



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

All parties attended and each gave affirmed testimony. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other, however a memory stick provided by the tenants was not provided to the landlords. The tenants stated that the landlords received all documents that are contained in the memory stick, and the same hard copies have been provided to the Residential Tenancy Branch. The hard-copy evidentiary material is therefore considered in this Decision, but not the memory stick.

The parties were given the opportunity to cross examine each other on the evidence and testimony, all of which, with the exception of the memory stick, have been reviewed and are considered in this Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of a months' rent that the landlords paid the tenants when not required to do so under the *Act*?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord testified that this fixed term tenancy began on March 1, 2013 and expired on February 28, 2014 at which time the tenancy ended and the tenants vacated the rental unit.

Rent in the amount of \$1,300.00 per month was payable under the tenancy agreement on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$650.00 which is still held in trust by the landlords.

The landlord further testified that no move-in or move-out condition inspection reports were completed. Further, the tenants delivered a letter on March 11, 2014 to the landlord's place of employment which contained a forwarding address of the tenants.

The landlord also testified that the parties signed a Mutual Agreement to End Tenancy on November 28, 2013 which showed that the tenants agreed to move out by the end of February, 2014. The landlord erroneously thought that the landlords had an obligation to pay the tenants compensation, and on March 1, 2014 the landlords gave the tenants a money order for \$1,300.00. The landlord emailed the tenants about the erroneous payment in an attempt to recover it but the tenants did not respond. The landlords claim back the \$1,300.00 from the tenants.

The landlord further testified that the bathtub in the rental unit had been re-glazed prior to the tenants moving in, and as a result of the tenants' use, 90% of the glazing has come off. The landlord stated that it must have been peeled off by the tenants or the tenants' children. A copy of a receipt for re-glazing has been provided in the amount of \$450.00. The tenants told the landlords about the peeling during an inspection before the tenancy ended, and it had been patched around the drain prior, but before the tenancy began. The landlords claim that amount from the tenants.

The landlords also claim \$40.50 and have provided a receipt for purchasing paint for the interior of the rental unit. The landlord testified that the tenants had painted one coat of paint in the downstairs bedroom, but crayon still showed through, and the landlords had to apply a second coat. Also, the walls at the bottom of the stairs had been patched by the tenants so was also in need of new paint. The rental unit had been painted in 2012.

The landlord also testified that the tenants left all kinds of debris behind at the end of the tenancy causing the landlords to make about 4 trips to the local landfill of pruning, wood waste, unwanted belongings, garbage and a partial pile of gravel. Receipts totalling \$38.50 have also been provided for landfill costs.

The landlords also claim \$105.00 for carpet cleaning and have provided a receipt for that amount stating that an error appears in the landlords' claim and the amount is \$105.00, not \$150.00 as claimed. The carpet really needed to be cleaned and the tenants did not do so before vacating.

The landlord also testified that the gate of the rental home was falling apart at the end of the tenancy. The wood was not rotten, and the lattice was not broken at the outset of the tenancy. It appears the tenants perhaps forced open the gate. The landlords claim \$40.00 for that repair.

The landlord also testified that it took the landlords lots of time and energy to return the rental home to the condition it was at the outset of the tenancy. The house was in pristine condition for selling and was vacant for months prior to this tenancy. The landlords have provided a virtual tour on a memory stick. Also provided are photographs of the rental unit showing its condition on the last day of the tenancy.

The other landlord testified that they had received some wrong advice and paid the tenants compensation they weren't entitled to. The tenants had been offered an incentive to purchase the house by the landlord giving them \$5,000.00 as part of the down-payment, but the tenants declined that offer and the \$1,300.00 compensation was never meant to be a rebate or incentive.

The landlord further testified that on March 1, 2014 the landlord went to the rental unit at 10:00 a.m. and took most of the photographs. The parties agreed that the tenants would have until 2:00 to finish moving.

The tenants never told the landlords that the gate was broken or any other issues with the rental unit. However, when asked about the workmanship and warranty on the glazing of the bathtub, the landlord testified that he believed that they had a one year warranty.

During cross examination, the landlord agreed that the tenants' belongings and garbage were removed prior to the agreed walk-through at 2:00 on March 1, 2014. He also testified that the bathtub was patched around the drain prior to the commencement of the tenancy.

The first tenant testified that the wood on the fence was not sealed properly and the gate was rotted before the tenancy began.

With respect to the bathtub, the tenant testified that it simply flaked.

The tenant agrees to the paint at the bottom of the stairs.

The tenant also testified that there was nothing spilled on the carpet, and they were dingy at move-in. The only damage was normal wear and tear and the house had been on the market for sale for 10 months prior to this tenancy. The tenant also believes that the stuff the landlords took to the landfill was normal spring clean-up.

