



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of a conference call in response to an application made by the landlords for a Monetary Order for damage to the unit, site or property and to recover the filing fee for the cost of this application from the tenant.

One of the landlords and the tenant appeared for the hearing and no issues in relation to the service of the original hearing and amended documents under the Residential Tenancy Act (referred to as the *Act*) were raised by any of the parties.

The tenant confirmed receipt of the landlord's documentary evidence. However, the landlord denied being served a copy of the tenant's evidence for this hearing. The tenant provided two Canada Post tracking receipts which indicated that the landlord refused the package which was returned to the tenant. Section 90 of the *Act*, states that a document served by registered mail is deemed to be received 5 days after such mailing. Based on this, I find that the tenant served the landlord with the evidence used in this hearing. In addition, refusal or neglect to accept registered mail is not a ground for an application for review under the *Act*.

Both parties provided verbal affirmed testimony during the hearing along with the documentary evidence which was carefully considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the rental suite?

Background and Evidence

Both parties agreed that the tenancy began on July 31, 2011 for a one year fixed term and thereafter on a month to month basis. Rent was payable by the tenant to the

landlord in the amount of \$900.00 on first day of each month. The tenant paid a security deposit of \$450.00 on July 22, 2011, which the landlord is required to return to the tenant based on a Dispute Resolution hearing that took place on May 30, 2013. The tenant vacated the rental suite on January 29, 2013 after being given a notice to end tenancy for landlord's use of the property. The landlord did not complete or provide the move-in or move-out condition inspection reports.

The landlord testified that the living room and hallway carpet and underlay was replaced on July 28, 2011 before the tenancy started. However, the landlord claims that when the tenant left, the carpet had been significantly damaged by the tenant, so much so that it had been worn down to the underlay, caused as a result of the tenant's clutter. In addition the two bedroom carpets had been damaged by faeces from the tenant's cat. The landlord provided one picture showing two small black stains on the carpet and testified that this showed the damage to the bedroom carpets by the tenant's cat. The landlord provided a statement from the carpet installer who states that he had installed the original brand new carpet at a cost of \$1,205.86 and that the total cost of replacing all of the carpets in the bedroom, hallway and living room would be \$1,557.58 which the landlord now claims from the tenant. The landlord testified that there was total of 800 square feet of carpet of which the tenant damaged 45% which could not be rectified and is the reason why the entire carpet has to be replaced.

The landlord testified that he spent a total of \$156.34 on paint and supplies, for which he provided receipts as evidence, to rectify the damage the tenant had caused to the rental suite walls, door mouldings and water damage. The landlord provided; a picture which he testified showed two chunks which had been taken out of the door molding; a picture which showed an arrow shaped chunk which had been taken out of the wall; a picture of water stains on the walls which the landlord claimed were caused by the tenant not using the exhaust fan and leaving the shower door open whilst showering; and, a picture which the landlord claims shows cat scratches to the walls. The landlord testified that he had to fill in the scratches and holes, paint over them and also paint all the walls which had water stains as these could not be wiped clean.

The landlord testified that he spent \$270.75 on the replacement of a door and four sets of blinds for which he provided a receipt for. The landlord testified that the tenant's cat had caused damage to a door and provided a photograph which he claimed showed cat scratches on the bottom of the door indicated as a strip of damage along the bottom. The landlord also provided one picture of a set of blinds showing some blind strips that were bent which the landlord indicated had been caused by the tenant's cat.

The landlord also provided a written statement from the previous tenant who stated that there was flood in the rental suite and that she was told that the damaged laminate flooring would be replaced with carpet. The previous renter also states that the suite was in new condition when it was left on June 30, 2011.

The landlord also claimed \$450.00 for the return of the damage deposit as the cat was not authorised to be in the rental suite.

The tenant testified that the suite was in good condition at the start of the tenancy but that it was not in new condition as there were marks to the walls. The tenant disputed the area of the carpet in question, testifying that it was about 490 square feet and questioned the landlord as to whether the carpets had been replaced. The landlord confirmed that the carpets had not been replaced as he could not afford the cost of doing so.

