



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application 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.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other. The landlord declined to call his witnesses to give evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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 money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on May 01, 2012 for a fixed term which expired on April 30, 2013 and was extended until May 15, 2013 on which date the tenants vacated the unit. Rent for this unit was \$1,500.00 for the fixed term period

increasing to \$2,000.00 per month for the last month of the tenancy. The tenants paid a security deposit of \$750.00 and a pet deposit of \$750.00 in the last week of April, 2012.

The landlord testifies that the tenants had signed a tenancy agreement for the first year of the tenancy and also a purchase and sale contract which was to commence at the end of the tenancy. A Move in inspection was attended by the parties at the start of the tenancy however no inspection report was provided to the tenants. At the end of the tenancy it was determined that the tenants had caused considerable damage to a hardwood floor in the guest room. The property was brand new at the start of the tenancy and the flooring had a 25 year guarantee. However the tenants had caused such severe scratches that it damaged the floor through all the layers and lacquers. Some of the veneer was also bubbled. The landlord testifies that 21boards had to be replaced and the landlord has provided photographic evidence of the replaced area but agrees that they did not provide photographs of the damage. The landlord testifies that they contacted three flooring companies and described the damage to the floor. The landlord testifies that these companies provided verbal quotes of \$500.00 for the repair work. The landlord testifies that his brother did the work which took one and half hours. The landlord agrees that they have not provided an invoice for the new flooring or the landlord's brother's labour.

The landlord testifies that one room was a study and had a desk and cabinetry installed. The tenants had drilled one and a half inch hole through the cupboards. These holes could not be patched and a new cupboard had to be purchased. As this was a middle cupboard the crown moulding also had to be removed and replaced. The landlord testifies that they had originally claimed \$900.00 for this but have reduced their claim to \$500.00. The landlord has provided photographic evidence of the holes but has not provided an invoice for the repair.

The landlord testifies that the tenants damaged the eve's trough on the roof in an area beside the driveway which was only noticed after the tenants had departed. The landlord testifies that he later met with the tenant and the tenant denied that this

damage was caused by the tenant as the tenant stated he did not have a vehicle of a size that could have caused the damage. After some discussion the tenant stated that if there was damage then the tenants would cover it. The landlord testifies that the tenants moving truck was big enough to have done this damage. The landlord testifies that their original claim to repair this damage was \$800.00 however the landlord had a company do the repair for \$130.00. The landlord has provided photographic evidence of the damage but no invoice to show the amount paid.

The landlord testifies that they found mouse dropping and a nest of baby mice in the crawl space. The insulation had to be removed and replaced and the landlord seeks \$100.00 for this work. The landlord has provided photographic evidence of mice droppings and the nest of baby mice.

The landlord testifies that the tenants damaged two sliding screen doors. Both screens had to be replaced as there were claw marks from the tenants' pets on the screen and one screen was also detached at the bottom. The landlord seeks to recover \$75.00 for this work and has provided photographic evidence but no invoice.

The landlord testifies that the tenants' dog has scratched the front door and frame. The door and frame had to be sanded and repainted by the landlord's brother and the landlord seeks to recover \$50.00 for this work. The landlord has provided photographic evidence but no invoice.

The landlord testifies that the tenants left a large amount of grease spots on the driveway. The tenants did leave a product to remove these stains but it was for fresh grease stains and did not work on these marks. The landlord testifies that they tried three different products unsuccessfully and the landlord has now had to buy a product to roll onto the driveway to cover the stains. The landlord seeks to recover \$200.00 for this product. The landlord has provided photographic evidence of the stains but has not provided an invoice for the product purchased to cover the stains.

The landlord testifies that after the tenants had moved out the landlord and other people noticed a strong odour in the house. The landlord testifies that they spoke to a company about removing this smell and they advised that they would use a machine called an ion ozonator. The landlord testifies that he was able to purchase a similar machine for \$500.00 and so used this in the property to get rid of the odour. The landlord has not provided an invoice for this machine in evidence.

