



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: CNC, MNDC, FF
Landlord's Application: OPC, FF, O

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 1 Month Notice to End tenancy for Cause and monetary compensation for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing I heard that the tenants have vacated the rental unit but had yet to return the keys to the landlord and participate in a move out inspection. As the tenants have vacated the rental unit, I found that it was not longer necessary to consider whether the 1 Month Notice to End Tenancy for Cause should be upheld or cancelled. Nor did I find it necessary to further consider the landlord's request for an Order of Possession. Since both parties agreed to meet at the rental unit at 11:00 a.m. on the day of the hearing for purposes of returning the keys and performing the move-out inspection report, I ordered both parties to fulfill that agreement.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced February 1, 2014 and the tenants were required to pay rent of \$750.00 on the 1st day of every month. A flood occurred on February 7, 2014 due to a blocked sewer line in the property. The landlord took compensation from her insurance company and used the proceeds to make rectify the flood damage and make other renovations in the rental unit. The remediation of the water damage and renovations were completed March 11, 2014. The tenants were provided compensation of \$675.00 calculated as loss of 60% of the rental unit for 1.5 months.

The tenants are of the position the \$675.00 given to them is insufficient for the loss of use, among other damages they suffered as a result of the landlord's actions and the tenants are seeking additional compensation \$1,167.98. Below, I have summarized the tenant's reasons for seeking additional compensation from the landlord and the landlord's responses.

Loss of use of rental unit

The tenants seek compensation of \$750.00 for enduring a construction zone for 1.5 months as opposed to the \$675.00 given to them by the landlord. The tenants submitted that the bathroom was very difficult to use during the remediation; the master bedroom carpeting was removed and the tenant's possessions piled on her bed; and part of the kitchen was not useable for a period of time. The tenants were not provided a working stove for the period of March 6 – 11, 2014 and they did not have a fridge or toilet for a period of 24 hours. In addition, the tenants had to endure paint fumes as a result of the landlord's decision to repaint the unit.

The landlord acknowledged that the tenants had diminished use of the rental unit during the remediation and renovations but that she had compensated the tenants based upon her insurance company's estimate of loss of use by the tenants. Further, the landlord discussed her renovation plans with the tenants and they were agreeable to having new carpets and paint. The tenants even provided the landlord with their opinion about various colour options.

The tenants explained that they did give their opinion about colour options but felt they did not have a choice in whether the landlord made repainted or installed new carpeting.

The landlord acknowledged that the stove, fridge and toilet were not accessible for a brief period of time but pointed out the tenants had indicated to her that it was not a significant issue as one tenant was going out of town and the other indicated she could stay with her mother one night.

Damage to personal property

The tenants seek \$842.98 for damage to their personal property caused by the landlord when she undertook renovations. The tenants submitted that while the landlord was renovating their unit, the landlord got paint on their TV, TV mount and wiring as well as a bedside table; the kitchen table, coffee table, and dresser were scratched; there was a hole in the couch and the legs were bent. In addition, the bathroom mats were damaged by the flood and disposed of by the landlord.

The landlord submitted that the tenants were asked to remove their wall mounted TV and in response the tenants told the landlord to paint around it. The landlord stated the paint she used is latex so it is removable with soap and water, as she informed the tenants previously.

The landlord submitted that the couch was already in rough shape and had legs that were so bent they had to be removed to avoid damaging the new carpeting. The tenants objected to the landlord's throwing the legs away.

The landlord submitted that the dresser was old (approximately 20 – 30 years) and the drawers did not shut. The landlord denied scratching the table and pointed out that the tenants had a party in the unit and that it is likely the table was scratched then.

Breach of contract

The tenants submitted that when they rented the unit they were permitted to have a dog reside with them and they were not required to pay a pet damage deposit at the start of the tenancy; however, after the renovations were complete the landlord did not permit the tenants to keep a dog in the rental unit. As a result, the tenant claims to have paid her mother \$50.00 per month to keep the dog at her house and the tenant is seeking to recover \$150.00 from the landlord for this breach.

The landlord stated the reason the tenants were not permitted to have the dog is because they did not pay the pet damage deposit.

Restriction of laundry facilities

The tenants submitted that the landlord was supposed to be provided access to the laundry room on Wednesdays and Thursdays. The tenants submitted that on two occasions the landlord failed to provide them with access to the laundry room on their scheduled dates, causing them inconvenience and forcing them to do their laundry elsewhere. The tenants are seeking compensation for \$100.00 for this inconvenience and loss.

The landlord acknowledged that she failed to provide the tenants with access to the laundry room on one of their scheduled dates and a few hours on another scheduled date.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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.

The burden of proof is based on the balance of probabilities. 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.

Upon consideration of everything provided to me, I provide the following findings and reasons.

