



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, SS, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the unit, site or property; for an order permitting the landlords to serve documents (not including the Notice of Hearing package) in a different way than required by the *Act*, and to recover the filing fee from the tenants for the cost of the application.

One of the landlords and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties agree that all evidentiary material has been exchanged, and the parties were given the opportunity to question each other. All testimony and evidentiary material provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the application seeking an order permitting the landlords to serve documents in a different way than required by the *Act*.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2014 and was to expire on April 1, 2016. A copy of the tenancy agreement has not been provided for this hearing, however the landlord testified that it is silent with respect to the tenancy after the fixed term. The landlord obtained an Order of Possession effective June 30, 2016 and the tenants actually moved out on July 4, 2016 which is when the landlord received the keys from the tenants.

Rent in the amount of \$850.00 per month was payable on the 1st day of each month, and at the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$425.00 which was dealt with in a previous hearing and the landlords were ordered to keep it. The landlords received the tenants' forwarding address in writing but the landlord does not recall when, stating that it was between July 4 and August 16, 2016.

The rental unit is a single family dwelling. A move-in condition inspection report was not completed at the beginning of the tenancy, however the landlord had the home listed for sale and obtained permission to use the realtor's photographs in the advertisement to rent the home. The tenancy agreement has a clause which the landlord read during her testimony: "Item 18 – The property will remain in similar condition to that of the condition on the date of first viewing on August 22, 2014 and as pictured in the listing photographs provided by Century 21." The landlord's parents were co-owners, and the agreement is signed by the landlords, the landlord's parents and the tenants. The landlords have provided a CD which contains a lot of photographs, including the ones in the listing which were taken in May or June, 2014. The CD contains "before" and "after" photographs.

With respect to a move-out condition inspection report, the landlord testified that she tried to schedule one with the tenants but the landlords had to re-schedule due to other unforeseen commitments and attempted to re-schedule by text message and email, but the tenants were not available and didn't offer any other dates. The landlord served one of the tenants personally with a Final Opportunity to Schedule a Condition Inspection on August 2, 2016, a copy of which has been provided, which schedules the inspection for August 8, 2016 at 6:00 p.m. The tenants didn't attend.

The landlords have provided a Monetary Order Worksheet setting out the following damage claim:

- \$19.66 grey upstairs paint;
- \$37.99 upstairs bedroom paint;
- \$37.99 living room paint;
- \$203.95 kitchen/master bedroom trim paint and supplies ;
- \$308.04 kitchen cabinets + U.S. exchange;
- \$24.00 landfill;
- \$150.00 estimated by advertisements on Kijiji to replace the dryer;
- \$100.00 professional cleaning;
- \$1,460.00 carpet replacement;
- \$850.00 rent for July, 2016; and
- \$1,305.00 for hardwood repair.

The landlord testified that because the tenants over-held for 4 days and left the rental unit in a condition that did not render it re-rentable the landlords claim \$850.00 for July's rent.

The home had previously been painted in the upper level when the landlords purchased it in 2011, and the lower level was painted in 2013 or 2014. The landlord colour matched what was there for all rooms painted after this tenancy, and receipts for the purchase of paint have been provided.

The landlords did not incur all costs claimed, but sold the house on August 22, 2016 prior to completing the work, such as the kitchen cabinet, dryer, carpeting and hardwood repair. However, the tenants left a lot of junk behind in the back yard and removed some of it after the landlords' photographs were taken. A receipt for landfill charges has been provided, and the landlord testified that the cost was incurred even though the tenants had removed some of the debris.

The tenant testified that the tenants had intended to purchase the rental home and would not have caused any damages.

The landlords had previously resided in the rental unit and left electrical parts, a Telus receiver and wiring, pots and pans and a couple of boxes of household items, and testified that whatever the landlords took to the landfill were assumingly those items. The tenants retrieved all of their belongings.

