



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, FF

Introduction

This hearing was convened by way of a conference call in response to an application made by the landlord for an Order of Possession for cause, a Monetary Order for damages to the rental suite, and recovery of the filing fee for making this application.

The landlord appeared for the hearing along with the tenant who also provided two witnesses. All the parties appearing for this hearing provided affirmed testimony during the hearing. No issues in relation to the service of the hearing documents for these proceedings in accordance with the *Residential Tenancy Act* (referred to as the "Act") were raised by any of the parties.

Both parties also provided documentary evidence prior to this hearing which had been served in accordance with the Residential Tenancy Branch Rules of Procedures. At the start of the hearing, the landlord confirmed that she did not require an Order of Possession as the tenant had left on June 30, 2013 and that this was a clerical error made on the application. As a result, I dismiss this portion of the application and focus this decision on the landlord's monetary claim.

Both parties were given an opportunity to present evidence, both orally and in writing, and cross examine each other on the evidence presented throughout the hearing. This has been carefully considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to monetary compensation for damages to the unit?

Background and Evidence

Both parties agreed that this tenancy started on April 1, 2013 on a month to month basis. A written tenancy agreement was completed and rent was established at

\$1,100.00 payable by the tenant to the landlord on the first day of each month. The tenancy ended on June 30, 2013. The landlord did not complete a move in or move out inspection report.

The landlord testified for the majority of the hearing duration and alleged that the tenant had completed unauthorised repairs and renovations to her rental suite and as a result, the landlord had to bear the cost of rectifying this damage. The landlord provided the following evidence for the amounts being claimed.

\$228.65 for damage to the microwave. The landlord provided an invoice dated December 2, 2013 showing a door replacement. The landlord testified that the tenant had damaged the microwave door by scratching it and provided a photograph to indicate this damage.

\$65.00 for carpet re-stretching. The landlord testified that the tenant had caused a seam in the master bedroom carpet to get wet which then caused it to lift and bobble. The landlord also stated that it appeared as though the tenant had lifted the carpet from the sides and put it back. As a result, the landlord had to pay for it to be re-stretched and placed back into the sides.

\$184.18 for damage to the hot water tank. The landlord testified that the tenant had caused damage to the seal of the hot water tank by melting it, but was unable to provide an explanation of how this was done by the tenants. The landlord provided a photograph showing a melted seal around the metal pipe exiting the hot water tank. The landlord also provided an invoice dated December 4, 2013 which shows that a B vent was removed and replaced with a C vent.

\$288.00 for labour costs. The landlord claims for 14.4 hours at \$20.00 per hour for the time it took to repair the damages caused by the tenant. The landlord alleges that the tenant removed the hanging kitchen cupboards and took them out of the unit for some unknown reason but then re-installed them. The landlord testified that she saw the kitchen cupboards on the tenant's floor through the tenant's partially opened blinds.

After the tenancy had ended, the landlord looked inside the cupboards and discovered that the cupboards had been screwed back into the wall as some of the screws had gone in all the way through the cupboards and into the wall. The landlord testified that the cupboards had not been secured properly and had been re-hung out of alignment and damaged in certain parts. The landlord provided several photographs showing cracks in cupboards that had been taken off the wall and square pieces that had been cut out from the backs of the cupboards.

The landlord testified that the re-installing of the cupboards by the tenant widened the existing holes, which caused the cupboards to become unsteady. When the landlord removed the cupboards, she noticed that there were several screw holes in the wall that did not align with the holes made in the cupboard to secure them to the wall. The landlord suggested that the tenant had done some renovations to the back of the cupboard walls, including painting the walls, as she saw that the walls behind the cupboard had been painted. When questioned about the damage being claimed by the landlord behind the hanging kitchen cupboards and whether this could have been present during the installation, the landlord would only agree on the fact that she was not present during the installation and could not testify about the condition of the walls before the kitchen was installed.

The landlord went on to accuse the tenant of painting various walls of the rental suite a slightly different colour to the colour the landlord had painted before this tenancy started. In addition, the landlord claimed that the tenant had retextured the ceilings to a different style than the style that was present at the start of the tenancy. The landlord provided a photograph showing the textured ceiling of the utility room.

The landlord claimed that she spent additional time and costs in dealing with other damages caused by the tenant to the rental suite. This included; scratches to a window ledge in the entrance, dents to the front door, damage to a sliding door in the bedroom, damage to the window screens, re-painting walls and that she had to fill in lots of holes and scratches in the walls left by the tenant.

\$88.00 for paint and cleaning supplies. The landlord claims this amount for materials she had to purchase in order to rectify the damages caused by the tenant. However, no receipts were provided for this hearing by the landlord for these costs.

The tenant denied all of the allegations made by the landlord stating that the landlord's application is coming several months after the tenancy ended and only after the landlord lost in a previous dispute resolution hearing and was ordered to pay her double the amount of the security deposit.

