



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for monetary compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord's Counsel said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 12, 2015. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

The parties were affirmed to tell the truth in the hearing.

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for damage and if so how much?
3. Is there other damage or loss and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?

Background and Evidence

There was some discussion of the events that led up to this application including other hearings involving this tenancy. The parties were told to try to focus their testimony on this application, which is for compensation for damage and or loss to the Landlord. The following testimony was directly related to the Landlord's application.

This tenancy started on April 1, 2012 as a month to month tenancy. Rent was \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$312.50 and an additional tenant paid a security deposit of \$312.50. The total security deposit paid was \$650.00 at the start of the tenancy. The Landlord's Counsel said an addendum is attached to the tenancy agreement which says the washer, dryer, stove and fridge are all in working condition. Landlord's Counsel said this with the Landlord's testimony and written statements serves as the Landlord's evidence as to the condition of the unit on move in. The Landlord said no move out condition inspection report was done as the Tenant was not

available. The Tenant said no move in or move out condition inspection reports were completed and signed by the parties.

The Landlord's Counsel started the hearing by outlining the Landlord's application. The Landlord's Counsel said the Landlord is requesting compensation for damage to the unit, site or property in the amount of \$5,800.00. This amount was paid to the tenants that moved into the unit following the tenancy with the Tenant as the new tenants did the repair work. There is no invoice or paid receipt in the Landlord's evidence package for the repair work. The Landlord did submit a signed statement from the new tenant's son saying he did the work and he and 2 colleagues were paid \$5,800.00. As well the Landlord submitted a Statutory Declaration that says that the Landlord paid the new tenant's son T.C. \$5,800.00 for repair work to the rental unit. The Landlord said the repair work was a result of damage to the unit caused by the Tenant. The Landlord's Counsel said the damage included repairing holes in the walls and painting the unit. The Landlord continued to say the carpet in the unit had to be replaced because of burn marks, stains and tears in the carpets. The Landlord said the carpets were in good condition and cleaned at the start of the tenancy. Further the Landlord said the flooring in the kitchen was replaced as well due to damage caused by the Tenant. The Landlord's Counsel said the Landlord is requesting \$5,800.00 as compensation for the damage to the unit cause by the Tenant. To support the Landlord's claim the Landlord's Counsel went through 44 photographs of the rental unit taken at the end of the tenancy. The Landlord said the photographs show how unclean the unit was and the damage to the unit caused by the Tenant. Counsel also referred to a number of written statements submitted as evidence to support the Landlord's application.

Further the Landlord's Counsel said the Landlord is also requesting the cost of replacing the fridge and stove for \$600.00 and the washer and dryer for \$650.00. The Landlord's Counsel said the addendum attached to the tenancy agreement indicates the appliances were working at the start of the tenancy and the Landlord said the alliances were not working at the end of the tenancy. The Landlord said she submitted receipts for all the alliances that were replaced and the delivery costs.

The Landlord's Counsel said the Landlord's total claim is for \$7,050.00 plus the filing fee of \$100.00 which the Landlord has paid.

The Arbitrator questioned the Landlord's Counsel to itemize the repair bill of \$5,800.00. The Landlord's Counsel said there was no breakdown of the repair costs, it was just for repairs done to the unit. The Arbitrator asked if cleaning costs were included in the bill. The Landlord's Counsel said no clean costs were included in the bill. The Arbitrator asked the Landlord and the Landlord's Counsel if they applied for cleaning costs. The Landlord's Counsel said no the Landlord had not applied for cleaning costs.

The Tenant said that the unit was not in good condition when she moved in. She said there were holes in the wall, the carpets were stained and the lino in the kitchen was lifting and bare wood was showing. In addition the Tenant said she had paid her rent until the end of September, 2012 and a previous arbitrator had issued an Order of Possession to the Landlord for October 31, 2012 so the Tenant believed her tenancy would be in place until October 31, 2012. The Tenant said she was incarcerated in September, 2012 so she asked friends to remove her possessions and to clean the rental unit. The Tenant said when her friend went to the unit on September 17, 2012 the Landlord's husband was changing the locks and tried to deny her entry to the rental unit. The Tenant continued to say the Landlord would not let her

friends into the unit after that so she could not clean it or make any repairs if there were repairs to do. The Tenant said that the Landlord's photographs show the unit is messy and not clean but the photos do not show the any holes in the wall, no rips in the carpet and no damage to the kitchen floor. The Tenant said the walls, carpet and kitchen floor are in the same condition as when she moved in. The Tenant said given an opportunity her friends would have cleaned and repaired the rental unit before the end of the tenancy of October 31, 2012. The Tenant said the Landlord has no evidence to support her claims.

The Tenant provided a witness G.T. The Witness was affirmed and gave the following testimony. The Witness said she went to the Tenant's rental unit on September 17, 2012 to remove some of the Tenant's belongings and she found the Landlord's husband changing the locks and he tried to stop her from entering the property. The Witness continued to say she tried again later in September to gain enter to the Tenant's rental unit but was denied entry by the Landlord and the locks had been changed.

The witness G.T. continued to say she entered the rental unit within two weeks of the start of the tenancy and the rental unit was in poor condition when the Tenant moved in. She said there were holes in the walls, the carpets were stained and the kitchen flooring was lifting from the floor boards. The Witness continued to say during the tenancy the washer and dryer were not working, the stove did not work properly and the fridge was replaced. The Witness said the rental unit was not in good condition at the start of the tenancy.

