



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNR, MNSD, MNDC, FF

Introduction

The landlords apply for an order of possession, withdrawn at hearing, and for a monetary award for damages for cleaning and repair of the premises, for overholding and for payment of a utility charge.

The application discloses a claim for rent but it was not pursued at hearing.

The landlord Ms. S. and both respondents attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlord Mr. S. was too ill to attend. Ms. S. did not wish to request an adjournment.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlords are entitled to damages or compensation for any of the thirteen items claimed in the Monetary Order Worksheet filed in this matter?

Background and Evidence

The rental unit is a three bedroom house on a city lot.

It appears that the tenant Mr. P.K. moved into the property in the year 2000 or before. In August 2000 he signed a tenancy agreement with the landlords which indicates that he may have been a co-tenant with a Mr. A.A. and Ms. C.B, who had resided there since 1997.

The respondent Ms. K.S. is not a party to any tenancy agreement though she may have been residing in the premises since the year 2000.

Another tenancy agreement, perhaps an amendment, was prepared in 2007.

It was agreed at hearing that the respondent Mr. P.K. is the only “surviving” tenant.

The tenant and Ms. K.S. vacated the premises on September 30, 2015, possibly pursuant to a two month Notice to End Tenancy for "landlord use of property" issued pursuant to s. 49 of the *Residential Tenancy Act* (the "Act").

Though the Monetary Order Worksheet filed by the landlords does not mention it, their application appears to disclose a claim for October rent. No mention of that claim was advanced at hearing and so I assume that it was resolved prior to hearing.

The monthly rent had been \$1471.39, due on the first of each month. The landlords hold a \$550.00 security deposit paid August 1, 2006.

The landlord Ms. V.S. testifies that when two original tenants vacated in 2006 a move out condition inspection was done. She files the report of that inspection as evidence that when the tenant Mr. P.K. began his sole tenancy the premises were in good condition.

She files a move out condition report from the end of September 2015 to show the damages that is alleged to have occurred during the last nine years. Mr. P.K. did not acknowledge his agreement with the reported state of the premises at that time.

The landlord discovered a significant stain in the carpet in the basement bedroom. The tenant and Ms. K.S. acknowledge the stain.

The landlord claims that the linoleum in the basement bathroom has been severely discoloured by water spilling over from the shower stall in that room. The tenant and Ms. K.S. say that there was no significant spill over and that the discolouration is the result of structural seepage or some like defect.

The landlord says the carpet was new in 2008. Later she indicated that all carpets were new in 2006. The lino was said to be new in 1998.

The landlord claims for the cost of repainting the interior of the home. She produces an invoice for preparation work necessary before painting. The landlords do not seek the cost of painting. The invoice lists the items that are required to be prepared. The invoice totals \$1743.00

The tenant and Ms. K.S. argue that the items in the list are reasonable wear and tear.

The landlord claims for the cost of replacing a number of the blinds, some bent or broken, some water stained and for cleaning the others.

The tenant and Ms. K.S. argue that various of the blinds had been damaged, by bending or breaking, years ago. They refer to family photos from around 2008, showing damaged blinds in the background. Ms. K.S. says she dusted the upstairs blinds but not the downstairs ones as

they were mildewed and she thought they would simply be replaced. They say the water staining is reasonable wear and tear.

The landlord claims for the cost of general cleaning and supplies. She says that in particular the oven and stove vent had not been cleaned.

The Ms. K.S. testifies that the premises were reasonably clean. She refers to various photos taken just before move out. She indicates that she has an aversion to regular cleaning supplies and so had anticipated cleaning the oven with an ammonia product in the heated oven. However, she says, the oven ceased to work just before the move out and was not repaired until the last day, affording her no time to clean it.

The landlord responded that the oven was repaired three days before move out, leaving the tenant ample time to clean the oven.

The landlord claims for general yard work; garden clean up, debris removal, and for seeding the lawn in an area she claims the tenant and Ms. K.S. left unmaintained and covered with belongings. She says that the tenancy agreement requires tenants to maintain the yard.