The tenant denied all of the damages claimed by the landlord and in his written submissions pointed to two statements provided by a friend and his previous landlord who helped him move out of the rental suite. In both statements, the authors state that the rental suite was left in good condition with no damage to the walls or carpets and that the rental suite was cleaned thoroughly on move-out.

The tenant pointed out that the pictures provided by the landlord did not show what the landlord was testifying to. The tenant stated that the landlord's picture showing cat scratches to the door appeared to be a long strip of cellophane. The tenant pointed out that, whilst he had a cat, he felt insulted that the landlord would claim that he would live in such filthy conditions with his daughter. The tenant claimed that no cat faeces stains were left by him when he vacated the suite. The tenant also pointed out that the landlord was claiming for damage to the multiple blinds but only provided one picture of a set of blinds which were of a type which could have been easily bent back into shape.

The tenant testified that there was indeed water stains on the walls opposite the closet which housed the washer and dryer which he tried to wipe off but could not without taking the paint off. However, the tenant claimed that this was caused by a defective dryer where the exhaust fan had been blocked which lead to moist air coming back into the rental suite. The tenant testified that this had been pointed out to the landlord. To substantiate this, the tenant provided three notices of entry issued to the tenant by the landlord; the one dated December 14, 2012 indicates that the landlord wants entry into the suite to do maintenance on the washer and dryer.

The tenant testified that he did not cause any of the damage to the blinds, molding or the doors. The tenant testified that the picture of the molding shows filler inside the door mould and that the doors and blinds were left undamaged at the end of the tenancy.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. The *Act* also states that the tenant and landlord together must complete a condition inspection report at the start and end of the tenancy.

In assessing the landlord's claim for damages in this case it is essential that a landlords meet the burden of proof based on the balance of probabilities, as detailed above, particularly where the landlord has failed to complete the condition inspection reports and where the tenant denies the damages claimed by the landlord.

In relation to the damage to the carpet, the landlord failed to provide any evidence of the damage to the hallway and living area carpets and that the tenant was responsible for this. The landlord provided one picture of two small black stains claiming these were stains caused by the tenant's cat faeces, but I find that the picture and the testimony of

the landlord does not satisfy me that this damage was caused by the tenant. Furthermore, I find that the landlord had given then tenant three notices which were provided as evidence for this hearing, during which the landlord would have had an opportunity to document these damages and give the tenant an opportunity to rectify them before the tenancy ended. In addition, I find that it would have been prudent for the landlord to provide sufficient evidence of the damage for such a large monetary claim for such significant damages. The landlord testified that he had evidence of this but it was not provided for this hearing; nevertheless the tenant denies causing any damage to the carpet and the landlord would still have had to prove that the tenant was responsible for the damages.

In relation to the landlord's claim for paint, painting supplies and blind and door replacements caused by the tenant and his pet, again there is no convincing evidence that the tenant or his pet caused this damage. The photograph of the cat scratches to the door are not clear enough for me to consider as evidence as the long neat strip of cat scratches to the door do not satisfy me that this damage was caused by a pet. The tenant denies the damage to the door moulding and walls and the landlord has not satisfied me that there is sufficient evidence to find that the tenant was responsible for the damages show in the pictures.

Whilst I am satisfied that the water stains in the rental suite existed, again there is no evidence provided by the landlord to show that the tenant was responsible for this as the tenant provided sufficient evidence in the form of a written notice from the landlord stating that the dryer required maintenance which I find backs up the tenant's testimony that the water stains were caused by a blocked dryer exhaust fan.

After examining all of the evidence in this case I find that, whilst both parties have provided evidence for this case, the landlord's evidence is no more compelling than the tenant's evidence and as a result, the landlord has failed to meet the burden of proof required for me to make a monetary award in favour of the landlord.

The landlord claims \$450.00 from the tenant in the form of a security deposit because he did not have authority for having a cat in the rental suite. However, the security deposit issue has already been dealt with during a prior hearing on May 30, 2013.

Conclusion

For the reasons set out above, I dismiss the landlord's application without leave to re-apply.

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: November 12, 2013

Residential Tenancy Branch

