



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for damage to the rental unit and to recover the filing fee from the Tenants.

The Tenants, the Landlord, and the Landlord's translator appeared for the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's documentary and photographic evidence served prior to the hearing. The Landlord confirmed receipt of the Tenant's late evidence.

The hearing process was explained and no questions of the proceedings were asked. Both parties were given the opportunity to present evidence, make submissions to me, and cross examine each other on the evidence provided.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for alleged damage caused by the Tenants to the rental unit?

Background and Evidence

The parties agreed that this tenancy began on March 27, 2013 for a fixed term tenancy ending on March 31, 2014 which then continued on a month-to-month basis thereafter. The signed tenancy agreement was provided into evidence and shows the Tenants' monthly rent of \$2,100.00 was payable on the first day of each month.

The parties agreed that the tenancy ended on April 17, 2016. The Landlord confirmed that he had not completed a move-in or move-out Condition Inspection Report ("CIR") of the rental unit.

The Landlord testified that the Tenants failed to remove a temporary shed at the end of the tenancy which they had constructed during the tenancy. As a result, the Landlord had to get a contractor to remove this for a cost of \$300.00.

The Landlord testified that pursuant to clause 8 of the signed tenancy agreement, the Tenants were responsible for lawn care. The Landlord testified that the lawn had not been properly cared for by the Tenants during the tenancy. The Landlord referred to his photographic evidence to show the condition of the lawn left by the Tenants at the end of the tenancy and now claims \$200.00 for lawn restoration performed by the same contractor who deconstructed and removed the shed. The Landlord provided the contractor's invoice paid for these two costs for a total of \$525.00.

The male Tenant testified that the Landlord gave them permission to construct the shed and that at the end of the tenancy they asked the incoming renters if they wanted to keep it; however, the incoming renters informed the Tenants that they would need to speak to the Landlord about this and the Tenants did not get a response. The male Tenant acknowledged that they did not obtain anything in writing from the Landlord that allowed them to leave the shed at the rental unit.

With respect to the lawn maintenance, the male Tenant testified that a racoon had frequented the neighbourhood and had caused the damage shown in the Landlord's photographs and that this damage was not limited to the rental unit but to neighbouring properties as well. The female Tenant later testified that bad weather prevented them from mowing and weeding the lawn at the end of the tenancy.

The Landlord claims \$450.00 as evidenced by an invoice paid to a contractor for cleaning of the rental unit. In support of this claim, the Landlord referred to his extensive photographic evidence showing the lack of cleaning to the bathrooms, kitchen cupboards, appliances, floors, and baseboards.

The male Tenant insisted that they had cleaned the rental unit despite the Landlord's photographs showing that it was dirty. The male Tenant stated that he did not have the Landlord's photographs in front of him during the hearing but submitted that they did not show an extensive amount of cleaning was required. The female Tenant submitted that the Landlord refused several times to do a move-out CIR which would have informed them of any extra cleaning they were required to do.

The Landlord claims an estimated cost of \$1,029.00 for the replacement of two doors in the rental unit. The Landlord provided two close-up photographs showing a small crack in each door and testified that he got a company to look at the damage and they advised that the doors must be replaced. However, no report of this was provided.

The male Tenant testified that they were not aware of this damage and this could have been there at the start of the tenancy. The Landlord rebutted stating that the doors were provided brand new at the start of the tenancy. The male Tenant stated that if the Landlord had completed the CIR, this would have indicated the damage.

The Landlord claims \$1,575.00 for the repairs and repainting of the walls in four bedrooms of the rental unit. The Landlord provided four close-up photographs which he stated were taken in each room showing several screw holes in the walls left by the Tenants. The Landlord confirmed that the Tenants were not given any specific instructions with respect to hanging up of pictures or anything on the walls. The Landlord provided an invoice for this cost but this does not detail the exact work that was undertaken.

