



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNR, MNDC, OPC, OPB, MND, MNSD, FF

Introduction

In the first application the tenants seek to cancel a one month Notice to End Tenancy, however they vacated the premises in early April and so the Notice is no longer in issue. The tenants also seek compensation for a month's rent and damages relating to the breaking of a shower door and alleged failure of a fridge and a washing machine.

In the second application the landlords seek an order of possession, no longer required as the tenants have left, and a monetary award for April rent and for cleaning and repair costs.

There is a written tenancy agreement disclosing that the applicant Mr. S.B. and his wife Ms. B.B. are the landlords. The applicant Ms. C.B., their daughter, who lives across the street from the rental unit and acted as agent throughout the tenancy, is not one of the landlords named in the tenancy agreement. The written agreement also shows that only Mr. G.F. is the tenant, though Ms. A.S. lived there for a number of months. Her legal status was that of a mere occupant.

The tenant Mr. G.F. did not attend the second day of hearing. Ms. A.S. confirmed that she was attending on his behalf and with his authority.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either side is entitled to any of the economic relief they claim?

Background and Evidence

The rental unit is a two bedroom house on a city lot. The tenancy started in March 2013 for a one year fixed term and then month to month. The monthly rent was \$950.00, due on the first of each month. The landlords say they hold a \$475.00 security deposit, the tenant says it's \$500.00. It's agreed that the tenant and Ms. S. vacated on or about April 4th. No April rent was paid.

The tenant Mr. G.F. says he works on a tugboat and is away much of the time. His partner Ms. A.S. was living elsewhere at the start of the tenancy but ultimately moved in around December 2013.

Mr. G.F. testifies that in early March of this year he was stepping into the tub/shower unit to join Ms. A.S., when the glass door fell off its railing and came crashing down, injuring Ms. A.S.. Mr. G.F. also says that the fridge began to leak and as a result food in it was spoiled. He says the washing machine leaked, the "toilet plunger" malfunctioned the outside faucet to the home leaked and that a fence blew down in a windstorm.

The tenant's partner Ms. A.S. testified that there was no move-in inspection done. She says that the shower door crashed down and shattered when Mr. G.F. "bumped" it getting in. She opines that the door was substandard because it had no track on the bottom. She went next door to the applicant Ms. C.B. and informed her about it. She says her leg was cut but not to an extent requiring stitches. She did not go to the hospital. She says she has a part time job cutting hedges and that she lost \$250.00 from a job she was unable to attend to because of the injury. When given an opportunity to respond to the landlords' evidence, Ms. A.S. testified that Mr. G.F. never touched the shower door when he was getting in.

Ms. C.B., the daughter and agent testified that she received \$475.00 as a security deposit and opened a bank account specifically to hold it as per a document she submitted.

She says that the fridge did fail within two months from the start of the tenancy in March 2013 and that she offered to replace any food that spoiled as a result but her offer was declined. The fridge was repaired in short order by the landlords.

She admits the washing machine was also repaired during the tenancy but points out that it was repaired on May 17, 2013 and that the tenant Mr. G.F. was away working until May 19th, so he did not suffer any loss of use.

Regarding the shower door incident, Ms. C.B. testifies that Ms. A.S. came over to report the incident but declined any help, would not show the injury and said she was off to work. She disputes that the tenant had a hedging job paying \$250.00.

Ms. C. B. testified that she and the tenant Mr. G.F. did a walk through but they missed signing the report. She says that to the knowledge of Ms. A.S. she pursued Mr. G.F.'s signature for a number of days but was unsuccessful.

In regard to the landlords' claim Ms. C.B. testified that as a result of the shower door incident the landlords conducted an inspection in early March 2014 and took a number of photos then and after the tenant left.

She showed that a bedroom door was broken at the knob, apparently the result of significant force. There was a large dent in the bathroom door, consistent with the door having been punched or hit with something fist size. She showed photos of the stove with a browned, burnt top and front panel, saying that Mr. G.F. had reported it came from a grease fire.

She says the tenant and Ms. A.S. failed to use the proper detergent in the clothes washer and failed to wipe the front loading door seal after each use. She says the tenant and Ms. A.S. were told about this maintenance requirement three times.

Ms. C.B. testified that the shower door is a "floating shower door" and is safe and proper. She says that Mr. G.F. had told her he'd "shoulder checked it" when getting it. It has not been repaired.

She claims the tenant put metal pots on the exterior deck, causing rust stains and that the deck needs re-coating. She claims a garden window needed cleaning, a baseboard was chipped, the walls had "at least" one hundred tiny pin holes, the kitchen floor tile was warping and a heater cover was burnt because the tenant left the heaters on high when he left, a divider fence was torn down, dog feces was left on the lawn and that the unit required a general cleaning.

Ms. C.B. claims that the tenant or Ms. A.S. smoked in the premises, contrary to the tenancy agreement and that the inside now requires painting to cover over the smoke odour. She thinks that Ms. A.S. has been living there from the start.

The landlord Mr. S.B. testified that he too thinks Ms. A.S. has been living there since very early in the tenancy. He visited in August 2013 and was told that everything with the rental unit was "OK."

Ms. A.S. responded to the landlords' denying each item.

