



Dispute Resolution Services

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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 a landlord's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the "Act"), regulation or tenancy agreement and to recover the filing fee from the tenants for the cost of this application.

The landlord appeared for the hearing with an agent who led the testimony and also acted as a translator throughout the hearing. The tenants also appeared for the hearing and the male tenant led all of the testimony. Both parties provided sworn testimony during the hearing. The landlord served a copy of the application and the Notice of Hearing documents to the tenants by registered mail. The tenants confirmed receipt of the documents and based on this I find that the landlord served the hearing documents to the landlord in accordance with section 89(1) (c) of the Act.

Both parties also submitted documentary evidence for this hearing which was served to each other in accordance with the Residential Tenancy Branch Rules of Procedures. The tenants provided photographic evidence which was submitted to the Residential Tenancy Branch late and was not before me during the hearing. As this evidence was not available for the hearing because it was submitted late and was not discussed in this hearing, I have not considered it in this decision.

While a number of matters which did not relate to the landlord's monetary claim were discussed during the hearing by both parties, I have only described the evidence that was relevant to the landlord's monetary claim before me.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damage or loss under the Act?

Background and Evidence

Both parties agreed that this tenancy started on March 1, 2009 for a fixed term of one year, after which the tenancy continued on a month to month basis. Rent in the amount of \$2,000.00 was payable by the tenants on the first day of each month. The tenancy ended when the tenants left in June, 2013.

The landlord's agent testified that a move in inspection report was not completed at the start of the tenancy as the house was brand new and that one was not completed at the end of the tenancy because the tenants had abandoned the rental suite leaving no forwarding address.

The landlord's agent testified that the tenants had caused damage to the rental suite and presented the following monetary claim amounts and the evidence relating to it.

- \$1,000.00 for damage to the fridge. The landlord's agent testified that the tenants had broken some shelves in the fridge including a fruit and vegetable compartment which had been taped by the tenants. In addition, the landlord's agent claimed that the tenants had caused damage to the bottom sill of the fridge. The new renters of this unit had complained to the landlord that the fridge was not working and as a result, the landlord determined that the fridge was leaking cooled air through the cracks of the sills. The landlord's agent testified that the landlord is now going to have to replace the fridge and is seeking half of the costs from the tenants based on the fact that a new fridge would cost approximately \$2,000.00 to replace.
- \$637.00 for carpet replacement. The landlord's agent testified that the tenants had caused cigarette burn marks in the carpet of the den and there was also staining to the carpets in the recreation room and one of the bedrooms. As a result, the landlord replaced the den carpet and now claims the cost of the carpet and the installation.
- \$1,050.00 for paint damage. The landlord's agent testified that the tenants had caused water damage to a window ledge, left paint marks on one of the internal doors and scratches to many of the other internal doors. There was also damage to the hallway walls which indicated that the tenants had filed in holes. The landlord provided a receipt showing the cost of the work in rectifying these issues. The receipt provided shows that the total amount charged to the landlord was \$1,995.00; however, the landlord's agent stated that the landlord was not claiming the full amount as other work had been done that did not relate to damages caused by the tenants.

- \$50.00 for damage caused to the bedroom window screen. The landlord's agent testified that the tenants had dented the window screen.
- \$250.00 to repaint the exterior balcony railings. The landlord's agent stated that the tenants scratched the railings and these had to be repainted.
- \$250.00 for replacement of an interior door. The landlord alleges that the tenants caused a 'punch' hole in the downstairs den door which had to be replaced.
- \$425.00 to replace the main door leading from the exterior of the rental suite into the garage. The landlord's agent testified that the tenants caused multiple dents to the door which has to be replaced.
- \$100.00 for an external PVC irrigation pipe. The landlord's agent testified that the tenants had broken this pipe.
- \$250.00 to replace the bath tub faucet. The landlord's agent stated that the tenants had worn the faucet so much that it had caused the faucet to break.
- \$481.44 management fee. The landlord's agent testified that he was employed by the landlord to oversee the repairs and deal with the damages caused by the tenants, and as a result, the landlord claims these fees back from the tenants.

The landlord submitted a multitude of coloured photographs which do not relate to any of the items claimed above. However, the landlord did submit black and white photographs in support of the damages detailed above. The landlord only provided three invoices; two relating to the cost of purchasing and installing the carpet and one relating to renovations that the landlord completed which relate to the paint damage detailed above. The landlord's agent testified that he did not provide invoices for the remainder of the claim as he is a builder by trade and his estimates are accurate.

The tenant admitted to causing the cracks in two shelves in the fridge and the crack in the fruit and vegetable container. The tenant testified that the cracks were normal wear and tear and resulted because of the cheap plastic shelving in the fridge which was unable to support the weight of the products inside. The tenant testified that the fridge company informed them that this was a common problem with this model. The tenant also testified that the landlord did not have a warranty for the fridge. The tenant denied

causing any damage to the fridge sill at the bottom of the fridge and claims that the total cost being sought by the landlord for this item is exorbitant.

