



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Producers Realty Ltd. PM Division
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing was originally scheduled to be heard on April 20, 2015, however both parties requested an adjournment to exchange further evidence and in the hopes of resolving this matter. The parties were unable to resolve the matter so the hearing proceeded and completed on this date.

This hearing dealt with an application by the landlord for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, the recovery of the filing fee and an order to retain the security deposit in partial satisfaction of the claim. Based on the testimony of both parties I am satisfied that the parties exchanged their documentary evidence in accordance with the service provisions of the Act and the Rules of Procedure.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

This was a highly contentious hearing. The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar and fraud” to each other. The parties were more intent on arguing with each other than answering questions or presenting their position.

The landlord was especially upset with me by telling me that “you’re unfair in letting the tenants say all these lies”. The landlord further advised me that “regardless of your decision, I’m appealing it; no one takes advantage of me”. The landlord stated that she

wasn't given an equal portion of the hearing to state her case. However, during the 85 minute conference the landlord spoke for 65 minutes, uninterrupted. The landlord did not offer the same courtesy to the tenants whereby she continually interrupted them and engaged them in an argument.

I assured the landlord that she would be given all the time she needed and that no decision had been made, however this only infuriated the landlord even more. When the landlord was given further opportunity to present her case she spent it making editorial comments about the tenants character and not focusing on presenting her claim as applied for. The landlord further stated to the tenants "this isn't over; I'm going to the police and to Supreme Court".

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. This month to month tenancy began on February 14, 2014 and ended on September 1, 2014. The tenants were obligated to pay \$1550.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$775.00 security deposit. Written condition inspection reports were conducted at move in and move out with both parties present at each.

The landlord stated that she purchased the home new in 2007 and lived in for almost eight years. The landlord stated that the house was in excellent condition when she rented it out to the subject tenants. The landlord stated that the tenants caused an extraordinary amount of damage in such a short time. The landlord stated that she incurred some costs to repair or replace items in the suite. The landlord stated that she has been unable to repair some of the more costly items due to financial constraints and waiting for the outcome of this hearing. The landlord stated that the tenants had left a garbage pail full of feces and diapers behind which required her to hire someone to remove it.

The landlord stated that the tenants damaged walls, the front porch, back deck floor, deck gate, door weather stripping, door stopper, concrete panels in the driveway, curtains, door jamb, casing, door, frame and parts, tiles, paint, fireplace trim, and the refrigerator. The landlord stated that the tenants killed and stole some plants and did not pay the utility bills.

The tenants gave the following testimony:

The tenants stated that this was a very difficult tenancy. The tenants stated that the landlord continually harassed them to the point they had to call the police on several occasions and make a report. The tenants stated that they were good tenants that maintained the property and the home in very good condition. The tenants stated that the inside of the home only had normal wear and tear and that the alleged exterior damage was due to the cold winters and hot summers. The tenants stated that they treated this property as if it were their own home and dispute the claims as made by the landlord. The tenants stated that at the move out condition inspection, they became so frustrated with the landlords behaviour and unreasonableness that they refused to sign the form and walked out. The tenants stated that the landlord was attempting to blame them for every item of wear and tear and damage from when the home was built to move out.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I address the landlords' claims and my findings as follows.

Landlords First Claim - The landlord is seeking \$148.66 for an unpaid water bill. The tenants do not dispute this claim and agree with the amount. Based on that agreement, I find that the landlord is entitled to \$148.66.

Landlords Second Claim- The landlord is seeking \$80.00 for the removal of the tenants' garbage. The landlord stated that the tenants left a garbage bin full of diapers and feces that became infested with maggots. The landlord provided a receipt and photo of the bin. The tenants dispute this claim. The tenants stated that they never threw diapers into this garbage can.

The photo provided by the landlord does not depict the diapers or feces as alleged. It is unclear whose garbage was taken to the dump as the photos are inconclusive. Due to the insufficient evidence before me I dismiss this portion of the landlords' application.

Landlords Third Claim – The landlord is seeking \$100.00 to fill and sand holes in the walls of the suite. The landlord stated that she couldn't believe the amount of holes in the walls. The landlord stated that she stopped counting at 50. The landlord stated that the suite was painted in 2007. The landlord is relying on photos, a receipt and the condition inspection report for this claim.

The tenants dispute this claim. The tenants stated that they had about 20 small nail holes for family pictures. The tenants stated that many areas of the suite had small scuffs in it when they took possession. The tenants stated that they caused minimal wear and tear on the walls.

Policy Guideline 40 provides the "useful life" of building elements and states that the useful life of paint is four years. The photos provided by the landlord do not depict excessive damage as alleged. In the landlords own testimony she advised that the paint was seven years old thus going beyond the reasonable "useful life". Based on the above, I dismiss this portion of the landlords' application.

Landlords Fourth Claim – The landlord is seeking \$120.00 to trim bushes, weed the property, and bring it to a maintainable state. The landlord is also seeking \$90.00 for four dead plants and three missing ones. The landlord stated that she conducted the yard work herself. The landlord provided an estimate from a "handyman" for this portion of the claim. The landlord stated "its hard work and I did the best I could". The landlord stated that she doesn't know how much the plants cost but estimated it to be \$90.00.

The tenants dispute this claim. The tenants stated that the yard was well maintained and that the landlord was being extra picky. The tenants stated that the yard was well kept.

Policy Guideline 1 states that generally a tenant that lives in single family dwelling is responsible for routine yard work including cutting grass and weeding. Based on the documentary evidence before me I find that the landlord is entitled to \$120.00 for yard maintenance. The landlord has not provided sufficient evidence to support the claim for the plants and I therefore dismiss that portion of the landlords' application.

