



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$7,500.00 and a request for recovery of the \$100.00 filing fee.

Background and Evidence

The applicant testified that:

- The tenant hindered the sale of the rental unit by refusing viewings, and by changing the locks on the rental property without landlord's permission.
- She did not give the tenant any written notice to enter the rental property, however she made numerous phone calls and was frequently denied access.
- Her realtor did give written notice to enter the rental property when she was acting as her real estate agent.
- As a result of the tenant's lack of cooperation, the rental unit did not sell, and she believes she has lost property value in the amount of \$2074.00.
- The tenant also left numerous damages that did not exist at the beginning of the tenancy.

- The hardwood floor in the rental unit is now badly scratched and will need to be completely replaced or refinished. The floor only had some minor scratching at the beginning of the tenancy.
- There were nail holes in the second ensuite door, the entry lock was damaged when the tenant changed the lock as was the door, the second ensuite light was broken, there were gouges in the walls in the master bedroom, and the baseboards in the downstairs were badly marked up and had to be repainted.
- No move-out inspection was done on the date that the tenant vacated, and she had not made any prior arrangements to do a move-out inspection with the tenant.
- The tenant did not asked to do a move-out inspection, he just gave her the keys and left.
- She is requesting a monetary order as follows:

Home Depot- lights	\$29.38
Walmart -puck lights	\$67.00
Home Depot-holder for bathroom light	\$44.79
Home Depot-drywall, screws and base	\$42.00
Home Depot-glass for broken light	\$25.17
Royal Lighting-clips for broken light holder	\$9.00
Rona- lightbulb	\$9.43
Labour to finish baseboards and drywall damage	\$200.00
Hardwood floor damage	\$4704.00
Filing fee	\$100.00
Total	\$5230.77

The witness for the landlord testified that:

- On March 19, 2012 she posted a notice on the tenant's door stating that she would be holding an open house on March 24, 2012, and March 25, 2012.
- She was unable to hold the open houses because the tenant had changed the locks to the rental property and did not allow her access.
- On June 14, 2012 she had arranged to do a multi-agent open house however the tenant phoned and cancelled.
- I was not acting as the landlord's rental agent, only as an agent for the sale of the rental property.

The respondent testified that:

- He did not cause any damage to the rental property whatsoever, and at the end of the tenancy the landlord stated they did not need to do a move-out inspection and he would be getting his full security deposit back.
- The scratches on the hardwood floor were already there when he moved into the rental unit and were noted on the move-in inspection report, in exactly the same spots where the landlord has written them in on the report she filled out in his absence after he moved out.
- He did not in any way hinder the sale of the property, and in fact he showed the rental unit for the landlord approximately 25-30 times.
- He does not recall ever getting any written notice of entry from the landlord to show the rental unit.
- He does not believe any of the landlords claim is justified, especially since she never even offered him a chance to do a move-out inspection of the property with her.

Witness for the tenant testified that:

- She was acting as a rental agent for the landlords when the tenant moved into the rental property.
- There had been some previous tenants in the rental property.
- When the tenant moved into the rental property there were already scratches on the dining room and living room floors and those were listed on the move-in inspection report.

Analysis

It is my finding that the applicant has not established a monetary claim of any kind against the tenant.

The landlord claims that the tenant hindered the sale of the rental property by not allowing access; however the landlord also testified that she never gave the tenant the required 24 hour written notice to enter the rental unit, and therefore the tenant was not obligated to allow the landlord access.

The landlord's real estate agent testified that she gave written notice to enter the rental property, however she also testified that she was not acting as the landlord's rental agent at the time, only as a real estate agent, and there's no evidence to show that the landlord ever authorized her to give any notices as the landlord.

Further although the landlord claims that she has lost money due to the tenant's actions, she has provided no evidence whatsoever to show that she has lost any money on the sale or possible sale of the rental property.

Secondly I also deny the landlords claim for damages. Under the Residential Tenancy Act, the landlord is obligated to give the tenant an opportunity to do a move-out inspection, however in this case the landlord testified that she never made arrangements to do a move-out inspection with the tenant.

Therefore since no move-out inspection was done with the tenant, it is basically just the landlord's word against that of the tenant as to the condition in which the unit was left, and that's not sufficient evidence to meet the burden of proving that the tenant caused damages to the rental unit.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Conclusion

This application is dismissed in full 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: March 18, 2013

Residential Tenancy Branch