The tenant admitted to causing the hole in the interior door but denied all knowledge of damage to the carpets, the dents in the garage door, the bedroom window screen and the PVC irrigation pipe.

In relation to the paint damage, the tenant testified that they had patched up about 6-8 small holes in the walls where they had hung pictures but the photographs presented by the landlord appear to show more than this number and these were not created by the tenants. The tenant testified that the paint had chipped off the doors very easily throughout the four year tenancy because the landlord had not primed the doors prior to painting them. The tenant testified that he had addressed these issues with the landlord both throughout the tenancy and at the end of the tenancy. However, the landlord told him not to repair it because he would be painting the whole house again.

The tenant testified that the marks on the exterior balcony railings were normal wear and tear and also caused by the hot Okanagan sun. The tenant testified that the broken faucet testified to by the landlord's agent was part of the many plumbing and electrical issues that existed during the tenancy which were dealt with in previous hearings. The tenant denied causing this damage and testified that this was a broken faucet which was not repaired by the landlord during the tenancy.

The tenant testified that the landlord's claim for the management fees is yet another example of how the landlord is trying to recoup costs from the tenants as a result of a previous hearing in which the tenants were awarded compensation by the arbitrator.

The landlord's agent stated that there was a flood in the basement suite in May, 2011 and the carpets were replaced in October, 2011. The landlord alleges that the tenants had guests who smoked inside the rental suite, but this was denied by the tenant.

Analysis

When a party makes a claim for damage to a rental suite, 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.

In relation to the landlord's claim for damages to the rental suite, the Act 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 to the rental suite, I find that the failure of the landlord to complete any of these reports requires the landlord to prove, using other evidence, that the tenant caused the damages, which would have otherwise have been indicated on the condition inspection reports.

The tenants admitted to causing damage to the shelving within the refrigerator and in conjunction with the landlord's photographic evidence of the broken shelving, I find that the tenant's are responsible for this damage. A landlord is not required to have a warranty for any appliance under the Act and this does not absolve the tenants from their obligations in dealing with damages as required by the Act. In addition, the tenants provided insufficient evidence to show that the fridge was faulty and that this was addressed with the landlord at the time this damage occurred.

However, the landlord bases his monetary claim for the damage to the fridge on the fact that the tenants caused damage to the bottom sill which has now rendered the fridge inoperable. The landlord has failed to provide sufficient evidence that the tenants caused this damage and that this damage resulted in the landlord having to purchase a new fridge. Based on this I am unable to award the landlord the amount claimed for this damage

In determining the amount the tenants have to pay for the damage caused to the fridge shelves, the landlord has provided no invoices related to this claim and therefore I am unable to accurately determine the amount to be awarded. The tenants provide, in their written submissions, that they were quoted \$75.00 for each shelf. As a result, I use this evidence to award the landlord \$225.00 for the damage to the shelves in the fridge.

The tenant also admitted to causing the hole in the interior door. However, again, the landlord failed to provide supporting evidence to demonstrate the cost of a similar door and its installation but claims \$250.00. As the landlord has not provided any such invoice or quote, I am only prepared to award him 50% of the cost claimed in the amount of \$125.00.

In relation to the scratches and marks claimed by the landlord to the balcony railings, I find that the photographic evidence submitted by the landlord is not clear enough to show the extent of the damages testified by the landlord. I accept the evidence of the tenant that the hot weather coupled with a long tenancy would have resulted in some

element of reasonable wear and tear. As a result, I dismiss this portion of the landlord's monetary claim.

The landlord submits that he had to employ his agent to deal with the damages to the rental suite, but I find that the tenant should not be responsible for how the landlord chooses to conduct his business; rather an applicant must prove the damages in relation to the test detailed at the start of this section. The landlord's agent testified that most of the damages have not been repaired, as evidenced by the lack of invoices submitted for the majority of the landlord's monetary claim. Therefore, I find that the landlord's claim for the management fees is not justified and dismiss this portion of the landlord's claim.

In relation to the remainder of the landlord's monetary claim, I find that the evidence presented by both parties results in one word against the other and the landlord's evidence is no more compelling than the tenants evidence. In addition, the landlord has failed to provide sufficient evidence to verify the actual amounts claims due to the absence of invoices to support the landlord's remaining claim. As the landlord has failed to provide sufficient evidence to meet the burden of proof as required above, I dismiss the remainder of the landlord's monetary claim and award him \$350.00. As the landlord has only proved a small fraction of his monetary claim against the tenants, I am only prepared to award the landlord \$25.00 for the return of the filing fee pursuant to section 72 (1) of the Act. As a result, the landlord is awarded \$375.00 monetary compensation.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$375.00**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced 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: February 11, 2014

Residential Tenancy Branch

