceeded.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage to the rental unit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on June 30, 2009 for a month to month tenancy beginning on August 1, 2009 for a monthly rent of \$925.00 due on the 1st of each month. The parties agree the tenancy ended on or before May 31, 2012.

The landlord provided a copy of a Condition Inspection Report recording the condition of the rental unit at both the start and the end of the tenancy. The Report is signed by both the landlord and the female tenant at the start of the tenancy and the landlord and both tenants at the end of the tenancy.

The tenants noted that the report appears to be altered, after they signed it, in the section describing the main bathroom where it states that there are 2 bulbs missing. The tenants submit this was not in the Report that they had signed it. The tenants confirmed they did not see any other changes in the Report.

The landlord specifically seeks the following compensation:

Description	Amount
Replacement flooring (2 estimates)	\$683.20 or \$747.04
Painting – bedroom	\$436.80
Cleaning	\$350.00
Dimmer switch repair	\$42.90
Total	\$1,512.90 or \$1,576.74

The landlord testified the tenants had a dog and the damaged area is where they kept the dog's water dish. She submits that the contractors who provided estimates on the repairs indicated that the damage is consistent with damage that is caused when pools or puddles of water are left on the top of the laminate flooring.

The tenants submit that there was a leak in the kitchen sink and that the damaged floor area is near the sink; they therefore believe the damage was caused by this leak. The

tenants also testified that while the location was where they originally kept the dog's water dish they at some point changed this location.

The landlord acknowledged there had been a leak in the kitchen faucet, as confirmed in the Condition Inspection Report that existed at the start of the tenancy in 2009 and was repaired in 2012. The landlord testified that this was a leak into the sink and there were no other leaks that would have caused water to pool on the flooring.

The landlord testified the rental unit had not been adequately cleaned, as is recorded in the Condition Inspection Report, and that she hired a cleaning company to complete the heavy duty cleaning like mould/mildew removal at a cost of \$200.00 and that she completed the rest of the cleaning herself. The landlord provided additional photographic evidence of the condition of the unit but did not provide any receipts for the hired cleaning.

The male tenant testified that he cleaned the unit the best that he could. The tenants also testified that some of the photographs provided by landlord appear to exaggerate the condition and in some cases show the same condition at the start of the tenancy.

The parties agree the tenants did paint the bedroom with the landlord's permission; however the paint job was not well done and required repainting to correct the paint job to a suitable standard.

The landlord seeks compensation for replacement of a dimmer switch that she submits was damaged by the tenants. The tenants acknowledged damaging the dimmer switch but that they had fixed and it was in working order when they ended the tenancy. The landlord submits the replacement the tenants provided was not safe and she had to replace the one they had installed. The landlord did not provide a receipt for her replacement dimmer switch or any additional evidence regarding the unsuitability of the switch installed by the tenants.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**

4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

While the tenants have provided an alternate theory as to what caused the damage to the floor, I find the landlord's evidence and testimony to be more credible as to the cause of the damage. I find this, in part, because the landlord had witnessed the dog's water dish in that location on many occasions.

I also find it unlikely that a landlord who acknowledges a leak in a faucet in a move in Condition Inspection Report completed in 2009 would wait until 2012 to repair a leak that would have caused this type of damage.

As such, I find the tenants, in regard to the flooring, failed to comply with Section 37 of the *Act* and as a result the landlord suffered a loss. I find the landlord has provided sufficient evidence to establish the value of that loss at \$683.20, based on her submission of estimates.

In regard to the landlord's claim for cleaning, I find the landlord has established that cleaning was required at the end of the tenancy, despite the male tenant's testimony that he cleaned the unit substantially.

I make this finding because both tenants signed the Condition Inspection Report agreeing that the report represented the condition of the rental unit and although they identified that one item was altered they did not indicate that any of the notations recording the cleanliness of the unit were incorrect. The Report confirms substantial cleaning was required in most rooms.

Therefore, I find the tenants, failed to comply with the cleaning requirements under Section 37 and the landlord has suffered a loss. As the landlord did not provide a receipt or even an estimate (provided on company letterhead or rate sheet) for the cleaning, I find the landlord has failed to establish the value of this loss at \$350.00 however, based on the evidence before I find \$150.00 to be a reasonable compensation, for cleaning completed by the landlord.

As the parties have agreed the bedroom required painting I find the landlord is entitled to compensation in the amount established by the estimate submitted by the landlord of \$436.80.

As to the dimmer switch replacement, I find the landlord has failed to provide sufficient evidence to establish the tenants failed to repair the dimmer switch to safety standards required by law. As such, I find the landlord has failed to establish the tenants did not comply with their repair obligations under Section 37 and I dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,320.00** comprised of \$683.20 replacement flooring; \$150.00 cleaning; \$436.80 painting; and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: August 16, 2012.

Residential Tenancy Branch