The tenant testified that she lacks the physical capability, the tools, the knowledge or the resources to do the renovations claimed by the landlord. The tenant testified that she works long hours as a nurse and would not have had an opportunity to do the renovations claimed by the landlord. In addition, the landlord would have likely noticed that such major renovations would have been occurring inside the rental suite as the landlord monitored the suite very closely.

The tenant testified that the landlord's invoice relating to the hot water tank is for a change of a vent pipe which was done to meet code requirements and does not relate to any damage that had been repaired by the company. The tenant testified that the melted bezels in the photograph provided by the landlord relates to damage on the side facing the vent and this was not caused by her. The tenant questioned the validity of the landlord's photographs and claimed that they had been taken after the tenancy ended and was not reflective of the state of the rental suite when she vacated it.

The tenant produced two witnesses who both provided affirmed testimony that they were with the tenant when she vacated the rental suite and there was no damage to the rental suite. The tenant provided three photographs which indicate that the suite was in good condition.

The tenant denied removing the kitchen cupboards, stating that she would not have been able to do this on her own without a work crew and there would be no reason for her to do this. The tenant testified that the damage to the cupboards behind the walls was likely present at the start of the tenancy and was likely caused during the installation of the cabinets before the tenancy started. The tenant stated that she had showed the landlord's photographs used in this hearing to a professional builder who indicated that it is common for basement suite kitchens to be installed with used cabinetry which often has parts cut out of the backing to house appliances.

The tenant denied any damage to the microwave, curtain rods, texturing of the ceilings and damages to the walls, doors and closet doors claimed by the landlord and stated that these are unfounded allegations being made by the landlord.

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 these reports requires the

landlord to prove, using other evidence, that the tenant caused the damages and that they were not in existence at the start of the tenancy, which would have otherwise have been indicated on the condition inspection reports.

The tenant disputes the damages claimed by the landlord and states that the photographs provided by the landlord were taken several months after the tenancy had ended, which is consistent with the dates on the invoices provided by the landlord for the repairs. When the landlord was questioned about this, the landlord stated that she only had the repairs done at the point she decided that she was going to re-rent the suite.

The landlord was not able to provide sufficient evidence to show that the damages shown on her photographs were in existence at the start of the tenancy or on the day the tenant left the tenancy and therefore, I have placed little evidentiary weight on the photographs provided by the landlord as evidence for her claim. In addition, the photograph regarding the microwave damage does not clearly show any scratches to the microwave; the landlord had circled the damage but this is not clearly evident to me on the photograph. Furthermore, the two invoices do not show that the repairs were done to rectify any damage. As a result, I find that the invoices provided by the landlord do not conclusively show that the work was done to rectify damage to the rental suite.

I accept the tenant's testimony that the work done to the hot water tank relates to regular maintenance and indicates no repair to the seal of the hot water tank. Again, I have placed little evidentiary value on the invoices provided by the landlord to support her claim of damages to the rental suite. The landlord did not provide any receipts or invoices relating to the cleaning materials she purchased and as a result, I am unable to award these costs to the landlord.

Section 7(2) of the Act states that a party who claims for compensation for damage or loss from another party for non compliance with the Act, must do whatever is reasonable to minimize the damage or loss.

The landlord testified that she saw the hanging kitchen cupboards on the floor of the rental suite through the tenant's blinds. However, I find that to a reasonable person, this would have been a material breach of the tenancy that would have required a landlord to take some immediate action to address such a serious issue directly with the tenant, either verbally or in writing, or using remedies under the Act through an immediate inspection pursuant to section 29(2) of the Act or through dispute resolution. The landlord stated that she decided not to deal with the issues because she knew the tenant would play games. However, I find that even if I were to accept the landlord's

version that she saw the hanging kitchen cupboards on the tenant's kitchen floor, which I do not, I find that the landlord failed to comply with the Act in mitigating this loss by addressing this issue in an expeditious manner.

In relation to the tenant's evidence, I accept the tenant's affirmed testimony and photographic evidence, as well as the evidence from the tenant's two witnesses, that the tenant complied with section 37(2) of the Act and left the rental suite at the end of the tenancy reasonably clean and undamaged, apart from reasonable wear and tear.

I also accept the tenant's testimony that it would have been impossible for the tenant to take down the kitchen cupboards and retexture the ceiling without the landlord noticing, as the landlord lived in close proximity to the tenant. The tenant denied creating the holes in the walls where the cupboards were hung and causing any damage to the wall. I find that it is just as likely that the damage referred to by the landlord regarding the kitchen cupboards could have been caused during the installation and the landlord has provided insufficient evidence to suggest otherwise, as she was not present during the installation.

As a result, I find that the landlord has provided insufficient evidence to support a claim that the tenant caused damage to her rental suite and I find that the evidence provided by the landlord is no more compelling than the tenant's evidence. As a result, I find that the landlord has failed to meet the burden of proof for me to award the costs claimed.

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: February 07, 2014

Residential Tenancy Branch