The tenant and Ms. K.S. say they did maintain the yard, including seeding the lawn and that they cleaned up before leaving, as per the photos provided. They say that the area of brown grass at the side of the house was caused by them having to move belongings to that area from under the wooden deck while the landlords attended to its repair.

The repair of the deck was a central subject in a previous dispute hearing between these parties, heard in September 2015. The file number of that dispute is shown on the cover page of this decision.

The landlord says the tenants failed to leave a functioning garden rake, working smoke detectors, double sheeted shower curtains, a working doorbell, bulbs, door knobs or functional stoppers for the sink and tub.

The tenant and Ms. K.S. says the garden tools were originals from the landlord many years ago and the rake broke. Ms. K.S. says the landlords "repeatedly" refused to fix the smoke detectors. She says the landlords were at the property many times and well knew that the doorbell did not work. She says that the glass door knobs that came with the place were very old and loose or malfunctioning. She says the original knobs were left on a shelf in the home and produced a picture showing them on a shelf.

The tenant Mr. P.K. says that shower curtains wear out on a regular basis and that he'd replaced the shower curtains at various times. He says the original tenants took the shower curtains with them when they left.

The landlord claims that her husband had to take away garbage and refuse from the home after the tenant and Ms. K.S. left. She seeks \$70.00 as compensation. The tenant and Ms. K.S. say they cleaned the yard and refer to the pictures they provided. They say that any damage to yard equipment is reasonable wear and tear over fifteen years of use. They say that the landlords have been on the property regularly over the last fifteen years and had raised no concern about the state of it until this proceeding.

The landlord says the tenants have failed to pay a \$373.58 municipal utility bill and produces a copy of it. The tenants say they paid it October 2, 2015.

The landlord says the tenants were not completely moved out until October 1st and so they should have to pay damages for overholding, equivalent to one day's rent.

Analysis

I have considered all the evidence presented during this hearing though it may not all be referred to in this decision.

Carpet and Lino

The tenants caused a significant stain in carpeting in the premises. Ms. K.S. indicated it might be a hair dye spill. It exceeds reasonable wear and tear. The landlords are entitled to have the carpet replaced. I accept the landlords' quote of \$876.80 as the reasonable cost.

I find that the carpet is roughly eight years old. Residential Tenancy Policy Guideline 40 "Useful Life of Building Elements" places an expected life of ten years on carpeting. This carpet, undamaged, had a reasonable remaining life of two years. I therefore award the landlords \$184.13 for this item.

I dismiss the landlords' claim for linoleum replacement. The cause of the discoloration is far from certain. The landlord's assertion that it comes from negligent use of the shower is only conjecture. The discolouration is equally consonant with deterioration from some other cause. Without more certainty that it is a tenant-caused problem, the landlords have not proved their claim.

Painting Preparation

The tenant and Ms. K.S. acknowledge they left stickers on a window pane. I award the landlords \$50.00 for the cost of removal.

I dismiss the landlords' claim regarding preparation necessary to paint window sills and casings. This is an old house. The windows are single pane windows, prone to frosting or moisture buildup on their interiors. The photos of the exterior of the windows show the paint peeling and

cracking, black areas appearing. In my view, the window areas have degraded with time, both inside and out. The tenants are not responsible for the renovation of these areas.

The caulking material below the bathroom vanity cabinet has not been shown to have been installed during this tenancy.

The tile and “wetwall” behind the tub spout in the bathroom may just as easily have been caused by a leak behind the wall, in the plumbing or from elsewhere. Lacking any testimony or other evidence from a qualified person, like a plumber or renovator, the evidence does not persuade me on a balance of probabilities that water would run down the wall from the shower spout, seep through the minor crack in the tiling behind the tub spout and cause that wall to deteriorate.