The Landlord's Counsel asked the witness if she was in the rental unit at the start of the tenancy. The witness said no she entered the rental unit in the first or second week of the tenancy. The Landlord's Counsel said the witness did not know the condition of the unit at the start of the tenancy only the condition 1 to 2 weeks after the tenancy started.

In closing the Tenant said there were no condition inspection reports completed and she and her witness have both testified that the rental unit was not in good condition at the start of the tenancy. The Tenant said she gave the Landlord a list of items that need to be repairs just before the Landlord gave her an eviction notice. Further the Tenant said both her and the witness testified that the alliances were not working and were older units so the Landlord should not be awarded any compensation for their replacement. The Tenant continued to say the rental unit was messy and unclean but the Landlord did not give her the opportunity for her friends to clean the unit and the Landlord took possession of the unit during her tenancy. The Tenant said the Landlord does not have proof that there was any damage and she just wants this dispute to be over.

The Landlord's Counsel said in closing that the condition of the rental unit at the end of the tenancy was very poor. It was messy, dirty and in need of repairs. The Landlord's application is requesting \$5,800.00 of compensation for repairs to the walls, floors and for painting. As well the Landlord is requesting compensation for the replacement of the washer, dryer, stove and fridge at a cost of \$1,250.00. The Landlord's Counsel said the Landlord's application is supported by photographs, written statements, statutory declarations and the testimony of the Landlord.

The Landlord said inclosing that she has been a landlord for over 20 years and has not needed condition inspection reports before. The Landlord said the Tenant left the rental unit in terrible condition; messy, dirty and in need of repairs. The Landlord said it took her over two weeks to clean the unit and now she is requesting compensation for damage to the unit.

Analysis

There was much contradictory testimony about the facts of this situation and much of the evidence was by affirmed testimony, written statements and witness testimony.

At the start of a tenancy: Section 23 (4) of the Act says a Landlord **must** complete a condition inspection report in accordance to the regulations.

At the end of a tenancy: Section 35 (3) of the act says a Landlord **must** complete a condition inspection report in accordance to the regulations.

Condition inspection reports have a number of functions which include what happens to security and pet deposits at the end of a tenancy and to establish a base line for the condition of the rental unit that is agreed to by both the Landlord and Tenant at the start of a tenancy. As well the move out condition inspection report establishes the condition of the rental unit at the end of the tenancy and deals with any damage and what is agreed to be done about the security and pet deposits.

The Residential Tenancy Branch provides a condition inspection report form on the web site and at the brand offices. It establishes the type of information that is required in a move in and move out report. These reports are done room by room and there are a number of descriptions of the type of condition the rooms are in. As well there is space provided for a written description of the rental unit room by room. The parties sign the agreement as agreeing to the condition or not and there is a place for repair items to be listed. The Condition Inspection Reports are detailed for a reason. The reason is to establish the condition of the rental unit on move in and move out. Other forms or information can be used and will be accepted if the level of detail meets the standard set by the Residential Tenancy Condition Inspection Report forms. The Landlord's Counsel and the Landlord submitted a note with no mention of the condition of the rental unit and only a reference that appliances were all in working order. There is no comment on the age or condition of the appliances. Given that the Landlord has been a Landlord for over 20 years it is the Landlord's responsibility to comply with the Act.

The Landlord has provided the note about the appliances, there are written statements, photographs at the end of the tenancy and the Landlord has provided testimony that the rental unit was in good condition at the start of the tenancy.

The Tenant and the Tenant's witness have provided testimony that the damage to the rental unit was there at the start of the tenancy. As well the Tenant has given testimony the Landlord locked her and her agents out of the rental unit during the tenancy which may be in violation of the Act. The result of denying access to the Tenant and the Tenant's agent the Tenant did not have an opportunity to clean or repair any damage that may have happened during the tenancy.

Consequently there is much contradictory testimony with regards to the facts of this situation. As a result I will rely on the standards set by the Act, which require the Landlord to complete a detailed condition inspection report to establish the condition of the rental unit at the start of the tenancy. If this is not done and there is no other acceptable information to established the condition of the unit at the start of the tenancy then there is no base line to measure damage if any and it is not possible to quantify any damage for compensation. I find the addendum note

and the evidence provide by the Landlord with regards to the condition of the unit at the start of the tenancy does not meet the standards I need to establish a base line to measure any damages from. The Landlord did not do an acceptable move in condition inspection report. I find the Landlord cannot establish a baseline for the condition of the rental unit at the start of the tenancy to measure what if any damage the Tenant did during the tenancy. Consequently pursuant to section 23 and 35 of the Act, I dismiss the Landlord's claims for repairs and the damage to the rental unit.

Further I have reviewed the tenancy agreement and it states that stove, oven, refrigerator, washer and dryer are include in the tenancy. There was no evidence presented that the Tenant misused the appliances and the evidence presented is unclear as to the age and condition of the appliances at the beginning of the tenancy. Consequently I find the Landlord has not established grounds to prove the Tenant is responsible for the replacement of the appliances or for compensation. Consequently, I dismiss the Landlord's claim for \$1,250.00 which represents the cost to replace the appliances.

As the Landlord has not been successful in this matter, I order the Landlord to bear the cost of the filing fee of \$100.00 that she has already paid.

Conclusion

The Landlord's application is dismissed without leave to reapply.

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 03, 2015

Residential Tenancy Branch

