



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MND, MNSD

Introduction

This is an application brought by the Landlord(s) requesting a Monetary Order in the amount of \$3010.13 and a request for recovery of the \$50.00 filing fee. Applicants are also requesting an Order to retain the full security deposit/pet deposit towards the claim.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all the applicants' relevant submissions; however I have refused the tenants evidence package as it was not submitted within the proper timeframe required in the rules of procedure. The respondent was given the opportunity to provide proof that she was in hospital and unable to provide the evidence within the required timeframe; however she failed to provide that evidence.

I gave the parties the opportunity to give oral testimony and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established a monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on March 1, 2014 and ended on January 31, 2015.

The parties also agree that there was a security deposit of \$1050.00 paid on February 25, 2014, and a pet deposit of \$1050.00 also paid on February 25, 2014.

The parties do not agree on the following:

Kitchen Sink

The landlord claims that the tenants caused a leak in the kitchen sink and that a pipe was loosened, and as a result the leak had to be repaired at a cost of \$60.00.

The tenants testified that this was an older sink and that at no time did they ever notice any leak, nor did they abuse the sink in any fashion, and therefore if there was a leak, it was not a result of any negligence or abuse on their part.

Carpet Cleaning

The landlords claim that the tenants left the carpet with a bad pet smell and therefore the carpets had to be cleaned in an attempt to get rid of the smell, at a cost of \$442.05.

The tenants testified that there had been a dog living in the rental unit before them and at no time were they ever told that there was a pet smell during their tenancy. The tenants further stated that there also been a skunk on the rental property which would cause the smell in the rental unit. They further stated that they left the carpets in the same condition as they were on the move-in.

Furnace Repair

Landlord's testified that the tenants ran the oil tank dry and as a result they had to call a repair person who said the furnace was damaged as a result of no fuel. They also got a second

person because the tenants did not trust the first repair person, and the second person also confirmed that the damage was a result of no oil. The cost of the repair was \$257.25.

The tenants testified that they always had to wait for any repairs and the landlord always told them to deal with it themselves and therefore they had attempted to adjust the intake for the oil tank on their own however that did not resolve the issue and eventually the landlord did have a look at it; however the person looked at it was biased. They always kept oil in the tank and they never ran it dry. Therefore if there was a problem with the furnace it was not the result of them running the tank dry.

Chimney Flashing

The landlord testified that the tenants had called him about some bricks loose on the chimney in January and therefore they inspected the chimney at that time, and no holes were found in the flashing at that time.

The landlord further testified that later after they had complained to the tenants about the smell in the carpet, they found a leak around the chimney and discovered holes had been put in the flashing, and they believe the holes were put there by that tenants. The cost to repair that damage was \$789.78.

The tenants testified that this is a completely ridiculous claim, and that at no time did they ever go and put any holes in the flashing around the chimney. They had in fact told the landlord about problems with the chimney well back in 2014.

Carpet and Underlay

Landlord testified that at the end of the tenancy the tenants left the carpet with such a bad smell that they were unable to get the smell out and had to replace the carpet and underlay. They believe it was a pet urine smell. They are not sure of the age of the carpet but they believe there around 5 to 6 years old. The cost to replace the carpet was \$557.61 in materials and \$267.75 in labor.

The tenants testified that these carpets were probably 10 to 15 years old and were in very poor condition when they moved in. The carpets were already torn and there were dark dirt spots on the carpet. They clean the carpets thoroughly when they moved out and there was no mention of any pet odor on the move out inspection report, and in fact the landlords altered that report later on.

In response to the tenants claim that the report had been altered, the landlord agreed that she did alter the report, however she claims she only put things on that she had already discussed with the tenants during the move out inspection, (a claim that the tenants deny).

Cleaning and Dog Waste Removal

The landlord testified that the tenants left the rental unit in need of significant cleaning, and there was a significant amount of dog hair left behind, and as a result they had to pay the new tenants a total of \$425.00 for cleaning, and \$210.69 for materials. The landlord's further testified that they have provided photo evidence that shows the amount of hair left under the fridge and stove.

The tenants testified that the rental unit was left completely clean, and the landlord made no mention of any need of further cleaning during the move out inspection. The tenants further admitted that they did not move out the stove and fridge; however they were not on wheels and if that's the only place the landlord could show hair in her photographs it's obvious that the landlords were just trying to find evidence for their claim. If the rental unit was left in such dirty condition why have the landlords not supplied photographs to support that claim.

Analysis

It is my decision that the landlord has not met the burden of proving any of their claims against the tenant.

First of all, I find it disturbing that the landlord admits that she has altered the move out inspection report and included things that were not on the report at the time of the inspection. The landlord claims that she only put things on the report that were discussed with the tenant

during the move out inspection, however I fail to see why those items were not included on the report at that time if they had been discussed with the tenant. I therefore find that the move out inspection report is of little value in support of the landlord's claims.

Secondly, although the landlord claims that the tenants caused damage to the rental unit it is my finding that the landlord has not met the burden of proving that the tenants cause any damage beyond normal wear and tear.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. In this case, for the majority of the landlords claim it is basically just the landlord's word against that of the tenants, and the tenants deny all the landlords claims.

There is no evidence been supplied to show that the tenants damage the kitchen sink or cause the leak, and therefore that is just the landlord's word against the tenants. In fact there is no mention of any leak on the move out inspection report.

As far as the carpet cleaning and carpet replacement is concerned, again I deny this portion of the landlords claim because, as stated above, the landlord admitted to changing the move out inspection report. Further I accept the tenants claim that this carpet was 10 to 15 years old and therefore it would be considered completely depreciated and of no value anyway.

As far as the furnace repair is concerned, I am not convinced that the landlord ever took sufficient steps to ensure that repairs to the furnace were done promptly. The tenant has testified that, in fact, when the landlord was informed of an issue, the tenants were told to deal with it themselves.

It's also my finding that the landlord has not shown that the tenants left the rental unit in need of significant cleaning. I reviewed the photo evidence provided by the landlord and the photo evidence does not show that this rental unit was left in poor condition. As stated by the tenants the only photos that show any significant amount of dirt were under the fridge and the stove, and unless those appliances are supplied with wheels, the tenant is not required to clean under

the fridge and stove at the end of a tenancy. The tenants testified that the fridge and stove were not on wheels.

Since I have deny the landlords full claim it is also my decision that the landlords must bear the cost of the filing fee they paid for dispute resolution.

Conclusion

This application is dismissed in full without leave to reapply, and I have issued an Order for the landlord to return the full security/pet deposits totaling \$2100.00 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: November 02, 2015

Residential Tenancy Branch

