



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

Issue(s) to be Decided

This matter requires a decision on the merits of the landlord's claims as to whether the damage was actually done, whether it is proven that it was caused by the tenants and to what extent reasonable wear and tear is a factor.

Evidence and Analysis

This tenancy began October 1, 2003 when the female tenant moved in and her husband joined the tenancy the following year. Rent was \$880 per month at the end of the tenancy and the landlord holds a security deposit of \$325 paid on October 1, 2003.

The tenants gave notice that they were moving out on November 30, 2008. However, they had substantially completed their move out on November 6, 2008. On November 14, 2008, the adjoining duplex experienced a flood and the parties arranged for those tenants to move in to the subject rental unit. The landlord returned the two weeks rent to the applicant tenants.

The landlord's present claims are seriously complicated by the fact that there are no Condition Inspection Reports for either the move-in or move-out. As to the latter, the tenants claim that, after learning the landlord did not intend to return the security deposit, they attended the rental unit on or about November 15, 2008 and asked to be shown the alleged damages. They stated, and their former neighbour verified, that the landlord refused them admittance to the rental unit. The landlord stated that was not the case. The one item of damage shown to the tenants was to a piece of clapboard siding at ground level.

The landlord claims and I find as follows:

Replacement of linoleum flooring - \$1,544.36. The landlord submitted photos of the linoleum flooring showing considerable cracking and claims the replacement estimate. The tenant stated that the cracks were apparent when she moved in and that they had worsened during the tenancy. She stated that a flooring specialist told her that it was the result of a lower grade material being placed directly on cement and that the only way cracking could be avoided would be putting on a heated floor or wooden sub-floor. The floor has not yet been replaced.

On considering that explanation and on examining the photographs, I find that the damage to the floor appears to be consistent with natural breakdown of the floor rather than surface damage. Therefore, this part of the claim is dismissed.

Patching and repainting - \$4,960 plus \$248 GST. The landlord submitted photographs of a number of patches done by the tenants where pictures had been hung and where doors without stops had struck the wall. The landlord claimed that the patches were not properly done and submits an estimate for that work and repainting. The landlord stated that the unit had been painted one year prior to the tenancy. The tenants stated that on move in, they had hung pictures but mostly in holes left by the previous tenant. The said door stops were missing but they had requested the landlord to replace them but he had not done so. They said they patched the holes and sanded them using the proper materials.

The tenants stated that the rental unit was in need of painting when they moved in and that the previous tenant stated it needed painting badly when the previous tenant moved in. The tenants further pointed out that the estimate submitted by the landlord stated the address for the unit next door, a matter the landlord held was simply an error on the part of the estimator.

In the absence of a Condition Inspection Reports, and in consideration of some element of normal wear and tear during the five year tenancy, I find that the landlord has not proven the actions of the tenant necessitated premature repainting. This portion of the claim is dismissed.

Damage to siding - \$400. The landlord submitted photos of damage to the clapboard siding at ground level. The work has not been done and the estimate is that of the landlord. The tenants noted that the siding goes right to ground level and that it is possible it may have been damaged during lawn mowing or edging. As the work has not been done, and as I cannot be certain this damage was caused by the tenants, this part of the claim is dismissed.

Garbage removal - \$200. The landlord submitted photographs showing some refuse around the yard. The tenants claim that most of the materials shown belong to the adjoining duplex and that they had left one compost pile at the request of the tenants who moved in after them, a claim contested by the landlord. As there remains considerable doubt as to whether the tenants are responsible for the refuse and as it has not been removed, this part of the claim is dismissed.

Conclusion

I find that the landlord has not proven that the damages claimed beyond normal wear and tear were caused by the tenants. Therefore, the application is dismissed without leave to reapply.

The security deposit must now be returned to the tenants.

January 21, 2009.

Dispute Resolution Officer