The landlord testifies that the tenants did not leave the rental unit in a clean condition at the end of the tenancy. The landlord claims that they had to clean the house over four days and hired an extra person to help in this work. This included cleaning excessive dirt from the window sills, grime and food stains on the walls and grease between the sealed glass in the oven door. The landlord testifies that the oven was a brand new model at the start of the tenancy. There were also grease stains on the deck. The landlord seeks to recover \$300.00 for cleaning supplies and \$400.00 for the extra cleaning person. The landlord also seeks \$30.00 paid to the landlord's brother who had to dismantle the oven door to clean the grease between the glasses and then put the door back together again.

The landlord testifies that due to the work and odour in the property the landlord could not move back into the home. As the landlord was renting a home elsewhere the landlord had to pay another two weeks rent of \$500.00 to stay in the rental home while the odour was removed and the cleaning and damages repaired.

The landlord testifies that the tenants were allowed to have one dog but also kept cats, rabbits and a lizard in the unit. The landlord testifies that the rental was also only for four people however the tenants had six people and a baby living in the home.

The tenant testifies that they attended the move in inspection but did not receive a copy of the report. On moving from the property the landlord did an informal inspection on May 15, 2013 and provided the tenants with an informal cleaning and repair sheet. The landlord allowed the tenants to return on May 16, 2013 to complete this extra cleaning

and repairs. The tenant testifies that they did do the additional cleaning as indicated on this list. A second inspection was conducted on May 16, 2013 with the landlord and the landlord concluded that the property was clean. The tenant testifies that as he was unable to do some of the repairs indicated on the list provided by the landlord on May 15, 2013 the tenant deferred to the landlords professional standing. The tenant submits that some of the repairs indicated by the landlord were no more than normal wear and tear. The landlord asked the tenant to sign a blank condition inspection form when they met after the tenancy had ended and the tenant informed the landlord that he would be willing to sign a completed inspection report if the landlord forwarded one to the tenants by e-mail. The tenant submits that the landlord made no mention of his discovery of additional damages or cleaning after the inspection process.

The tenant testifies that in trying to resolve these issues the tenants provided the landlord with a condition inspection report which the tenants had filled in using the landlords informal comments. On the tenants report they have indicated the damage to the screen doors and dog scratches to the front door. The tenants have also documented that they dispute the rest of the indicated damages and have stated on the report that they are normal wear and tear.

The tenant testifies that there was some scratching that occurred on bedroom flooring where the tenants' daughter moved a chair across the floor. The tenant testifies that some of these scratched were deep but questions the quality of the floor if they could be caused by an 11 year old girl moving a chair. The tenant does not recall any water damage occurring on the floor.

The tenant agrees that he did drill some holes in the cabinetry to facilitate wiring to go up inside the cupboards. The tenant testifies that the landlord had stated to the tenants that the landlord had some materials to cover these holes so the tenant did not repair them. The tenant disputes the landlords claim for the cost of repair.

The tenant testifies that the roof had sustained damage which the tenant thinks might have happened after a heavy snowfall which damaged the eve's trough. The tenant testifies that the damage was not caused by the tenants moving truck as the truck would not have been able to reach that area of the roof due to items stacked in that area.

The tenant testifies that the landlord and the landlord's brother were standing talking to the tenant on the driveway and the damage would have been noticeable on the last day. The tenant refers to the landlords photographic evidence showing tire tracks in the gravel that looks like s a vehicle backed into the area and the tenant submits that if it was not snow damage then it may have been caused by a vehicle after the tenants left the property. The tenant testifies that he had vehicle insurance with the U-Haul truck and if the tenant had caused the damage the insurance would have covered it. The truck however was not damaged and the tenant has provided a sign in form on which the tenant has signed when returning the truck that there is no damage caused.

The tenant agrees that the sliding door screens were damaged. The tenant testifies that they purchased some new screening but found it was not wide enough so deferred that repair to the landlord. The tenant agrees that their dog did cause some scratches to the front door and frame and does not dispute this section of the landlords claim. The tenant agrees the landlord may deduct the cost for the screens and the repair to the front door from the security deposit.

The tenant testifies that the driveway is still useable and agrees that his son did park a car on the driveway which may have leaked some oil. The tenant however disputes the landlords claim as the landlord has not shown that the landlord has cleaned the driveway or how much a product costs to do so.

