



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause, a monetary Order for damage, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Agent for the Landlord stated that on August 12, 2016 or August 13, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via courier. The male Tenant acknowledged receipt of these documents.

On August 15, 2016 the Landlord submitted 7 pages of evidence and 8 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via courier, on August 15, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

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

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for damage to the driveway?

Background and Evidence

The Tenants and the Landlord agree that:

- closer to the road;
- after the Landlord noticed the Tenants' vehicles were damaging the driveway she asked the Tenants to park closer to the road;
- the Tenants' vehicles damaged the asphalt portion of the driveway;
- the male Tenant told the Landlord that he would repair the damage to the driveway;

- after promising to repair the driveway the Tenants continued to park the cube van on the driveway;
- the Tenants arranged to have a portion of the driveway repaired during the latter part of the tenancy;
- when the repair company arrived at the residential complex the Landlord told them not to complete the repairs and she wanted the entire driveway repaired.

The Landlord is seeking compensation for damage to the driveway, in the amount of \$2,546.25. The Landlord submitted an invoice, in the amount of \$2,546.25, for removing the existing asphalt and replacing it with 500 square feet of asphalt.

In support of this claim the Landlord stated that:

- the Tenants periodically parked a dump truck on the driveway and subsequently parked a five-ton truck on the driveway;
- the Tenants also damaged the concrete portion of the driveway when they drove on it with their large vehicles; and
- the company that was going to complete the repairs was only intending the repair a portion of the damaged asphalt, specifically the hole with water in it that can be seen in one of the Landlord's photographs.

In response to this claim the male Tenant stated that:

- he parked a dump truck on the driveway once or twice;
- he subsequently parked a one-ton cube van on the driveway;
- the company that was going to complete the repairs was going to repair all of the damage to the asphalt;
- the Tenants did not damage the concrete portion of the driveway;
- the damage to the concrete portion of the driveway is consistent with wear and tear on an older concrete driveway; and
- the company he hired was going to charge \$250.00 to repair the damaged asphalt.

Analysis

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear. On the basis of the undisputed evidence I find that the Tenants damaged the asphalt driveway during the tenancy by driving on it with heavy vehicles. I therefore find that the Tenants were obligated to repair the damaged asphalt, pursuant to section 37(2)(a) of the *Act*.

On the basis of the undisputed evidence I find that the Tenants made arrangements to have at least part of the damaged asphalt driveway repaired and that the Landlord prevented them from making those repairs.

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the

regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the Landlord did not take reasonable steps to minimize her damage or loss when she prevented the Tenants from repairing the damaged asphalt. I find that the Landlord should have permitted the Tenants to repair the driveway and if, once those repairs were complete, she was not satisfied with the nature or extent of the repair she could have made additional repairs to the asphalt and then sought compensation from the Tenants.

As the Landlord refused to allow the Tenants to make repairs to the asphalt, at what appears to be a significantly lower cost than the company that repaired the asphalt on behalf of the Landlord, I find that the Tenants were no longer obligated to repair the damaged asphalt.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants damaged the concrete portion of the driveway. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's claim that the concrete portion of the driveway was damaged by the Tenants or that refutes the Tenants' submission that they did not damage the concrete portion of the driveway.

In considering the claim for damaging the concrete portion of the driveway I considered the photographs submitted in evidence by the Landlord. The photographs show evidence of cracking near where a young girl is standing. As this area is a significant distance from where the Tenants parked, I cannot conclude that this area was damaged by the Tenants vehicles. I find that cracking in this area lends credibility to the Tenants' submission that the cracking in the concrete is consistent with wear and tear on an older concrete driveway.

As the Landlord has submitted insufficient evidence to establish that the Tenants damaged the concrete portion of the driveway, I find that the Tenants are not obligated to repair the damage to the concrete.

I find that the Landlord has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord's application for a monetary Order is 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: October 05, 2016

Residential Tenancy Branch

