



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC

Introduction

This is an application for a monetary order for \$1349.82 and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the applicant established a monetary claim in the amount of \$1349.82?

Background and Evidence

The applicant testified that:

- During the tenancy a baby gate and some gardening tools went missing and she believes that the tenants should pay for the replacing those missing items.
- At the beginning of the tenancy the tenants were given a \$100.00 per month rent reduction on the agreement that they would do some work on the property, and they failed to do that work. She therefore believes that that money should now be paid.
- When the tenants vacated there was a hole in the vinyl siding caused by some bricks the tenants had, that fell into the siding.
- She also believes there may be damage to the weeping tile around the house because the tenants had piled heavy pallets of bricks on top of the weeping tile.
- The tenants clogged up the sink with hair and then deducted the cost of drain cleaner from their rent and she believes this money should be paid.
- The tenants neglected to remove a buildup of snow from the roof and as a result the weight of the snow pulled down the gutters, the fascia and the soffits and she believes that the tenants should be held liable for this damage. Had the tenants informed her of the large buildup of snow she would've arranged to have it removed.
- She also had to replace smoke alarm batteries and light bulbs at the end of the tenancy.
- The tenants also left numerous screw and nail holes in the walls and those have to be repaired.
- She also believes that the tenants gave false information to previous hearing as the tenant stated that they painted the walls back to the original color, however the original color was yellow, and they were painted to gray for the tenant when she moved in. The walls are still gray they have not been painted back to yellow. This speaks to the tenant's honesty.

She is therefore requesting a monetary order as follows:

Missing baby gate	\$45.00
Missing gardening tools	\$30.00
Return of rent reduction for work not done	\$800.00

Money deducted for drain cleaner	\$54.88
Repair gutters and downspouts	\$219.21
Smoke alarm batteries and light bulbs	\$49.00
Screw and nail hole repair	\$40.00
Damage to vinyl siding	\$45.00
Possible damage to weeping tile	\$145.00
Repair soffits, fascia, etc.	\$598.30
Filing fee	\$50.00
Total	\$2076.39

The respondents testified that:

- At the beginning of the tenancy there were some items left behind however the landlord told them to throw out anything that was damaged. They therefore threw out the baby gate as it was broken, and they threw out some broken tools.
- There was no move in inspection report done and therefore how can the landlords say that we threw out usable some items.
- We never agreed to a rent reduction in exchange for doing some work at the rental property. We simply told the landlord we did not want to pay \$1200.00 per month but were willing to pay \$1100.00 per month. There is nothing in the tenancy agreement that states that there was a rent reduction, and they never saw the letter supplied by the landlord, and only signed by the landlord, prior to the last hearing.
- They had some plumbing issues at the rental property which the landlord failed to repair and therefore they did buy drain cleaner and deducted it from the rent. Especially since the landlord told them they could only use environmentally friendly drain cleaner which was more expensive.
- As far as the gutters, downspouts, fascia etc. they do not believe there is any liability on their part for this damage. This damage was caused when there was a large buildup of ice that got too heavy and pulled down the gutters. The snow

was not even that deep at the time; they had actually had rain which melted a lot of the snow and then frozen to cause the ice buildup.

- Further at no time did the landlord ever tell them to let her know if the snow on the roof got too high.
- We don't recall there being any light bulbs that were not working when we vacated, however we did neglect to replace the battery in the one smoke detector that was in the rental unit. The battery had died while they were moving out.
- We patched most of the holes in the rental property that we had put in the walls, except for a couple which we inadvertently forgot, however we believe this is normal wear and tear and it is certainly excessive to be charging \$40.00 to repair two small holes.
- Further at the previous hearing when we stated that we had painted the walls back to the original color, I was referring to the original color in which they receive the house, not the color it was painted prior to them moving into the rental unit. She did not fabricate any information.
- We do not dispute the claim for damage to the vinyl siding, as one of the bricks may have fallen against the siding and cause that hole.
- There is no evidence that there is any damage to the lawn or the weeping tile, and besides the landlord had given them permission store the bricks on the property and was well aware that they were stored beside the house. The landlord never asked us to remove the bricks.
- The landlord is also claiming that there is never any seepage into the basement; however when we rented the property the landlord suggested that if we wanted to store anything in the basement we put the items on pallets as there was moisture that seeped into the basement.
- We believe this whole claim has been fabricated by the landlord because she was ordered to return double our security deposit in a previous hearing.

Analysis

It's my finding that the applicant has not met the burden of proving the majority of this claim.

I will not allow the claim for the missing items, because since the landlord did not do the required move in inspection report, it is basically just her word against that of the tenants and that is not sufficient to meet the burden of proving a claim. Burden of proof

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondents that burden of proof is not met.

I will not allow the claim for the alleged rent reduction because again the landlord has not met the burden of proving that there was any agreement that the tenants would do work on the property for a reduction in rent. The letter supplied by the landlord that purports to show this agreement, has only been signed by the landlord, and the tenants deny ever seeing such a letter until the previous hearing.

I also deny the claim for the deduction for drain cleaner. Plumbing problems are considered an emergency repair, and the landlord is required to reimburse the tenant for those repairs. The landlord claims that this was just a hair buildup caused by the tenants, however there is no evidence to support that claim and therefore I allow this deduction.

I also deny the landlords claims for the damage to the gutters, fascia, soffits etc. as there is no evidence to show that this damage was the result of any negligence on the part of the tenants. The landlord argues that the tenant should have informed her of the large buildup of snow, however she also admits that she had never inform the tenants that they should contact her if the snow buildup got too high.

Further viewing the photos, it does appear that this was a buildup of ice, and not snow, which may have resulted from rapid thawing followed by freezing and again I fail to see how the tenants can be held liable for this damage that obviously was caused by weather conditions.

The tenants have admitted that they failed to replace the battery in the smoke alarm, and therefore I will allow a small amount for replacement of that battery, however as no move out inspection report was done there is no evidence to support the landlords claim that there were light bulbs missing or not working.

I will allow \$10.00 for replacement of the smoke alarm battery.

The tenant stated at the hearing that they do not dispute the claim for the damage to the siding, and therefore I will also allow the landlords \$45.00 claim for siding repair.

I will not allow the landlords claim for repairing holes left in the walls, as this is considered normal wear and tear. It's not unreasonable for tenants to hang items on the walls during the tenancy and therefore landlords must expect to have to repair some holes in the walls at the end of the tenancy.

I deny the claim for possible damage to the lawn and weeping tile, as the landlord has provided no evidence to support the claim that damage has occurred.

Further I find the tenant's explanation of why she stated the walls were painted back to the original color as quite plausible and I do not find that the statement reflects negatively on the tenants.

As I have only allowed a very minimal amount of this claim, I will not allow for recovery of the filing fee.

Conclusion

I have allowed \$55.00 of the applicants claim and have issued a monetary order in that amount. The remainder of the claim is 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: October 16, 2013

Residential Tenancy Branch