In regard to the sliding door, it is apparent that moisture ingress through it was significant enough to stain the bottoms of the entire row of vertical blinds hanging in front of the door. The “rot” referred to in the painter’s invoice is consonant with damage resulting from a failed or poorly functioning sliding door. The tenant is not responsible for it.

The tenant taped over the top of a shower stall. The tape should have been removed. I award the landlord \$5.00 for the job.

For the foregoing reasons I dismiss the remainder of the landlords’ paint preparation claim.

Blinds Cleaning and Replacement

In regard to the issues of cleaning and repair, during a tenancy s. 32(2) of the *Act* imposes on a tenant the obligation to “maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.”

At the end of the tenancy, a tenant is obliged by s. 37(2)(a) of the *Act* to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

It can be said that often the opinion of a landlord as to what is “reasonably clean” or what “reasonable wear and tear” differs markedly from the opinion of a tenant.

In reaching the decision in this case I am influenced by the facts, as found in the earlier arbitration, that the landlords were often in the home and in the yard. Indeed, it appears the landlord inspected the premises in February 2014, accompanied by two men from the construction industry to view and assess its value. As well, the landlords were frequently in the back yard or in the yard of the premises next door, which they also own.

There is no indication that the landlords made any issue known to the tenants regarding the state of the home or the yard at any of those times.

The lack of complaint or direction from the landlords during the tenancy is certainly not a defence to their claim, but it is an indicator of what the parties may have accepted as “reasonably clean” or undamaged.

In regard to the blinds, they were installed in 1992 according to the landlord. They have given twenty three years of service. According to Policy Guideline 40, blinds have a useful life of ten years. Even if the broken or damaged blinds exceeded reasonable wear and tear, to make any award for their replacement would be putting the landlords in a better position than they are entitled to.

In any event, blinds have a “useful life” because they do get damaged or broken and generally degrade with use and over time. In this case, and having reviewed the photo evidence presented by the parties I dismiss the landlords’ claim for cleaning and replacement of blinds.

In regard to the sliding glass door, horizontal blinds, the water staining on the bottom few inches of the blinds is consonant with moisture build up inside the sliding glass door itself. That is not a cause for which the tenants are responsible.

Cleaning

The evidence shows that the premises but for the oven and some stickers on a door, were left in a reasonably clean state when the tenants left. A bit of dust or lint behind a door is not significant in my view.

The tenants failed to attend to leaving a clean oven. Ms. K.S.’s aversion to modern cleaners is not a significant excuse for failing to attend to this normal cleaning chore. The fact that the oven may not have been working for a few days prior to move out is not a reasonable excuse either.

I award the landlords the amount of \$60.00 for oven cleaning, including supplies.

Property Maintenance, Soil and Grass Seed

Tenants who rent an entire suburban home are generally responsible for basic maintenance of the yard. The tenancy agreement filed in this matter confirms it.

There was some discussion that the tenant should have cut back an ivy plant. A tenant is not generally responsible for the pruning of trees or shrubs (see Policy Guideline 1 “Landlord and Tenant – Responsibility for Residential Premises”).

In regard to the removal of some leftover firewood and a wooden firewood rack, these items should not have been left by the tenant without the landlords’ consent. I consider \$50.00 to be a reasonable charge for their removal and award that sum to the landlord.

In regard to the side yard area where the landlord claims the grass to be dead, on the competing evidence and without the opinion of someone with an expertise in the matter, I am not in a position to disagree with the tenant's and Ms. K.S.'s assertions that the area only needs watering to be restored. In result, the landlord has not proved this item on a balance of probabilities and I dismiss it.

Damaged and Missing Items

The landlords claim for the cost to replace a rake and hoe, a shower curtain and liner, a fan filter, a dimmer switch, some bi-fold door hardware, batteries, a dryer vent cover, a shovel, two sprinklers, a nozzle, a hose, light bulbs, vertical blinds, two smoke alarms, an electrical plate, a door bell and a sink/tub stopper.

