



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; 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 examine 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, and the tenant was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

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 keep the tenants security deposit?

Background and Evidence

The parties agree that this tenancy started on November 15, 2011 for a fixed term which ended on November 14, 2012. The tenant moved from the rental unit on that date. Rent for this unit was \$2,600.00 per month and was due on the 15th of each month in advance. The tenant paid a security deposit of \$1,300.00 on November 14, 2011. Both parties attended a move in and a move out condition inspection and the tenant provided his forwarding address in writing to the landlord on November 14, 2012.

The landlord testifies that the tenant failed to clean the carpets at the end of the tenancy. The landlord testifies that they have not yet had the carpets cleaned but have spoken to other people and they said it would cost \$350.00 plus HST to clean the carpets. The landlord also testifies that this was the amount they paid to have the carpets cleaned at the start of the tenancy.

The landlord testifies that the tenant failed to clean two fire places, the hottub and a chandler. The landlord seeks to recover \$125.00 for an estimated five hours of work to clean these areas. The landlord has provided photographs of the ash left in the fireplaces. The landlord testifies that these areas were not documented on the move out inspection although the hottub was looked at with the tenant. The landlord agrees that the lid of the hottub does not seal correctly.

The landlord testifies that the property has a two car garage and one of the garage doors is not working. The landlord testifies that they sent someone to look at the door in November, 2012 and the landlord was charged a sum of \$50.40 for the inspection of the door. The landlord has now received a quote to have the door repaired at a sum of 200.00 which included a new remote control. The quote provided in evidence states that this quote is for parts and labour to replaced stripped gears on the garage door plus a remote. The landlord testifies that the garage door is approximately 35 years old but the door was working correctly at the start of the tenancy.

The landlord testifies that the tenant hung curtains in the master bedroom and put up a curtain rod. When the tenant moved out he removed the curtain rod put did not fill the

holes left in the walls. The landlord has provided a quote from their handyman to repair the walls at a sum of \$160.00.

The landlord testifies that there was a toilet left with a broken flush. As this toilet was made in Sweden the parts are not readily available in Canada. The landlord testifies that she contacted the company and received a quote for \$100.00 for the part to repair the broken flush and a quote from a plumber of \$198.00 for two hours labour to make the repair. These quotes have been provided in evidence. The landlord testifies that the tenant did not inform the landlord that the flush was broken and the toilet was in good working order at the start of the tenancy. The landlord agrees that as the house is over 35 years old this could be the original toilet.

The landlord testifies that the tenant did not leave the garden in a well maintained condition. The landlord testifies that the tenant had an above ground pool and a dolls house and these had killed the grass. The landlord states the tenant had told them that he had re-seeded the areas and the grass may grow back in the spring. The landlord also states that there were leaves everywhere which the tenant had not picked up. The tenant had used a gardener in the spring of 2012 and the landlord had to call that gardener back who has given the landlord a quote for \$200.00 to tidy the garden.

The landlord testifies that their monetary loss is \$1,493.76 however they only seek to keep the tenants security deposit of \$1,300.00 plus the \$50.00 filing fee. The landlord testifies that they have provided e-mail correspondence between the landlord and tenant concerning some of the repairs which were not included on the move out condition inspection report.

The tenant disputes the landlords claim for carpet cleaning. The tenant testifies that at the start of the tenancy the carpets had not been cleaned by the landlord and the tenant had to pay to have the carpets professionally cleaned. The tenant was given the opportunity to provide proof that he had the carpets cleaned at the start of the tenancy after the hearing had concluded and the tenant has provided a copy of a cashed cheque

dated November 19, 2011 made out to a carpet cleaning company. The tenant testifies that at the end of the tenancy they rented a hand held carpet cleaner and they cleaned the carpets themselves again. The carpets were left in a good clean condition at the end of the tenancy as documented on the move out inspection report.

The tenant agrees that they forgot to clean out the fireplaces at the end of the tenancy but disagrees with the landlords claim for the time it will take to clean the fireplaces. The tenant disputes the landlords claim that the hottub was left unclean. The tenant testifies that they left the hottub in the same condition in which they found it. The lid of the hottub does not seal properly and leaves and pine needles continued to blow into the hottub and settle at the bottom of the hottub after the tenants cleaned it. The tenant disputes the landlords claim that the chandler was left dirty. The tenant testifies that the house was cleaned thoroughly and the landlord has not documented that the chandler was left unclean.

The tenant disputes the landlords claim that he was responsible for any damage to the garage door. The opening mechanism is very old with a remote for each door. The tenant testifies that when he moved in one of the remotes was not working and you had to open the door manually. When the tenant tried to get a new battery for the remote he was told it was so old it was now obsolete and batteries could not be obtained. The tenant testifies that the gears have plastic teeth and about a month into the tenancy the gears gave out due to the age of the unit.

The tenant agrees he did hang curtains at the window and put up curtain rods. The tenant testifies that there were small nail holes left on each side of the window but he tried to use existing nail holes wherever possible.

