



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, O

Introduction

This hearing was convened by way of conference call in response to the landlords' application 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 other issues.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords 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.

Issue(s) to be Decided

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

Background and Evidence

The parties agree that this tenancy started on September 01, 2010 and a new tenancy agreement was entered into on September 01, 2011 for a fixed term which expired on August 31, 2012. Rent for this unit was \$2,000.00 per month due on the 1st of each month.

No move in condition inspection was done at the start of the tenancy. The landlord completed the inspection report from memory after a walk through took place sometime a month later.

The landlord NK testifies that the tenant moved from the rental unit on August 31, 2012. The landlord NK alleges they found damage to the rental unit as follows:

Damage to a custom made fir front door. The door was left with deep scratches caused by the tenant's dog. The tenant admitted that her dog caused this damage. The landlord has provided two quotes, one for the replacement of the front door and one to repair the door. The landlord testifies that the repair quoted would not disguise the scratches so they decided to replace the door. The quote is for \$625.00 to repair and \$2,500.00 to replace. The landlord has provided photographic evidence of the door.

The landlord seeks to recover the sum of \$189.35 to replace a glass interior French door which the landlord alleges was damaged by the tenant. The landlord testifies that one of the glass panes in the door is broken and the frame is damaged. The landlord testifies it would cost more to repair the door then to replace it. The landlord has not provided any photographic evidence of the door showing the extent of the damage but has provided a receipt for the replacement door.

The landlords seek to recover the sum of \$431.20 paid to a contractor to install the French doors and to repair large holes in the ceiling caused when the tenant removed her light fixture and did not replace the landlords light fixture. The landlord testifies the contractor also had to repair large holes left in the tenant's son's bedroom. There were approximately four to five holes which required filling, sanding and repainting. The landlords have not provided any photographic evidence of the ceiling holes or the holes in the tenant's son's bedroom but have provided an invoice for this work.

The landlords seek to recover the sum of \$147.55 to repair the dryer seal that the tenant left damaged beyond normal wear and tear. The landlord testifies that the exterior seal was torn off and the repair man has documented that this damage is beyond normal wear and tear.

The landlord testifies that the dryer is five years old. The landlords have provided an invoice for the repair but no photographic evidence showing the damaged seal.

The landlords seek to recover the sum of \$36.00 to fill in holes in the yard that the tenant's dog dug. The landlord testifies that there were at least a dozen holes and the landlord had her farm hands fill the holes in.

The landlords seek to recover the sum of \$15.00 to replace a weather strip on the exterior den door. The landlord testifies that she replaced this herself and has provided photographic evidence of the weather strip but no evidence in the form of a receipt to purchase the new weather strip.

The landlords seek to recover the sum of \$320.00 for cleaning the tack room after the tenant had cats in the room. The landlord testifies that she cleaned the entire room to eliminate the cat dander.

The landlords seek to recover the sum of \$2,000.00 because the tenant sublet the rental unit and allowed another tenant to reside there. The landlord testifies that the tenant charged that other tenant \$700.00 a month in rent and did not ask permission of the landlords. The other tenant lived with the tenant for 10 months.

The landlords seek to recover the sum of \$1,361.28 from the tenant because the tenant failed to repair broken fence boards on the property. The landlord testifies that the tenant boarded her own two horses and another two horses. The landlord testifies that as this is a farm the fence boards always have to be replaced but with the exception of one area all the fence boards were in good condition at the start of the tenancy. The area that required repair was done by the landlords in September 2010. The landlord testifies that her farm hands replaced the boards and the landlord has provided a receipt for the new boards but not the labour costs. The landlord testifies that this cost also covers the farm hands labour in moving a pile of manure left on the driveway by the tenant. The landlord has not provided any photograph evidence of the damaged fence boards and there is no evidence of the condition of the boards at the start of the tenancy.

The landlords seek to recover the sum of \$95.00 for a hottub repair. The landlord testifies that in February, 2012 the tenant informed the landlords that the hottub had stopped pumping water. The hottub was not used after that and when the landlords moved back in they had a repair man look at the hottub and he notified the landlords that there was a clogged filter basket which did not appear to have been cleaned out in two years. The landlord testifies that the tenant was given detailed instruction on the care of the hottub. The landlord has provided a receipt for this repair but no photographic evidence.