In regard to the garden implements the tenant produced photos showing various of those items left in the yard; two sprinklers, some garden implements, one with a broken wooden handle, which I would ascribe to normal wear and tear for a garden implement of such age. There was no inventory from the start of the tenancy. On this evidence it cannot fairly be determined that the tenants failed to return any particular garden implement, subject to reasonable wear and tear.

In regard to the hose and nozzle, the evidence appears to indicate the tenants were using their own and took it with them on vacating. The landlords have not proved their claim in this regard.

There was no testimony about a dryer vent cover, an electrical plate, bi-fold door hardware, dimmer switches or light bulbs. I dismiss these items.

The issue of the vertical blind has been dealt with above. I dismiss that item.

The landlord says the two smoke detectors provided with the premises were left unattached and did not work. The tenant and Ms. K.S.'s evidence was that they had complained to the landlords during the tenancy that the detectors no longer worked but the landlords did nothing. Eventually they purchased their own detectors and took them when they left, leaving the landlords' detectors. The tenant provided descriptive photos showing the landlords' old detectors and the new ones with a manufacture date of 2007.

I find the tenant's and Ms K.S.'s version of events regarding the smoke detectors to be more likely. I dismiss this item of the claim, including the claim for batteries.

The landlord says the premises were provided with a shower curtain and liner for both bathrooms. The tenant and Ms. K.S. dispute this saying there was only a single curtain at move in the lower bathroom and none in the upper bathroom. They say they purchased a

replacement for the curtain in the lower bathroom and left it when they vacated. On this conflicting evidence I find that the landlords have not established their claim for this item on a balance of probabilities and I dismiss it.

Regarding the kitchen fan filter, under Policy Guideline 1, above, on vacating premises a tenant is required to clean the screen of a vent or fan at the end of the end of the tenancy. Normally, the replacement of a filter is the responsibility of a landlord. In this case the photo evidence shows that the tenant did clean the vent screen. I dismiss this item.

In regard to the sink/tub stopper, the tenant's photos show that stoppers were left on a closet shelf. It should be noted that if they were the originals from the start of the tenancy they would be well past any reasonable expected useful life. I dismiss this item of the claim.

The door bell was not working at the end of the tenancy. There is no evidence upon which I could conclude that its failure was somehow related to an act or inaction of the tenant. I dismiss this item.

Garbage and Refuse Removal

But for the items awarded under Property Maintenance, above, the evidence satisfies me that the tenant left the premises reasonably free of garbage and refuse, but for an empty plastic bag under some detritus. I consider that item to be insignificant and its disposal not to justify any award.

Municipal Utility Bill

At the time of the application there was an outstanding utility bill in the amount of \$373.58.

Ms. K.S. testified at the October 29th hearing that it had been paid. At the November 3rd hearing she referred to the payment information, indicating it had been paid on October 2nd. The landlord had not had the opportunity to check.

On this evidence I decline to make any award for the utility bill. However, if the bill has not in fact been paid by the tenant, I grant the landlords leave to re-apply to recover it.

Overholding

The landlord testified that the tenant did not fully vacate the premises until October 1st, a day late.

Not infrequently a tenant will be obliged to pay damages for staying past the lawful end date of a tenancy. Usually damages are measured by a loss of rent or compensation paid to a new tenant having to wait an extra day before moving in. In this case, even if the tenant failed to

return possession of the premises to the landlords until October 1st, there is no indication that the landlords suffered any damage or loss as a result. I therefore dismiss this item of the claim.

Conclusion

The landlords are entitled to a monetary award totalling \$349.13. As they have been partially successful, I award recovery of \$50.00 for a filing fee for a total of \$399.13

I authorize the landlords to retain \$399.13 from the \$550.00 security deposit they hold. The tenant Mr. P.K. will have a monetary order against the landlords for the remainder of the deposit plus \$17.83 in interest; a total of \$168.70

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: November 09, 2015

Residential Tenancy Branch

