



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

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 to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord 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 May 01, 2011 and ended on June 30, 2012. Rent for this unit was \$2,500.00 per month and was due on the first day of each month.

The landlord JM testifies that the tenants left damage to the hardwood flooring in the television area in the living area. The landlord testifies that there were white spots left on the floor in a two foot by two foot area. The landlord testifies that the tenant DG had informed the landlord that he had used something to clean the floor which left the white spots. The landlord testifies that he tried to polish the spots off the floor but this area could not be refinished successfully. The landlord testifies that they hired a flooring company to refinish the entire floor which required sanding and staining. The landlords have provided an invoice for this work to the sum of \$1,344.00.

The landlord JM testifies that the tenants agreed on the move out inspection report that they would pay to have the carpets and sofa cleaned and the landlord could deduct this from their security deposit when the landlord had provided receipts to the tenants. The landlord testifies that they seek to recover the sum of \$400.00 as the matter of the security deposit was decided at a previous hearing. The landlords have provided receipts for this work in evidence along with a copy of the move in and move out inspection reports.

The landlord JM testifies that that although the tenants had cleaned the rental unit it was not satisfactory to enable the landlords to re-rent the unit to new tenants. The landlords have provided an invoice from the cleaners and seek to recover the sum of \$210.00. The landlord testifies that they did not document the areas that required cleaning on the move out inspection report. The landlord FC testifies that the tenants had left at least an inch of cooked food in the stove and FC cleaned this along with the cleaning company who also helped clean grease from the hood and kitchen cupboards.

The landlord JM testifies that the tenants left a burn mark on the landlords' ottoman in the unit. The landlord testifies that this burn mark was not documented on the move out inspection as the tenants had covered the ottoman with a blanket. The landlord testifies the tenants also left two blinds damaged. Each blind had a damaged slat and the slats were replaced by the landlords. The landlord testifies that they did not notice this damage during the move out inspection so it is not documented on the inspection report. The landlord agrees that the move in report does document one of these blinds in the living room having cracked blades. The landlord has provided an invoice for the ottoman repair and the replacement slates and the landlords seek to recover \$235.20 from the tenants.

The landlord JM testifies that the tenants caused damage to the BBQ handle. The handle had been burnt off and not replaced by the tenants. The landlord testifies the BBQ was five years old. The landlord testifies that the tenants also pulled a heat registry away from the wall. The landlord has provided an invoice which does not detail this work but is for the amount of \$179.64.

The landlords testify that due to the level of repairs and cleaning the rental unit could not be re-rented until July 05, 2012. The landlords state that due to this they lost rental income of \$322.58 and seek to recover this from the tenants.

The tenant DG testifies that the wooden flooring was damaged over a one foot by one foot area. The tenant testifies that he cleaned the flooring with a cloth that was slightly abrasive and this flattened the varnish in this small area. The tenants dispute the landlords' claim that the whole floor had to be refinished and argue that the move in inspection report documents other areas of damage on the floor caused by the previous tenant. The tenants state they should not be held responsible to have the whole floor refinished. The tenants also testify that there were some spare floor boards stored in the basement which the landlord could have used.

The tenants do not dispute the landlords claim for cleaning the carpets and sofa of \$400.00. The tenants testify that they had agreed to pay this when the landlord had given the tenants the receipts for this work. The landlords did not send the tenants the receipts until he filed this application.

The tenants dispute the landlords claim for cleaning the unit again. The tenant TB testifies that they cleaned the unit thoroughly and used the self clean function on the oven. During the move out inspection the landlord was happy with the cleanliness of the unit and has documented this on the move out inspection report.

The tenants' testify that the burn mark on the ottoman was there at the start of this tenancy but it was overlooked at the move in inspection. The tenants refer to their photographic evidence showing the ottoman and the burn mark and testify that their photograph was taken on March 01, 2011 before they took over the unit. The tenant DG testifies that he was the roommate of the previous tenant and he took over the lease on May 01, 2011.

The tenant DG disputes the landlords claim for damage to two blind slats. The tenant refers to the landlords own move in condition inspection report which documents that the living room blind was broken at the start of their tenancy. The tenant testifies that he has no knowledge of a broken blind slat in the basement bedroom and it was not noticed during the inspection nor was it documented on the move out inspection report.