The tenant disputes that they are responsible for damage to the toilet. The tenant testifies that this is a toilet in the attic room and was seldom used throughout the tenancy. Towards the end of the tenancy when the tenant's sister used the toilet a flimsy plastic part on the flush sheared off. The tenant testifies that the original builder of the house was Swedish and that is why the toilet is of Swedish manufacture. The toilet

would therefore be around 35 years old and parts would be expected to fail after this time. The tenant testifies that there were two boxes of toilet parts in the garage of the property which the tenant inadvertently removed when he moved out but has now returned to the landlord. The tenant therefore disputes the landlords claim for \$100.00 to obtain a new part for the toilet.

The tenant disputes the landlords claim for garden maintenance. The tenant agrees he did have an above ground pool, a dolls house and a trampoline in the garden but all this equipment was taken down four weeks before the end of the tenancy. The tenant then put down new topsoil where needed and reseeded the areas. The tenant testifies that by the time he left the property the new grass was coming through. The tenant testifies that they had a landscaper come to the property in the late spring of 2012. The tenant paid \$700.00 to the landscaper to clean up the garden and was told it had not been done for several years prior to the tenancy. The tenant testifies that the garden was maintained each week throughout the tenancy and when they moved out the tenant's father raked all the leaves. However the weekend they moved there was a bad windstorm so the landlord would have to expect that more leaves would fall.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter the landlord has the burden of proof to show that the tenant was responsible for the damage or cleaning to the unit, site or property. To this effect 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 of 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.

I am not satisfied that the landlord has met the burden of proof with regards to the carpet cleaning. A landlord is required to provide a tenant with clean carpets at the start of a tenancy and I have no evidence from the landlord to show that the carpets were cleaned professionally prior to the tenant moving in. The tenant has provided a copy of a cashed check made out to a carpet cleaning company to show he did have the carpets cleaned at the start of the tenancy. Furthermore the move out inspection reports documents that the carpets are all in a good condition at the end of the tenancy. Consequently I dismiss this portion of the landlords claim.

The tenant has agreed that he forgot to clean out the two fireplaces at the end of the tenancy but agrees the landlords claim for five hours work to clean the fireplaces, the hottub and chandler is excessive. I therefore limit the landlords claim for the fireplace cleaning to **\$25.00**. With regard to the landlords claim for cleaning the hottub and chandler I find the landlord has not met the burden of proof showing that these areas were left unclean by the tenant, they are not documented on the move out condition inspection report and although the landlord refers to them in her emails I have no documentary evidence to show that the tenant failed to clean either the hottub or chandler. Consequently this section of the landlords claim is dismissed.

With regard to the landlords claim for the garage repair; I refer the landlord to the useful life of building elements on the Residential Tenancy Policy Guidelines #40 which states that the useful life of a garage door and opener is 10 years. As the parties agree that it is likely that the garage door and opener are over 35 years old then the landlord must expect some mechanical failure to occur and the tenant is not responsible to pay for the replacement costs of these parts. Consequently this section of the landlords claim is dismissed.

With regards to the landlords claim for holes left in the wall from curtain rods installed by the tenant. The tenant agrees that he did put up curtain rods and does not dispute that he did not fill the holes from these rods at the end of the tenancy. Consequently I find the landlord has established a claim for some repairs. However I find the landlords claim to fill the holes left by the curtain rods of \$160.00 to be excessive to fill sand and paint these holes therefore I limit the landlords claim to **\$50.00**.

With regards to the landlords claim for the damage to the toilet flush. I again refer the landlords to the useful life of building elements which states that a useful life of a toilet is 20 years. I also find it is likely from the testimony of the parties that the toilet is an original toilet in the property with a life exceeding 35 years. Consequently the landlord must expect some failure of the internal workings of the toilet system and I therefore dismiss this section of the landlords claim.

With regard to the landlords claim for garden maintenance; I find the landlord has not met the burden of proof that the tenant failed to maintain the garden to an adequate standard especially at the time of year that the tenancy ended. I accept the tenant's testimony that the made good on the areas of grass damaged by the above ground pool, the doll's house and the trampoline and the landlord has no evidence to show that the grass will not grow back in these areas in the spring. I further except that the tenant cannot be held responsible for leaves blowing onto the property after they had cleared them when this will be an ongoing occurrence in the Fall. Consequently I find the

landlord has not met the burden of proof in this matter and this section of the landlords claim is dismissed.

As the landlord has been only partially successful with this claim I find the landlord is entitled to recover half the filing fee to the sum of **\$25.00**.

The landlord is entitled to keep the sum of \$95.00 from the tenant's security deposit. The balance of the deposit must be returned to the tenant.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. The landlord is entitled to deduct the sum, of \$95.00 from the tenant's security deposit of \$1,300.00 leaving a balance of \$1,205.00 which must be returned to the tenant.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,205.00**. The order must be served on the landlord 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: January 08, 2013.

Residential Tenancy Branch