The tenants also offered dates to the landlords for the move-out condition inspection report. The tenant works night shift and his spouse works day shift and they told the landlords they could only do it on a Friday, and that the tenants would be available any Friday. However, the landlord kept suggesting Mondays or Tuesdays. The Notice of Final Opportunity to Schedule an Inspection Report was for August 8, 2016 which was a Monday and the tenants could not attend.

The house was left clean, and the tenant's mother went through it at the beginning and end of the tenancy and has provided a letter stating that all walls, cabinets and floors were clean, and that the rental unit was left clean at the end of the tenancy.

With respect to July's rent, the Order of Possession was effective at 1:00 p.m. on June 30, 2016 and the landlord told the tenants by text message on June 30, 2016 that as long as they were moved out entirely by the following Sunday, no rent would be charged for July. The tenants needed that weekend to finish cleaning.

The tenant also testified that walls were chipping or looked abused at the beginning of the tenancy, but did not look like they needed painting at the end of the tenancy. The tenants did no damage during the tenancy. The landlords had the rental home up for sale and

likely had to do some sprucing up for sale purposes and are trying to have the tenants pay for it.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any damage or loss suffered.

I explained to the parties that I would not order that the tenants pay the landlord for costs not incurred. It is clear that no loss exists to the landlords and therefore, the landlords' claims for the kitchen cabinet, dryer, carpeting and hardwood repair are dismissed.

The *Residential Tenancy Act* puts the onus on the landlords to ensure that move-in and move-out condition inspection reports are completed at the beginning and end of the tenancy and the regulations go into great detail of how that is to happen. I do not accept that putting a clause in a tenancy agreement that says the photographs of a realtor suffice in place of a move-in condition inspection report, and that is a method not sanctioned by the *Act*. Also, I find that photographs taken by a realtor are designed to show the pristine condition, which may not be so accurate.

Also, a landlord must consider any alternate dates the tenants provide before issuing a Final Notice to Schedule a Condition Inspection. The landlord testified that the tenants didn't offer any alternate dates, just simply would not make themselves available. The tenant testified that the tenants made it very clear to the landlords that they could not attend on a Monday or a Tuesday, and that they would be available any Friday. The landlords never offered any Fridays, and the landlord didn't dispute that in her testimony.

The *Residential Tenancy Act* states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. There is no move-in condition inspection report, and a tenant is required under the *Act* to leave a rental unit reasonably clean and undamaged except for normal wear and tear. The tenant testified that the walls were not in need of repainting, but were chipping and appeared abused at the beginning of the tenancy. The landlords' method of determining the condition of the

walls by a realtor's photographs is not only contrary to the *Act*, but I find are not entirely indicative of the condition of the walls. I am not satisfied that the painting required or completed by the landlords was as a result of anything beyond normal wear and tear or that the landlords have established element 2 in the test for damages. Therefore, I dismiss the landlords' claims for paint, supplies and professional cleaning.

With respect to landfill costs, the parties agree that the tenants recovered some of the items in the landlords' photographs, and the tenant testified that the landlords had left items on the property and in the shed from when they lived there prior. The landlord did not dispute that, and I dismiss the landlords' claim for landfill costs.

The landlord also did not dispute the tenant's testimony that the landlord told the tenants in a text message that as long as they were out of the rental unit by the Sunday after June 30, 2016 the landlord would not charge any further rent. The rental home sold on August 22, 2016 and I am not satisfied that the landlords have established that it could not have been re-rented if the landlords had advertised after receiving the Order of Possession. In the circumstances, I find that the landlords have scraped up every possible claim against the tenants including costs never incurred in hopes of having some compensation. I am not satisfied that the landlords have incurred any costs as a result of the tenants' failure to comply with the *Act*, and the landlords' application is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, the landlords' application for an order permitting the landlords to serve documents in a different way than required by the *Residential Tenancy Act* is withdrawn.

The balance of the landlords' application is hereby 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: February 21, 2017

Residential Tenancy Branch