The tenant JM testifies that the BBQ was old and the burners had corroded causing too much propane to leak. This made the BBQ very hot when turned on and the heat melted the handle. The tenant TB testifies that the heat register the landlord is referring to was also detached slightly from the wall. The tenant testifies that there was no change in this throughout their tenancy and was not documented on the move out inspection report.

The tenants dispute the landlords claim that the unit could not be re-rented due to damages and cleaning. The tenant DG testifies that the damage to the floor was very minor and would not require the whole floor being refinished, the unit was left reasonably clean and they believe the landlord was staying in the unit for those four days.

The landlord JM cross examines the tenants and asks why the tenants had not notified the landlords that there was a burn mark on the ottoman at the move in inspection. The tenant DG responds that he did not remember the burn mark but had taken photographs prior to the inspection. The tenant asks the landlords why they did not inspect their own furniture at the end of the previous tenancy and the beginning of their tenancy.

The tenant cross examines the landlords and asks why the landlords did not replace the damaged floor boards with the spares in the basement. The landlord JM responds that it would have cost more to do this then to refinish the floor.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.

With this test in mind I refer to the move in and move out condition inspection reports and find that the landlords have not documented on the move out report that there is damage caused by the tenants other than a spot on the hardwood floor in the dining room. The landlord has provided no further evidence to show how much of the floor was damaged or the extent of the damage that would result in the entire floor having to be refinished. Consequently I find the landlords have not met the burden of proof that the damage or loss exists to the extent claimed or that the landlord has mitigated the loss by just repairing the damaged area or showing proof that this small area could not be refinished. I therefore dismiss this section of the landlords claim.

With regards to the landlords claim for carpet and sofa cleaning; the tenants do not dispute this and have testified that they would have agreed to pay this had the landlords sent the tenants the receipts sooner. Consequently I find the landlords have established a claim for **\$400.00** for carpet and sofa cleaning and will receive a monetary award for this amount.

With regard to the landlords claim for cleaning; Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required particularly in light of the move

out condition inspection report which documents that the rental unit is good throughout the report. Therefore the landlords have not met the burden of proof in this matter and this section of the landlords claim is dismissed.

With regard to the landlords claim for the burn mark in the ottoman and the replacement of two blind slats; the tenants have provided documentary evidence in the form of photographs clearly dated before the tenancy started showing a burn mark on the ottoman. Consequently I cannot rule in favor of the landlords in this matter as the landlords have failed to meet the burden of proof that the burn mark was caused by the actions or neglect of the tenants. With regard to the landlords claim for replacement blind slats; the move in condition inspection report does state that one of these blinds was already damaged at the start of the tenancy and there is no proof that the other blind was also broken as the landlord did not document it on the move out inspection report and have provided no other evidence such as a photograph to corroborate any damage. Consequently this section of the landlords claim is dismissed.

With regard to the landlords claim for a replacement BBQ handle and to re-fix a heat register. The tenant agrees the BBQ handle was damaged but has testified that this was damaged through the faulty BBQ and not the actions or neglect of the tenants. The tenants also argue that the heat register was already detached from the wall at the start of the tenancy and not through the tenants' actions or neglect. Having considered both arguments in these matters I find the landlords have not met the burden of proof that the tenant actions or neglect caused the handle of the BBQ to melt or that they pulled the heat register from the wall. I am also not satisfied with the landlords invoice for these repairs as it does not document what was repaired or the extent of the repair just an amount for a repair. Consequently this section of the landlords claim is dismissed.

With regards to the landlords claim for a loss of rent for four days; as I have dismissed the landlords claim for all repairs other than the carpet and sofa cleaning I find the tenants cannot be held responsible for any loss of rental income as the landlord must mitigate any loss by having the carpets and sofa cleaned in a timely manner if the unit is

to be re-rented for the first of the month. Consequently I dismiss the landlords claim for loss of rental income.

The landlord has applied to recover the \$50.00 filing fee from the tenants. As the landlords have only been partially successful with their claim I find the landlords are entitled to recover half the filing fee of **\$25.00** pursuant to s. 72(1) 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 **\$425.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

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: February 04, 2013

Residential Tenancy Branch