Analysis

In regard to the tenant's claim for recover of rent I find no basis for its success. He received a one month Notice to End Tenancy in early March and chose to dispute it by making this application. By doing so he was maintaining his right to continue this tenancy. By leaving on or around April 4 without any written notice he was breaking that tenancy. He could only end the tenancy by either giving one month's written notice or by mutual agreement with the landlords. Indeed, when the April rent came due on the first of the month, it was owed and the landlords are entitled to recover that rent; an amount of \$950.00.

Regarding the shower door, it appears that the door was one designed for that application and there is no evidence that it was improperly installed. I consider it most likely that the tenant contacted it with excessive force enough to break it and for that he is responsible. In any event, the resulting damage and loss claimed was allegedly suffered by Ms. A.S. who is not a tenant, but only an occupant. The *Residential Tenancy Act*, does not contemplate dispute resolution for occupants. In my view Ms. A.S. must seek her relief in the courts; Provincial Court if the claim is under \$25,000.00.

Regarding the remainder of the tenant's claims regarding food spoilage and laundromat use, even if I concluded the landlords were liable, I find the evidence simply too sparse to permit me any basis for concluding there was any significant loss. There were no receipts or itemization food, nor particulars of if or when a laundromat was used. I dismiss the tenant's claim.

I award the landlords \$950.00 for unpaid April rent.

I award the landlords \$38.87 for each of the bedroom and bathroom doors, a total of \$77.74, which I find were damaged during this tenancy.

I dismiss the landlords' claim for a boiler element. The evidence does not satisfy me that the tenant or someone permitted on the premises by him broke it, as opposed to it simply failing or wearing out.

I dismiss the landlords' claim for a washing machine bellow. It is not clear that the tenant was required to use any particular soap or to perform any particular cleaning or regular maintenance on this machine. The landlords did not point to any applicable provision in the tenancy agreement, the governing document, requiring such nor is it what I would consider a normal or common procedure the average person would know.

I grant the landlords' \$399.00 claim for a new shower door. I find it to be most likely that the door was smashed by the tenant's, perhaps accidental, application of extraordinary force sufficient to break the door off its tracks.

I dismiss the landlord's claim for re-coating the deck. It has not been shown that a re-coating is needed, as opposed to a cleaning (normally the landlord's job in the case of outdoor decks).

The claim for repair of the garden window is actually a claim for cleaning. The landlord's photos show a build up of dirt in the window that should have been cleaned by the tenant before leaving. The amount claimed was not contested and does not appear inappropriate. I award \$14.97 as claimed.

I grant the landlords' claim of \$8.97 for baseboard repair materials. I am satisfied on a balance of the evidence, particularly Ms. C.B.'s fairly detailed testimony about her failed efforts to have the tenant sign the move-in condition report, that an inspection was done with the tenant and that the report fairly represents the condition of the premises then. The landlords' photos satisfactorily show the damage and justify the award.

I dismiss the landlords' claim for wall repair. Ms. C.B.'s testimony of about on hundred pin holes was denied by Ms. A.S. and no corroborating evidence was referred to. The landlords' have not satisfied the evidentiary burden on them regarding this item.

I dismiss the landlords' claim for kitchen floor repair. Though the photo evidence shows the tile in front of the under counter heater to be warping, likely because of heat from the heater, it is merely speculation that the tenant or Ms. A.S. somehow abused the heat to an extent to cause such warpage, speculation is not enough to justify a finding of fault.

Similarly, I dismiss the claim for the cost of special "high heat" paint to cover the browned heater covers.

I allow the landlords' claim for the cost of materials to reconstruct the yard divider fence. If, as Ms. A.S. alleged, the fence merely blew over, I think it most likely the landlords would have heard about it from her or the tenant, as they had with the various other complaints. I accept the landlord Mr. S.B.'s evidence that the tenant took a sledgehammer to it. I find the tenant took the fence down and he was responsible for seeing that it was put back up before he left. I award the landlords \$521.74 for the materials. There is no claim for labour.

I award the landlords \$20.00 for yard cleanup of dog waste. While they have an estimate of \$72.00 for someone to do the work, Ms. C.B. did it herself in under an hour. \$20.00 is reasonable compensation in that regard.

I dismiss the landlords' claim for general cleaning. The *Residential Tenancy Act* imposes an obligation on a tenant to leave the premises "reasonable clean" and the evidence does not show a failure in this regard.

I dismiss the landlords' claim for painting over the smoke residue. First, the tenancy agreement does not appear to prohibit smoking in the premises. The application for tenancy shows that the tenant was a non-smoker, but that notation does not impose any condition that he or his invitees not smoke in the rental unit. Secondly, the evidence presented by the landlords simply does not establish on a balance of probabilities that there was smoke residue on the walls, certainly not to an extent requiring repainting.

Conclusion

The tenant's claim is dismissed.

The landlords are entitled to a monetary award of \$1992.42 plus recover of the \$50.00 filing fee. I authorize the landlords to retain the security deposit in reduction of the amount awarded. Based on the landlords' banking evidence I find that deposit to have been \$475.00. There was no statutory interest payable on the deposit during this tenancy and so the landlords may keep whatever interest they were able to accumulate, without having to account to the tenant.

The applicant landlord Mr. S.B. will have a monetary order against the tenant Mr. G.F. for the remainder of \$1567.42

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: May 27, 2014

Residential Tenancy Branch