The tenant disputes the landlords claim to remove an odour from the house. The tenant testifies that there was no odour in the house and no mention of one during the inspections. The tenant refers to an e-mail from the landlord concerning a viewing on the house by a prospective purchaser. In this e-mail the landlord thanked the tenants

and said the house showed very well. The tenant agrees they kept some pets but states the rabbit was kept in the garage and was cleaned weekly; the tenants son had a lizard in an enclosed aquarium, the tenants had a dog which was outside a lot and the two cats were removed after the landlord asked the tenants to do so.

The tenant testifies that the house had geothermal heating which may have caused an odour after the tenants had vacated when the landlord put this heating on. The tenant testifies that they rarely used this heating but when they returned to the unit on May 16 the landlord had turned it on. The tenant testifies that the landlord was aware that there was the tenant and the tenants wife along with three children living in the rental unit. The tenant testifies that he had another daughter who came to stay for the summer and another daughter who came to stay for a month. The garage was turned into two bedrooms and the landlord had no problem with this arrangement.

The tenant testifies that on the second inspection the landlord has happy with the cleaning carried out by the tenants and no mention was made of any grease between the glasses in the oven door.

The tenant disputes the landlord's claim that the landlord could not move back into the house. The tenant testifies that it was his understanding that the landlord had a purchaser for the house.

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 find the landlord failed to do a move in or move out condition inspection report to identify any damage caused by the tenants during the tenancy. However the tenant agrees that there was some scratching on a bedroom floor, damage to two screens, damage to the door, holes left in the cupboards and stains on the driveway. The tenant disputes that the unit required additional cleaning, that there was an odour in the unit or that the tenants were responsible for or any damage to the eve's trough.

The tenant does not dispute the landlords claim for the screen door repairs or the repairs to the front door and therefore despite the fact that the landlord has not provided invoices showing the actual amount it cost to make these repairs I find the landlord is entitled to recover \$75.00 for the replacement screens and \$50.00 for the door repair. As the tenant orally agreed the landlord may deduct these sums from the security deposit at the hearing I hereby Order the landlord to deduct **\$125.00** from the security and pet deposit of \$1,500.00.

With regard to the remainder of the landlord's claim the landlord has provided no evidence showing the extent of the scratches on the flooring. The tenant agrees that the floor was scratched but no more than normal wear and tear. The tenant agrees he made some holes in a cupboard but has testified that the landlord said he had materials to patch the holes so the tenant did not make good on any repairs. The landlord has provided no evidence to show the actual cost for this repair work. The tenant agrees that the driveway was stained but the landlord has provided insufficient evidence to show the actual cost of the materials purchased to remedy this staining. However where a tenant agrees the damage was caused during the tenancy I am able to award a landlord some limited compensation without invoices showing actual amounts. I therefore limit the landlords claim for the holes in the cupboard to \$150.00 as the tenant should have rectified this before the tenancy ended; and a further limited amount of \$75.00 for staining on the driveway. I Order the landlord to deduct these amounts to a total sum of **\$225.00** from the tenants security deposit pursuant to s. 72(2)(b) of the *Act*.

The tenant disputes the landlords claim concerning responsibility for damage to the eve's trough and the landlord has insufficient evidence to show that this was damaged through the tenants' actions or neglect. The landlord has provided insufficient evidence to show that the tenants failed to leave the rental unit in a reasonably clean condition as specified under s. 32 of the *Act* or any evidence to show the actual costs incurred for cleaning. The landlord has provided insufficient evidence that the tenants' actions or neglect left an odour in the home or the costs to remedy this. The landlord has insufficient evidence to show that the oven door was left unclean.

With regard to the landlords claim for replacement insulation because of mice in the crawl space, if a home has rodents then unless the landlord can show that these rodents were present due to the actions or neglect of the tenants then the removal of the rodents and any associated costs are the landlord's responsibility. As the landlord has not shown that the mice were present due to the tenants' actions of neglect then I must deny the landlords claim in this matter.

As the landlord has failed to meet the burden of proof in these matters I must deny the landlords claim for two weeks of rent on the landlord's rental unit while cleaning and deodorizing took place.

Conclusion

I ORDER the landlord to keep **\$350.00** from the tenants' security and pet deposit. The remaining amount of **\$1,150.00** must be returned to the tenants.

The reminder of the landlord's application 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: September 09, 2013

Residential Tenancy Branch

