



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for damage and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that on September 10, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlords submitted with the Application were personally served to the female Tenant. The female Tenant stated that she believes these documents were served to her on September 12, 2015. As the Tenant acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

On October 26, 2015 the Landlords submitted five pages of evidence to the Residential Tenancy Branch. The male Landlord stated that all of this evidence, with the exception of the document that begins with "We had an agreement to have the 5th wheel parked...." were personally served to the female Tenant on February 29, 2016. The female Tenant acknowledged receipt of the documents served to her on February 29, 2016, with the exception of the document that begins with "While painting the place, just found out that all the beautiful designer silk curtains....".

On February 12, 2016 the Landlord submitted two documents and four photographs to the Residential Tenancy Branch. The male Landlord stated that all of this evidence, with the exception of the one document that was previously sent to the Tenants via email, was personally served to the female Tenant on February 29, 2016. The female Tenant acknowledged receipt of the evidence that was served to her on February 29, 2016.

The male Landlord stated that the delay in serving the evidence to the Tenants was due, in part, to the fact he broke his arm and because he understood he had to serve the evidence within ten days of the scheduled hearing.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulate that evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

The evidence submitted to the Residential Tenancy Branch on October 26, 2015 and February 12, 2016 and subsequently served to the Tenants on February 29, 2016 was not accepted as evidence for these proceedings as it was not served to the Tenants until nine days prior to the

start of the hearing. I find that this evidence was not served to the Tenants in accordance with rule 3.14 of the Residential Tenancy Branch Rules of Procedure. Given that the evidence was available for service to the Tenants on October 26, 2015/February 12, 2016 I find the delay in serving evidence was unreasonable and that it would be unfair to the Tenants to consider those documents.

The Landlords were provided with the opportunity to testify about any of the documents not accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?

Background and Evidence

The Landlords and the Tenants agree that the tenancy began approximately 2.5 years ago and that a condition inspection report was not completed at the start or the end of the tenancy.

The male Landlord stated that the tenancy ended on July 31, 2015; the male Tenant stated that it ended on August 31, 2015; and the female Tenant stated that it ended on August 01, 2015.

The Landlords are seeking compensation, in the amount of \$205.80, for cleaning the driveway of the rental unit. The Landlord submitted a receipt to show that the Landlord paid this amount to clean the driveway.

In support of the claim for cleaning the driveway the male Landlord stated that:

- the driveway was approximately four years old at the start of the tenancy;
- the driveway had some small oil stains on it at the start of the tenancy;
- the Tenants kept an uninsured vehicle on the driveway for a period of this tenancy; and
- when the vehicle was moved the Landlord noticed a large oil stain that was not present when the vehicle was first parked in that location.

In response to the claim for cleaning the driveway the male Tenant stated that:

- the driveway was stained prior to the start of the tenancy;
- the Tenants kept an uninsured vehicle on the driveway for a period of this tenancy;
- he always kept a piece of cardboard under the vehicle to ensure oil did not leak onto the driveway;
- when he removed the vehicle he did not notice a stain on the driveway that was not present prior to the start of the tenancy;
- he does not believe his vehicle could have leaked oil onto the driveway because of the cardboard he placed under the vehicle; and
- in the absence of a condition inspection report neither he nor the Landlords can be certain that any stains on the driveway were caused by the Tenants.

The male Landlord stated that he was able to obtain written statements from two neighbors in which the neighbors declare that a vehicle was parked in the driveway for an extended period of time.

The Landlords are seeking compensation, in the amount of \$500.00, for replacing the sheer curtains in the rental unit.

In support of the claim for replacing the sheer curtains the male Landlord stated that:

- the curtains were in good condition at the start of the tenancy;
- the curtains were tied in a knot when the rental unit was vacated; and
- in the middle of September of 2015 the curtains were removed at which time they were untied and he noticed they were damaged.

In response to the claim for replacing the sheer curtains the male Tenant stated that:

- he does not know if the curtains were in good condition at the start of the tenancy, because the unit was not inspected;
- he did not notice if his cat had damaged the curtains during the tenancy; and
- he did not notice if the curtains were damaged at the end of the tenancy.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 23 of the *Residential Tenancy Act (Act)* requires a landlord to complete a condition inspection report at the start of the tenancy. The primary purpose of completing this report is to establish the condition of the rental unit at the start of the tenancy which will help to establish if the unit has been damaged during the tenancy. On the basis of the undisputed evidence, I find that the Landlords failed to complete a condition inspection report at the start of this tenancy.

I find that the Landlords have failed to establish that the Tenants stained the driveway during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the male Landlord's evidence that the stain on the driveway was not present prior to the Tenants parking a vehicle in that location or that refutes the male Tenant's testimony that his vehicle could not have caused the oil stains on the driveway because he had cardboard under the vehicle. As the Landlords have failed to establish that the Tenants' vehicle stained the driveway, I must dismiss the Landlords' claim for cleaning the driveway.

In adjudicating this matter I have placed no weight on the observations of the neighbors, as the Landlord did not state that either of them declared that the Tenants' vehicle leaked oil onto the driveway.

On the basis of the testimony of the male Landlord and in the absence of evidence to the contrary, I accept that the sheer curtains were in good condition at the start of the tenancy and

that they were damaged at the end of the tenancy. I must therefore conclude that the curtains were damaged during the tenancy.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to repair/replace the curtains that were damaged during the tenancy.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant whenever compensation for damages is being claimed. I find that the Landlords failed to establish the true cost of repairing/replacing the curtains. In reaching this conclusion, I was strongly influenced by the absence of documentary evidence, such as a receipt or an estimate, that corroborates the Landlords' claim that it will cost \$500.00 to replace the curtains. When receipts/estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts or estimates. As the Landlords have failed to establish the value of the curtains, I dismiss the Landlords' claim for compensation for replacing the curtains.

I find that the Landlords have failed to establish the merit of their Application for Dispute Resolution has merit and I therefore dismiss their claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords claim for compensation has been dismissed.

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: March 09, 2016

Residential Tenancy Branch