The tenant disputes the landlords claim. The tenant testifies that she was not aware that the landlords had documented anything on a move in inspection report until August 31, 2012. The tenant was never given a copy of the report and no report was done during the walk through at the start of the tenancy.

The tenant agrees that the front door was scratched by her dog however the tenant had agreed to pay \$650.00 to the landlords to have the door repaired and disputes the landlords claim that the door could not be successful repaired and requires replacement.

The tenant disputes the landlords claim that she damaged the French door. The tenant testifies that these doors were always left open and the tenant has no knowledge of the glass being broken as only a small chip was identified at the end of the tenancy. The tenant testifies that this chip in the glass could have been there prior to the tenant moving in. The tenant disputes the landlords claim that there were large holes left in the ceiling. The tenant testifies that when she moved into the property there was an agreement that the tenant would purchase the property. The landlord NK, at that time, requested her light fixture so the tenant paid to have it removed and the tenants own light fixture put in its place. When the tenant moved out the tenants light fixture was removed and the only holes were the ones left for the landlord to reconnect her light fixture.

The tenant disputes the landlords' claims that there were holes made in her son's bedroom other than some holes to fit the blinds. The tenant testifies that she did not fill these holes in as she assumed the landlord would be putting blinds up when they moved back into the property.

The tenant disputes the landlords claim that her actions or neglect damaged the seal on the dryer. The tenant maintains that if the dryer is five years old any damage would be normal wear and tear.

The tenant disputes the landlords claim that her dog was responsible for digging a dozen holes in the property. The tenant testifies that this property is a 10 acre farm and there all manner of creatures living on the farm including raccoons living under the porch. The tenant agrees her dog did dig one large hole by the door but testifies that this hole was filled in when they moved out. The tenant testifies that she regularly had to fill in holes dug by raccoons in the area shown on the landlords' photographs.

The tenant testifies that she has no knowledge of any damage caused to the weather strip on the den door other than normal wear and tear.

The tenant disputes the landlords claim for cleaning out the tack room. The tenant testifies that she only put one cat in there for 24 hours while they moved out and states that one cat would not make so much mess or cause so much dander that would require the landlord to clean the tack room from top to bottom. The tenant testifies that at the end of the tenancy she explained to the landlord that she did not have time to sweep the tack room and the landlord told the tenant not to worry because it would only need a quick sweep.

The tenant disputes the landlords claim that she sublet the rental unit to another tenant. The tenant testifies that she had a ski student come and live with them to keep her son company and help the tenant's son adjust to living in this new property. The tenant testifies that the student was only 15 years old and the tenant was paid \$700.00 for her keep not for rent.

The tenant disputes the landlords claim that she damaged some fence boards. The tenant testifies the fencing is very old and falling apart in many places. The tenant testifies that she spent many days replacing boards herself and if a few were broken at the end of the tenancy this should not be her responsibility as the landlord did not do a move in condition inspection report at the start of the tenancy for them to document just how many boards needed to be replaced at that time or the condition of the fence.

The tenant testifies that she did leave some manure on the property but this was not on the drive. The tenant testifies that when she moved in there was an agreement that the landlord would keep the tractor on the property. However the landlord removed this and the tenant had no way to remove the manure. The tenant testifies that the manure is worth at least \$40.00 a truck load.

The landlord BD testifies that the tractor was very old and he was the only person able to operate it. It was an unacceptable risk to leave it at the rental property for the tenants use so it was removed.

The tenant disputes the landlords claim for the repair to the hottub. The tenant testifies that they stopped using the hottub because they had constant problems with it and the landlords would not spend any money to repair it. The tenant testifies that they did take regular care of the hottub and maintained it regularly when they did use it. The tenant testifies that she did buy new filters for it and disagrees with the landlords' comment that the filter had not been changed for two years.

Analysis

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.

To this effect I have 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.

With this in mind I have considered the landlords claim against the tenant and will address each area separately here. With regards to the landlords claim for damage to the front door; the tenant agrees that her dog did scratch the front door however I am not satisfied that the door could not be sanded and filled to hid the damage and therefore minimizing the landlords loss so I have limited the landlords claim to the cost quoted for repair to the sum of **\$625.00**.

