



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenants by mailing, by registered mail to where the Tenants reside on April 23, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on July 10, 2010. The tenancy agreement provided that the tenant(s) would pay rent of \$1550 per month payable in advance on the first day of each month.

The tenants paid a security deposit of \$750 at the start of the tenancy.

The tenancy ended on May 3, 2014 after the landlord served a 2 month Notice to End Tenancy on the Tenants. The security deposit of \$750 was returned within 15 days of the end of the tenancy.

On April 1, 2015 the tenants were successful with their monetary application and the landlords were ordered to pay the tenants the sum of \$1550 in monetary compensation because the landlords failed to move in as provided in the two month Notice to End Tenancy which they served on the tenants.

The landlords seek a monetary order in the sum of \$7350 based on the following evidence:

- The landlords produced over 200 digital photographs showing the walls and ceilings of many rooms in the rental unit which show that tenants attempted to touch up the nicks in the paint with a different colored paint. The photographs also show nicks and other damage to the cabinets. It also shows a fridge which was moldy because the tenants failed to clean the fridge.
- The landlord produced a quotation from a Cabinet repair company estimate it would cost \$1575 to repair. The cabinets have not been replaced or repaired.
- The landlord produced a quotation that indicates the cost to re-paint the rental unit would be \$6500. The landlord produced a second quotation that indicates the cost of repaint would be \$5775. The landlords testified they have not been able to fully re-paint the rental unit although they have paid approximately \$1500 for a partial re-painting.
- The landlords have owned the rental unit since 1998. The rental unit is approximately 2800 square feet. The rental unit was vacant for much of time.
- The previous tenant lived in the rental unit for approximately 1 year and left the rental unit in good condition.
- The landlords returned the security deposit at the end of the tenancy as the tenant's husband was terminally ill and they did not want any discord.

- The landlords testified they had to throw away a fridge. The fridge was approximately 20 years old although it had only been used for about 8 years.

The tenant responded as follows:

- They painted the walls with paint that was previously supplied by the landlord to fix the splash in the washroom.
- The cabinet damage claimed by the landlord is reasonable wear and tear
- The fridge was plugged in when they left. The landlord unplugged it after they vacated the rental unit.
- The previous tenants had caused damage. The tenants relied on some provisions of the pre tenancy Condition Inspection report which indicates scrapes and nicks were present.
- The tenants took care of the house as best as they could. The tenants produced 5 photographs showing the condition of the rental unit when they left.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I am satisfied based on the evidence presented that the tenants' efforts to touch-up caused significant damage. The many photographs show significant colors on the walls. A reasonable tenant would have been aware of the damage they were causing to the rental unit. I do not accept the submission of the tenant they are not responsible because they were only using paint provided by the landlord.

However, Policy Guideline #1 includes the following statement:

“PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.”

Policy Guideline #40 provides that the average life of an interior paint job is 4 years. The quotations provided by the landlord indicate it will cost \$5775 to \$6500 to fully paint the rental unit. The tenancy ended in May 2014. To date the landlord has spent \$1500 in re-painting. After carefully considering all of the evidence I determined the landlord has established a claim in the sum of \$1000 being a reasonable sum for the damage caused by the tenant given the length of the tenancy.

- b. I dismissed the landlords' claim for the cost to repair the cabinets as I determined the landlord failed to prove that the alleged damage was more than reasonable wear and tear. Further, it is worth noting the landlord has not incurred any expense to repair this to date.
- c. I dismissed the landlords' claim for the cost of a new refrigerator. I determined the landlord turned the power off to the fridge and this caused the problem with mold. Further, Policy Guideline 40 provides that the average life span of a fridge is 15 years. This fridge is 20 years old and passed the average life span of a fridge.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1000 plus the \$50 filing fee (reduced to reflect the limited success of the landlord) for a total of \$1050.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: September 29, 2015

Residential Tenancy Branch

