



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnd, mn/dc, mn/sd, ff

Introduction:

The landlord applies for a Monetary Order and an order to retain the security deposit.

Issues to be decided:

Are the tenants liable for repairs or losses to the landlord, following the ending of this tenancy?

Background and Evidence:

This tenancy began November 1, 2013 and ended June 30, 2014. Monthly rent was \$1,400.00, and a security deposit of \$700.00 has already been returned to the tenants. Although required in every tenancy, no move in inspection occurred regarding the garage, and no move out inspection for any portion of the premises occurred at the end of the tenancy, although requested by the tenants. The tenancy agreement was stated on page 2 of 10 to be for a fixed term tenancy of one year, but the date for the end of the tenancy was October 31, 2013, a date prior to the start of the tenancy.

I have received and reviewed a significant volume of submissions and photographs regarding this claim from the parties. The landlord has listed a number of items in his claim allegedly stolen by the tenants from the premises following the tenancy, as well as some items that were allegedly damaged. The landlord claims for costs and time for advertising after the premature ending of this fixed-term tenancy. The landlord also added a claim for his insurance deductible loss, related to a chimney fire the landlord alleged was due to the tenant's improper use of the fireplace.

The tenants dispute the entire claim. They admit they removed a few items inadvertently from the premises when they moved out, and upon discovery immediately offered to return them. The landlord's manager refused to allow them back onto the rental premises and the items were then returned by the tenants to the manager's office. The tenants deny stealing the other items alleged by the landlord. The tenants deny that they damaged the premises in any way, or damaged the landlord's lawnmowers. The tenants prefer that I not deal with the claim for the insurance deductible.

Analysis:

The claim for the landlord's deductible on his insurance related to damage from a chimney fire at the premises, was not formally added to the original claim, but was only referred to in the landlord's evidence. The tenants elected not to have me proceed with this portion of the landlord's claim. Given that this portion of the landlord's claim was never formalized, and the tenants' preference is that I not deal with it, I decline to address this matter. The landlord is at liberty to reapply to have this matter dealt with at a subsequent hearing.

The written tenancy agreement includes a date for the ending of the fixed term that is illogical, given that the date precedes the date the tenancy began. It may be that an error was made in the date entered, but given that there is uncertainty as to the actual end date of the fixed term, and given that the landlord prepared the agreement, the uncertainty is resolved in favour of the tenants, on the basis of the legal principal of *contra proferentum*. The ultimate result is that the agreement must be read as a month-to-month agreement. Accordingly, any costs (such as advertising, or value of time spent) incurred by the landlord related to the finding of new tenants are the landlord's own responsibility and cannot be passed on to the tenants, who were entitled to end the tenancy with the proper full month's notice.

The remaining claims by the landlord are all disputed by the tenants. I note that the burden of proof for each lies with the landlord, to establish his loss on a balance of probabilities. I find in each case, this burden of proof is not met. There is no move out inspection report, as was required by the landlord at the end of this tenancy. The quality of the tendered photos are poor, and therefore unreliable. The monetary claims are not supported by proper receipts or supporting evidence. The tenant also provides an explanation for each item, and the tenant's submissions are as likely as the landlord's, meaning that while the landlord's explanations are possible, they are not proven to be probable. With respect to each item, I specifically note and find as follows:

1. Hole in garage. There was no joint inspection of the garage area at either the start or end of the tenancy. Without a clear reference to the condition of the drywall in the upper level of the garage, I cannot conclude this damage was caused by the tenants, as opposed to it being damage that pre-existed the tenancy.
2. Drawers in garage. The tenants allege that the roof screws, nuts and bolts, and other hardware referred to by the landlord were not stolen, but rather were moved by the tenants to a different drawer, or to another area in the garage. I accept this testimony as reliable and credible, and dismiss the claim that these items were stolen.

3. Wood in garage. In the absence of a condition inspection report for the garage or other compelling proof from the start of the tenancy as to the presence of useful wood in the garage, I find the landlord has not proven that there was useful wood (2x4's, plywood) there at the start of the tenancy, and therefore cannot prove theft or removal of this material by the tenants.
4. Paint and stain in the garage. The landlord does not specify exactly what paint or stain was taken by the tenants. Further, I accept the submissions of the tenants that old paint stored in a storage room near the side entrance to the garage was dried out, hard or separated, several years old, and no longer useable. I further accept that the landlord's manager told the tenants to throw out a 5 gallon pail of deck stain that was leaking because the bottom was rusted through. The landlord has not proven that there was a loss of any value suffered, with regard to pre-existing paint.
5. Light fixture and light bulbs. The landlord alleges that a motion detector fixture from outside the guest cabin was removed, and high efficiency bulbs throughout the house were taken, and replaced with regular bulbs. The tenants submits the light fixture malfunctioned because it was on the same electrical feed as the hot tub, and it was taken down and placed into the garage, with notice to the landlord's property manager. The tenant admits to removing some high efficiency bulbs, but only ones the tenant had installed to replace regular bulbs at the start of the tenancy. The landlord has not proven any theft, or loss of value.
6. Internet devices. The landlord alleges that the tenants took the internet router. The tenants acknowledge they mistakenly took the landlord's modem, but the item has been returned to the property manager. The landlord has not proven any loss.
7. Furniture items. The landlord alleges the tenants took a TV stand and a lamp from the outside guest cabin. The tenants deny there was a TV stand there. The tenants acknowledge they mistakenly took the landlord's lamp, but the item has been returned to the property manager. Accepting the tenant's submissions, I find the landlord has not proven any loss.
8. Broken lawnmower. The landlord alleges a riding lawn mower and a push mower were damaged by the tenants. There is no supporting evidence of any repairs made to these items, or that any damage was attributable to the tenants as opposed to ordinary wear and tear. I note that the tenants deny damaging either one. The claim is not proven.
9. Outside upkeep. The landlord alleges the tenants failed to maintain the outside of the property, and that he had to pay his father (the property manager) to cut the

grass. The tenants note that there is no evidentiary proof of any payment to the father. The tenants further submit that they in fact mowed on a regular basis. The tenants further submit the outside planter box was rotten and coming apart, and they chose not to disturb it any further. The landlord has not proven any loss on a balance of probabilities.

I make no order regarding the security deposit, as it has been returned to the tenants following the ending of this tenancy, and as no monetary award is made to the landlord in any event.

Conclusion:

The landlord's claims are unproven and are all dismissed.

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: December 16, 2014

Residential Tenancy Branch