Landlords Fifth Claim – The landlord is seeking \$300.00 in labour costs for repairs to the front porch floor, the back deck floor, apply vinyl refresh, reattach lattice, and install doorstopper and door weather-stripping. The landlord also seeks \$124.54 for the two

cans of “Vinyl Refresh”. The landlord stated that all of these items were damaged as a result of the tenants’ negligence. The landlord stated that there were stains and holes throughout the deck and that pieces of trim was missing or damaged and that the door was also damaged. The landlord submitted receipts and photos for this claim.

The tenants dispute this claim. The tenants stated that much of the damage was from the inclement weather and that most of these items were through just wear and tear.

Having considered and reviewed the testimony and documentary evidence before me, I find that on the balance of probabilities, the landlord has proven this claim. Applying Policy Guideline 40, the “useful life” of a deck is 20 years. The deck was seven years old when the tenants lived in the unit. I find that the landlord is entitled to 65% of the costs claimed in this portion of the landlords application to address the items listed above and grant an award of \$275.95.

Landlords Sixth Claim – The landlord is seeking \$1740.00 + GST for the replacement of 2 concrete panels in the driveway. The landlord stated that the tenant damaged these two concrete panels by parking his big truck on them. The landlord stated that she submitted an estimate as she cannot afford to conduct the repair at this time.

The tenants dispute this claim. The tenant stated that he drives a one ton truck and that the cracks in the concrete were always there. The tenant stated that the reason they rented the unit was because of the large driveway and that the landlord had no issue with him parking there.

The landlord has failed to provide sufficient evidence that the tenant is responsible for the cracks in the concrete and I therefore dismiss this portion of the landlords’ application.

Landlords Seventh Claim – The landlord is seeking \$840.00 for replacing the door and frame, the adjacent flooring and baseboard, \$556.37 for door supplies \$8.47 for tiles, \$64.92 for mortar and grout, and \$26.01 for primer and paint. The landlord stated that the door that opens out onto the deck “looked like someone tried to break in”. The landlord stated that the door was so badly damaged; the entire casing and frame had to be replaced. The landlord stated that because the door didn’t shut properly, water seeped in and rotted the floor, and baseboard and caused moisture and mold to develop. The landlord stated that the tenants never advised her of this “break in” and that it exacerbated the problem. The landlord stated that the tenants had put her property at risk by not informing her of this damage.

The tenants dispute this claim. The tenants stated that there was not a break in, if there had been they would have reported it immediately to the landlord and the police. The tenants stated that the door was poorly installed and that they had problems with it from the first day they moved in. The tenants stated that the landlord is trying to have them pay to fix a problem that existed long before they moved in.

In the landlords own testimony she stated that she had to have the door, frame and casing completely replaced due to a building flaw. The landlord stated the contractor had not installed it correctly. Based on the conflicting testimony of the landlord, the lack of sufficient evidence, and on the balance of probabilities, the landlord has not satisfied me of this claim and I must dismiss this portion of the landlords' application.

Landlords Eighth Claim- The landlord is seeking \$120.00 to replace curtains. The landlord advised that she has not replaced them at this time and estimates the cost. The landlord stated that the curtains were damaged and discolored by the tenant. The landlord stated that the tenant washed the curtains in vinegar causing the discoloration and shrinkage.

The tenant disputes this claim. The tenant stated that the curtains are in good condition considering the age. The tenant stated that she did not use vinegar and that the curtains have not shrunk.

The photos submitted by the landlord do not represent the damage that she alluded to. The curtains appear to be in good condition. Based on the insufficient evidence of damage, I dismiss this portion of the landlords' application.

Landlords Ninth Claim- The landlord is seeking \$160.00 for the replacement of wood trim around the fireplace. The landlord advised that she has not replaced it at this time and estimates the cost. The landlord stated that the tenants damaged the trim by leaving puddles of water on the floor and by being reckless.

The tenants dispute this claim. The tenants stated that the trim was damaged by the landlords own handyman when he conducted a repair and left the area very wet.

The photos submitted by the landlord show a small gap between two pieces of trim. I cannot ascertain as to whether this was damaged or poor installation as the item in question is very small. Based on the insufficient evidence before me, and the landlord not being able to satisfy me whether this was damage or an installation problem; I dismiss this portion of the landlords' application.

Landlords Tenth Claim- The landlord is seeking \$499.99 plus GST for the replacement of a fridge. The landlord stated that the fridge had a "stab" on the side of it. The landlord

advised that she has not replaced the fridge at this time and estimates the cost. The landlord stated that the fridge was seven years old but was in excellent condition. The landlord stated that the tenants were reckless and caused the damage. The landlord provided a photo. The landlord advised that appliance repairman advised her that it was cheaper to replace the fridge than repair the “stab”.

The tenants dispute this claim. The tenants stated that they did not damage the fridge and do not know how it happened.

I am satisfied that the landlord has proven this claim but not to the amount sought. An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I find that a nominal award is warranted in this matter and that the appropriate amount based on the damage and the age of the fridge to be \$100.00.

Landlords Eleventh Claim- The landlord is seeking \$34.27 for copying and photos costs. The Act does not provide me the jurisdiction to award these costs and I therefore dismiss this portion of the landlords’ application.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

In summary, the landlord has been successful in the following claims:

Water Bill	\$148.66
Deck	\$ 275.95
Yard Maintenance	\$120.00
Fridge	\$100.00
Filing Fee	\$100.00
	\$
Total:	\$744.61

The landlord has established a claim for \$744.61 I order that the landlord retain \$744.61 from the security deposit in full satisfaction of the claim and return the remaining \$30.39 to the tenants.

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 22 , 2015

Residential Tenancy Branch