Loss of Use

It is undeniable that the tenants suffered a loss of use of the rental unit and the tenants have received compensation of \$675.00 from the landlord. This compensation was based upon an estimate by the landlord's insurance company as it relates to rectifying flood damage. However, in this case, the landlord went on to make additional improvements that would not have been encompassed in the insurance company's estimate of loss of use. Therefore, I find the issue is whether the tenants are entitled to compensation for the renovations or improvements the landlord made in addition to the repairs necessary to rectify the flood damage.

The landlord submitted that the tenants were agreeable to improvements being made and I find this position is consistent with most tenants' approach to enduring renovations. A landlord has the legal right to repair, maintain and improve their property and, in general, tenants endure the inconvenience of the process so as to benefit from the improvements. In such circumstances, the tenants are generally not compensated for the loss of use that is endured during the renovation process unless the impact upon the tenant's ability to use the rental unit is significant and prolonged.

Based upon the evidence before me, I find on the balance of probabilities that the tenants expected to benefit from the installation of new carpeting and paint and did not object to the renovations and the inconveniences that go along with it at the time, as is generally the case. I find it likely that the tenants have raised this as an issue after the fact because of other disputes between the parties concerning the tenants' ability to keep a dog at the property and the issuance of a 1 Month Notice to End Tenancy for Cause. The tenants' choice to not pursue other remedies to resolve the dispute about the dog and the tenant's choice to not pursue the cancellation of the 1 Month Notice contributes to their inability to benefit and enjoy the improvements made to the unit.

In light of the above considerations, I make no further award for loss of use to the tenants.

Damage to personal property

I accept that there was some damage to the tenant's property when the photographs were taken by the tenants; however, I find the disputed evidence does not satisfy me that the landlord caused damage to most of the items identified by the tenants. I am also apprehensive about the tenant's claims because I heard that much of the tenant's furniture was old and had pre-existing wear or damage and the tenants did not provide evidence showing that these items were relatively new or otherwise good quality or valuable. Therefore, I have only given further consideration to the tenants' claims that relate to items for which the landlord acknowledged her actions may have caused some damage or loss.

The landlord acknowledged getting paint on the tenant's TV, TV mount and wiring. I heard the landlord state that the tenants told the landlord to paint around the TV. Thus, I find the landlord

had a duty to act reasonably by taking appropriate precautions to shield the TV, TV mount and wiring from paint. While I appreciate latex paint is somewhat easy to remove if removed soon after it is applied, I find the landlord did not take any action to do so and instead informed the tenants how they could remove it with soap and water. I find the landlord should have removed the paint and in failing to do so the landlord was negligent and must compensate the tenants. Therefore, I find it appropriate to award the tenants compensation for diminished value associated to paint on the TV, TV mount and wiring.

The tenants seek compensation of \$450.00 for damage to the TV but this amount is identified as being the value of the TV. The tenants also seek \$42.95 for the TV mount but this amount is identified as being the value of the TV mount. I find these claims are unreasonable as the claims do not take into account that the property was used and is still functional. Therefore, I limit the tenant's claim to an estimated \$100.00 for diminished value.

Breach of contract

While the landlord may have violated the Act or tenancy agreement in prohibiting the tenant from having a dog in the rental unit or requiring a pet damage deposit after the start of the tenancy; the tenants did not seek a resolution to this matter by way of an order for compliance and did not substantiate the loss claimed.

The tenants had submitted that they paid \$50.00 for dog care but did not provide any evidence to corroborate that position. Considering the person caring for the dog was the tenant's mother I am reluctant to accept that she paid her mother for care beyond the expenses associated to feeding the dog and other expenses associated to maintaining a dog.

In light of the above, I dismiss this portion of the tenant's application for failure to mitigate losses or verify the amount of the claim.

Restriction of laundry facilities

I was provided undisputed evidence that the tenants were entitled to use the laundry facilities on two days per week and the tenants were deprived of such use on two occasions. I find the tenants did not substantiate the value of the loss as being \$100.00. Therefore, I award the tenants a nominal award of \$25.00 for the inconvenience of not being able to access the laundry room when scheduled and having to go elsewhere with their laundry on two occasions.

Filing fee and Monetary Order

Given the limited success of the tenants, I award the tenants \$25.00 toward recovery for the filing fee.

In total, the tenants have been awarded \$150.00. The tenants are provided a Monetary Order in that amount to serve upon the landlord. Should the landlord not satisfy the Monetary Order it may be filed in Provincial court (Small claims) to enforce as an Order of the court.

Conclusion

The tenants were partially successful and have been provided a Monetary Order in the amount of \$150.00 to serve and enforce as necessary.

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 17, 2014

Residential Tenancy Branch