With regard to the landlords claim for damage to the French doors. I find the landlord has insufficient evidence to determine that this damage was caused by the actions or neglect of the tenant. This section of the landlords claim is therefore dismissed.

With regard to the landlords claim for a contractor to install the new French doors and to repairs holes left by the tenant in the ceiling and the tenants sons bedroom; as I have denied the landlords claim for the French doors I must also deny the landlords claim for the costs to install the new ones. Furthermore I find as the landlords wanted their own light fitting removed at the start of the tenancy it is unreasonable for the landlords to hold the tenant responsible for having to fit a new light fixture in that area and making additional holes to do so. Therefore I find the tenant is not responsible for any minor repairs to the ceiling. I do find however that if a tenant has fitted window coverings during the tenancy that the tenant is responsible for making good on any holes left when this fixture is removed at the end of the tenancy. Therefore I award the landlord a nominal amount for this part of their

claim to fill and sand holes left by the window dressing to the sum of \$75.00. The landlords have no further evidence to show that any more holes were left in the tenant's son's room.

With regards to the landlords claim for repair to the dryer seal; The landlord has provided some evidence that the damage to the seal was beyond normal wear and tear. The tenant argues that they did not do anything to the dryer seal to cause the damage and the dryer is five years old. I have considered both arguments and find the useful life of a dryer is expected to be 15 years, therefore after five years the landlord must expect some wear and tear on some components of the dryer. Without any further corroborating evidence to show the dryer was damaged by the tenant's actions or neglect then I must dismiss this section of the landlords claim.

With regard to the landlords claim for \$36.00 to fill in the dog holes; I have considered the evidence provided by the landlord and the testimony of the parties. I find it is likely that the tenant's dog did dig holes around the deck and not raccoons as suggested by the tenant. I will therefore allow the landlords claim for **\$36.00** as I find this a nominal amount charged to fill the holes in.

With regard to the landlords claim of \$15.00 for the weather strip; I have considered the landlords photographic evidence and find the damage to the weather strip does not constitute anymore than normal wear and tear for an exterior doorway and therefore this section of the landlords claim is dismissed.

With regard to the landlords claim for \$320.00 to clean out the tack room; The landlord has insufficient evidence to support her claim that the tack room was left in such a condition with cat dander that it required a level of cleaning to the sum of \$320,.00. Therefore this section of the landlords claim is dismissed.

With regard to the landlords claim for \$2,000.00 because the tenant took in another tenant; I have pursued the tenancy agreement and there is no clause in that agreement to prevent the tenant letting a student live with her in the rental unit. If a landlord wants to restrict the occupants living in a unit the landlord must document that in an addendum which is signed

by both parties. In this case I am satisfied that the person living in the rental unit was a ski student for which the tenant was reimbursed her living costs. Consequently this section of the landlords claim is dismissed.

With regards to the landlords claim for repairs to the fence; The landlords have testified that the fence was in good repair at the start of the tenancy with the exception of one area but the landlord has also stated that as this is a farm the fence boards have to be continually replaced. The tenant has testified that the fence is old and in a poor state of repair and that she had to replace many boards at the start of the tenancy. It is my decision that the landlords have not shown that the tenant is responsible through her actions or neglect for any replacement boards and unless the landlords were able to show that the tenant damaged the boards then the landlords are responsible for maintaining the fencing at the property. Consequently this section of the landlords claim is dismissed.

With regard to the landlords claim for \$95.00 for the hottub repair; the parties agree that the hottub was not in use since February 2012 when the tenant informed the landlord that it would not pump. The landlord has testified that the hottub failed due to the tenants neglect in maintaining the hottub and ensuring the filter was regularly cleaned. However the landlord has not provided any corroborating evidence to show that the tenant did not clean out the skimmer basket for two years. Consequently I find this section of the landlords claim is dismissed.

The landlord is entitled to a Monetary Order for the repairs to the front door of \$625.00 and \$36.00 for filling in the dog holes pursuant to s. 67 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$661.00**. 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: January 30, 2013

Residential Tenancy Branch