The male Tenant stated that they used small nails to hang up pictures on the walls and that this was normal wear and tear. The female Tenant submitted at the end of the hearing, that the Landlord's claim should be dismissed on the basis that he did not complete the CIR and did not give them an opportunity to clean the rental unit.

Analysis

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

In this case, it was undisputed that the Landlord failed to complete a CIR for the rental unit. However, the Act does not state that a failure to do a CIR prohibits a landlord from bringing a claim against a tenant as a landlord may rely on other evidence to prove their claim. Therefore, I continue to make findings on the Landlord's claim as follows.

With respect to the Landlord's claim for the shed, I find that irrespective of whether the Tenants were given permission to construct the shed in this tenancy, the Tenants had an obligation and responsibility to ensure its deconstruction and removal from the rental unit prior to or at the ending of the tenancy. I find that this responsibility did not hinge on requirement for the Landlord to give instructions as to what was to happen to it. If the Tenants were unable to secure any instruction from the Landlord or from the new renters, the Act would have applied and the shed should have been removed by the Tenants.

With respect to the Landlord's claim for lawn maintenance, I accept the Tenants were responsible for this during the tenancy pursuant to the tenancy agreement. I find the Landlord's photographic evidence is convincing and compelling evidence that the Tenants failed in their duty to abide by this term of the agreement. I find the Tenants' explanations pointing to animal damage and weather related issues to be unsubstantiated and not plausible as I find the damage to the lawn indicated on the photographs is not consistent with animal damage. Rather, I find the evidence points to a lack of attention to care for the lawn. Therefore, I grant the Landlord's claim of \$525.00.

With respect to the cleaning of the rental unit, the Act does not require a landlord to give the tenant multiple opportunities to undertake cleaning to the rental unit. Rather, the Act requires the tenant to clean the rental unit to a reasonable standard that does not have to meet the standard of cleaning of another party. I find the Tenants' testimony that they cleaned the rental unit to be inconsistent with the Landlord's photographic evidence which I find clearly demonstrates a complete lack of cleaning of the rental unit. Therefore, the Landlord's portion of this claim for \$472.50, inclusive of the tax payable, is granted.

I deny the Landlord's claim for the replacement of the doors. This is because the Landlord's photographs only show a small tiny thin crack in the corner of the doors which I find hard to believe would require the complete replacement of the door. The Landlord failed to provide any supporting or corroborating evidence, such as a report from a carpenter, to show the doors were required to be replaced. In addition, the Landlord's failure to complete the CIR for this tenancy lends plausibility to the Tenants' submissions that the damage was present at the start of the tenancy which I find is possible because the Landlord provided insufficient evidence to show the doors were brand new at the start of the tenancy. In this respect, the Landlord has failed to meet the burden to prove the Tenants caused this damage.

I also deny the Landlord's claim for the repair and repainting of the holes in the bedroom walls. This is because the Landlord did not provide any instructions to the Tenants that prevented them from hanging up pictures in the rental unit. Therefore, it is reasonable to expect that the Tenants were going to hang up pictures during the tenancy. I find the Landlord's photographic evidence is not sufficient and does not satisfy me that the tiny screws heads that were left by the Tenant went beyond that of normal wear and tear. In addition, I find the Landlord's invoice evidence does not specifically inform of the exact work that was undertaken to repair the alleged damage to justify the \$1,200.00 claimed. I find this amount very excessive when I compare it to the evidence of the

damage alleged by the Landlord. Therefore, I find the Landlord also failed to verify the loss being claimed.

As the Landlord has been successful in a portion of the claim, I grant the Landlord the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$1,097.50 (\$525.00 + \$472.50 + \$100.00)

The Landlord is issued with a Monetary Order for this amount. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make full payment. Copies of the order are attached to the Landlord's copy of this Decision and the Tenants may be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Landlord has proved the Tenants caused some damage to the rental unit claimed. Therefore, the Landlord is issued with a Monetary Order in the amount of \$1,097.50. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 09, 2017

Residential Tenancy Branch