



Dispute Resolution Services

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

Decision

Dispute Codes: MND MNDC MNR FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, damage to the unit, and other money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The landlord has also applied for recovery of the filing fee for the cost of the application.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on October 15, 2006. The tenancy agreement sets out, under the heading "Rent," as follows:

1.) Payment of Rent:

The tenant will pay the rent of \$2000.00 on the 15th day of every second month. First payment is due on 15 October 2006.

The tenant agrees to purchase and install hardwood flooring throughout the upper level of the rental property. The landlord shall first agree to the particular type of hardwood flooring that will be installed. All costs associated with the purchase and installation of the hardwood flooring shall be borne by the tenant. The tenant will not be provided with further payment for labour associated with the installation of the hardwood

flooring.

The tenant agrees to complete the installation of the hardwood flooring throughout the upper level of the property before 31 March 2007.

The evidence of the landlord was as follows. The landlord provided some hardwood floor material at the outset of the tenancy. In October 2007 the landlord and tenant agreed to renew the tenancy for one further year, with monthly rent in the amount of \$1200 and an agreement that the tenant would supply and install hardwood floors in the rest of the house.

In May 2008 the tenant informed the landlord that there was a mould problem in the master bedroom due to seepage from the ensuite bathroom. The tenant agreed to remove bathroom tiles and install new tiles that the landlord would supply. In July 2008 the tenant advised the landlord that an independent contractor had inspected the property and provided an estimate of \$8000 to clean the mould. The landlord felt that the quote was unreasonable, and instead the tenant and landlord agreed that the tenant would move out for a period of one month, from August 15, 2008 to September 15, 2008, during which time the landlord would tend to the mould. During that one-month period, the tenant's belongings were to remain on the property and the tenant would not be charged any rent for the repair period.

On August 16, 2008 the landlord attended at the property and found what he determined to be significant damages to the property. On August 18, 2008 the landlord informed the tenant that he intended to evict the tenant because of the damages. The tenant and landlord agreed that the tenant would repair all damages to the property and remove all of his personal belongings by September 15, 2008. The tenant removed all of his belongings by September 21, 2008 but did not return the keys and garage remote control until October 6, 2008.

The landlord now claims monetary compensation as follows:

1. \$945 for repairs, as follows:

- a. \$200 to remove and install 2 inside doors
 - b. \$25 to install light fixture
 - c. \$10 to repair toilet handle
 - d. \$100 to repair multiple holes in drywall
 - e. \$100 to remove drywall scrap
 - f. \$75 to paint and install hardwood nose to top of stairs
 - g. \$75 to paint and install baseboard to fireplace
 - h. \$40 to paint and install casing to garage door
 - i. \$80 to install temporary laminate in master bedroom
 - j. \$200 to install baseboard in master bedroom
 - k. \$40 to re-key front door and re-code garage door
2. \$2,705 for 676.25 square feet of laminated floor, at \$4 per square foot, where the tenant installed laminate rather than the hardwood flooring agreed upon
 3. \$280 to remove and replace 28 square feet of laminate in the hallway, at \$10 per square foot; \$900 for estimated cost to remove temporary laminate that the landlord installed in the master bedroom and replace with hardwood
 4. \$240 for unpaid rent for September 16, 2008 to September 21, 2008
 5. \$70 to replace the garage remote

The response of the tenant was as follows. In regard to the flooring, the landlord provided some hardwood flooring that was really bad quality, and as it was purchased at an auction it could not be returned. To complete the floors the tenant purchased good quality laminate flooring, which the landlord inspected and approved. The tenant installed baseboards, stairs and other moldings on his own initiative to give the rooms a nicer completed look, but he did not install the last nose at the top of the stairs. The tenant never agreed to paint and install a baseboard to the fireplace. In October 2007 the tenancy continued on a month to month basis. The tenant did not agree to supply the rest of the house with hardwood floors. The landlord increased the rent by 20 percent, which disappointed the tenant, but he felt he couldn't complain because he and the landlord had an agreement.

The tenant accepts responsibility for the following costs: \$200 for removing and

installing two inside doors; \$25 to install light fixture; \$10 to repair toilet handle; \$100 to repair holes in drywall; and \$40 to paint and install garage door casing. The tenant questions his responsibility for removing drywall scrap, at a total of \$100, because the tenant removed four truckloads of garbage from the property at the outset of the tenancy. The tenant disputes the landlord's claim for \$240 for rent because the tenant told the landlord he would need a few more days to remove all of his belongings and the landlord said it wasn't a problem because the landlord's daughter would be moving into the house and the landlord did not intend to re-rent the property. The tenant acknowledges that he did not promptly return the garage remote because he had mistakenly packed it along with his belongings when he moved out. The tenant contacted the landlord on October 6, 2008 and informed the landlord that he had located the garage remote, but the landlord said it was now too late for him to return the new garage remote he had purchased.

Analysis

In regard to all portions of the landlord's claim regarding the flooring, I find that the landlord is not entitled to claim these amounts. Residential Tenancy Policy Guideline #1 sets out as follows:

Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant can not be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. The landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.

In this instance, the tenancy agreement should not have included the terms regarding the installation of hardwood floor, and as that term is void the landlord cannot claim costs against the tenant in regard to the flooring, and I dismiss those portions of the landlord's application.

As there was no agreement between the landlord and the tenant regarding further improvements and the landlord has not claimed that the costs associated with the hardwood nose at the top of the stairs or the fireplace baseboard were related to damage caused by the tenant, find that the landlord cannot claim against the tenant for those amounts and I dismiss those portions of the landlord's application.

Regarding the landlord's claim for \$240 for rent, I accept the tenant's evidence on this point and I find that as the landlord was not planning to re-rent, he may not claim loss of revenue for this time period. Because there was no new tenancy, I find that there was no urgency for the landlord to replace the garage remote, particularly when the tenant informed the landlord that he would promptly locate and return it, and therefore the landlord is not entitled to claim for its replacement. I also find that the landlord is not entitled to the amount claimed for re-keying the front door and recoding the garage door, as he did not specify what portion of those costs applied to the front door and which to recoding the garage door. I therefore dismiss those portions of the landlord's application.

I find that the landlord is entitled to the amounts for which the tenant acknowledges responsibility, specifically: installing two inside doors (\$200), installing a light fixture (\$25), repairing toilet handle (\$10), repairing drywall (\$100), and painting and installing the garage door casing (\$40). I also find that the landlord is entitled to \$100 for removing drywall scrap.

As the landlord's claim was partially successful, I find that he is entitled to partial recovery of the filing fee, in the amount of \$5.

Conclusion

I grant the landlord an order under section 67 for the balance due of \$480. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: December 11, 2008