The tenant further testified that the parties had made an agreement by email, a copy of which has been provided, that the tenants would return to finish cleaning until 2:00 on March 1.. The landlords' photographs were taken 4 or 5 hours before that. The cleaning was completed by 2:00 as agreed.

The tenant also testified that at the outset of the tenancy, the landlord stated that if the tenants bought the home, the landlords would give them \$5,000.00 towards the down payment, and if not, the last month of rent would be free, although nothing was put in writing.

The other tenant testified that the bathtub peeled and got worse and worse. The tenants' kids pulled some of it off, and so did the tenant. The landlord was told about the problem during an inspection. The landlords completed 2 inspections during the tenancy.

With respect to the compensation paid by the landlords, the tenant testified that they didn't ask for it, the landlords gave it to the tenants and the tenants used it for the move.

Analysis

Firstly, with respect to the landlords' claim for return of the compensation paid to the tenants, there is no requirement under the *Act* for a landlord to pay such compensation to a tenant when a Mutual Agreement to End a Tenancy is signed. One of the tenants testified that a verbal offer was made by one of the landlords, but nothing was in writing. The other tenant testified that they didn't ask for the money, the landlords just gave it to them. The landlords have advised the tenants that it was given as a result of poor legal advice they had received, asked the tenants for the return of it, and I find that the landlords have established a claim for \$1,300.00.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I have no move-in or move-out condition inspection reports to compare and must rely on the testimony of the parties and other evidentiary material. The landlords have provided photographs of the rental unit at the end of the tenancy but testified that most were taken at 10:00 a.m. before the tenants were finished, and that the parties had agreed to a 2:00 move-out. He also testified that the tenants' belongings and garbage were removed prior to 2:00. I cannot consider the photographs as evidence of the condition of the rental unit because the parties agree they were taken prior to the time agreed as the end of the tenancy and the parties agree that at least some, if not all of it had been cleaned up prior to 2:00.

With respect to re-glazing the bathtub, the tenant testified that the landlords conducted 2 inspections during the tenancy and were told about the peeling tub. There is no evidence that the landlords did anything about that. The parties agree there was a patch around the drain at the commencement of the tenancy, and the tenants testified that the tub just peeled. Although the tenant and the tenants' children pulled at the peeling glaze, I cannot find that that was the cause of the damage. The landlord was asked about a warranty on the workmanship and stated that he believed it was for one year. The tenants were only in the rental unit for one year. I find that the landlords did not mitigate any loss; they did not contact the company who re-glazed the tub and made no effort to find the cause when told by the tenants. Therefore, I find that the landlords have failed to establish element 4 in the test for damages.

The tenants agree to the paint, and I find that the landlords have established a monetary claim for \$40.50.

With respect to the landlords' claim for garbage removal, the tenant testified that the debris cleaned up by the landlords was normal spring clean-up. The landlord also testified that the tenants had their belongings and garbage removed by 2:00 on the last day of the tenancy. I cannot be satisfied that the removal of waste was more than spring clean-up which is not the tenants' responsibility.

I also accept the landlords' claim for carpet cleaning in the amount of \$105.00. A tenant is expected to clean carpets in a rental unit if the tenant resides in the rental unit for 1 year or more, or if the tenant has pets that are not kept in a cage, or if the tenant smokes in the rental unit. The tenants resided in the rental unit for 1 year, and I find that leaving a rental unit reasonably clean at the end of a tenancy includes carpet cleaning.

With respect to the gate, the tenants testified that the wood swelled because it was not sealed properly and that the gate was old and the wood was rotten. The landlords disagreed that the wood was rotten and guessed that the tenants forced it open, and perhaps that happened as a result of swelling. In any event, the onus is on the landlords to prove the condition of the gate at the commencement of the tenancy and prove that the tenants failed to comply with the *Act*. I find that the landlords have failed to establish element 2 in the test for damages.

In summary, I find that the landlords are entitled to recovery of the \$1,300.00 that they paid to the tenants as compensation that the landlords were not required to pay under the *Act* or any agreement. The landlords are also entitled to damages in the amount of \$40.50 for paint and \$105.00 for carpet cleaning. Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee for the cost of the application, for a total of \$1,495.50. Pursuant to the *Residential Tenancy Act*, I order that the \$650.00 security deposit be set off from those amounts and I grant the landlords a monetary order for the difference in the amount of \$845.50.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the security deposit of \$650.00 and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$845.50.

This order is final and binding and may be enforced.

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: June 10, 2014

Residential Tenancy Branch

