



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, MND, FF

Introduction

This hearing dealt with cross applications. The tenant is seeking compensation equivalent to two month's rent under section 51(2) of the Act and recovery of the filing fee. The landlord is seeking compensation for damages to the rental unit and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the landlord used the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property* within a reasonable period of time after the tenancy ended.
2. Whether the tenant is entitled to compensation under section 51(2) of the Act.
3. Whether the landlord has sufficiently established that the tenant damaged the rental unit and if so, the quantum of the damage.
4. Award of the filing fee.

Background and Evidence

I heard undisputed testimony from the parties that the tenancy commenced in 2004 and ended April 30, 2008 when the tenant vacated the rental unit. The rent was \$550.00 per month at the end of the tenancy. A move-in inspection and a move-out inspection were not conducted by the landlord and tenant together. Rather, the landlord identified defects or damages known to the landlord at the commencement of the tenancy on the

tenancy agreement and on May 10, 2008 the landlord identified damages on an invoice sent to the tenant to her forwarding address. The parties agreed that the tenant had authorized the landlord to retain her \$250.00 security deposit in satisfaction of cleaning required at the end of the tenancy.

On February 28, 2008, the landlord issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) with an effective date of April 30, 2008. The Notice indicated that the reason the landlord was ending the tenancy was that the rental unit would be occupied by the landlord's spouse or a close family member (father, mother, child) of the landlord or the landlord's spouse. The tenant was compensated one month's rent by way not paying rent for the month of April 2008.

Tenant's application

The tenant testified that leaving the rental unit at the end of April was a hardship for her as she had just recently returned to work following a disability and she had to leave her two children with family so they could finish out the school year and the tenant's belongings had to be put in storage. The tenant heard from family and friends living in the area of the rental unit that the landlord was intending to sell the rental unit and did not occupy the rental unit as stated on the Notice. The tenant is seeking additional compensation equivalent to two months rent under section 51(2) of the Act.

The landlord testified that had the tenant requested an extension of the effective date the landlord would have likely granted the tenant more time. The landlord also explained that the Notice was issued with the intention that the landlord's daughter would occupy the rental unit. The landlord's daughter was supposed to move-in on or about May 30, 2008 but around that time the daughter informed the landlord she would not be moving in to the rental unit. The rental unit has remained vacant and is undergoing extensive renovations.

The landlord testified that the future use of the rental unit is still uncertain. The landlord is considering moving in to the rental unit personally or selling it or renting it. Extensive renovations have been done to the rental unit since the tenant vacated and are expected to be complete in approximately two weeks.

Landlord's application

The landlord is claiming compensation for the cost of carpet replacement and replacement of the bathtub in the amounts of \$2,276.63 and \$617.40 respectively.

These amounts do not include labour costs with respect to installation. The landlord testified that the carpet that was replaced had been installed in December 2002 and that replacement was necessary due to damage near the transition to vinyl flooring and a piece was missing from the stair end. In addition, the landlord testified that the carpet smelled despite the tenant hiring carpet cleaners.

The landlord testified that the bathtub had been purchased in May 2003 and suffered damage at the time of installation which was professionally patched. Sometime during the tenancy the landlord alleges that the tenant, or someone permitted on the property by the tenant, punctured the bathtub with several small holes near the bottom of the tub and that the tub no longer held water. After trying to patch the holes, the landlord decided to replace the bathtub.

The landlord submitted photographs of the carpet and bathtub along with invoices for the carpet purchases and bathtub purchases.

With respect to the carpets, the tenant explained that the vacuum cleaner caught a snag in the carpet and that the tenant showed it to the landlord. The tenant testified that the landlord was supposed to place a transition piece in place of the damaged area to stop further fraying of the carpet but that it was never done. The landlord did not recall this conversation with the tenant. The tenant testified that the piece of carpet missing from

the stair end was poorly glued on and that it came off when she moved something. It is not known where the missing piece went.

With respect to the bathtub, the tenant claims that she has no knowledge of puncture holes in the bathtub and that the bathtub was only used for showers and baths by her and her children. The tenant claimed that she used the bathtub for baths and that the tub held water without leaking. The tenant acknowledged that one mark was made on the tub during her tenancy but that she had pointed it out to the landlord. The tenant first learned that the landlord was alleging damage to the tub by way of an invoice mailed to the tenant by the landlord on May 10, 2008.

Analysis

Although testimony was heard with respect to an excessive rent increase during the tenancy and the lack of condition inspections with the tenant, the issues of the rent increase and the tenant's security deposit were not pursued by the parties in making their applications and are not issues before me to decide with this proceeding. The parties are at liberty to explore remedies available to them with respect to the rent increase and the handling of the tenant's security deposit.

Tenant's application

A landlord may end a tenancy for landlord's use of the property provided the landlord intends, in good faith, to use the property for one of the reasons permitted under section 49 of the Act. The reasons provided under section 49 of the Act are indicated on the 2 Month Notice. A tenant that receives a Notice to end tenancy for a reason provided under section 49 is entitled to compensation as provided under section 51 of the Act. Section 51 of the Act states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

...

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The landlord testified that the tenancy was ended in order for the landlord's daughter to move in to the rental unit. That did not happen. Nor has the landlord or a close family member of the landlord moved in to the rental unit in the eight months that have passed since the tenancy ended. The landlord did not indicate with any certainty that the landlord or a close family member of the landlord will be occupying the rental unit any time soon despite the anticipated completion of renovations in approximately two weeks. Rather, the landlord insists that the landlord is keeping her options open with

respect to the future use of the rental unit. I found the landlord's actions of extensively renovating a dwelling without an intended purpose to be rather unusual.

In order to make an award for compensation under section 51(2) I must be satisfied that the landlord had not taken steps to accomplish the purpose stated on the Notice or used the rental unit for that purpose within a "reasonable period" after the tenancy ended. In considering what constitutes a reasonable period of time, I noted that the landlord had ended the tenancy effective April 30, 2008 with the anticipation that the landlord's daughter would move in on or about May 30, 2008 – approximately one month after the tenancy ended. One can reasonably conclude that the landlord was allowing approximately one month to make the rental unit suitable for their daughter in issuing the Notice, which I find to be an indication of a reasonable period of time for the landlord to prepare the property for use by the landlord or the landlord's close family member. In contrast to the anticipated one month of vacancy, the landlord has had eight months of vacancy with alleged no certain plans for the use of the rental unit once renovations are complete.

In light of the above, I am satisfied that a reasonable period of time has passed since the tenancy ended whereby the landlord has not used the rental unit for the stated purpose for ending the tenancy as indicated on the Notice. Therefore, the tenant has established an entitlement to compensation under section 51(2) of the Act and I award the tenant compensation of \$1,100.00 based on monthly rent of \$550.00.

Landlord's application

Carpet

Despite the lack of an adequate move-in inspection there is no dispute that the fraying of the carpet near the transition to the vinyl flooring occurred during the tenancy; nor, is there a dispute that the piece of carpet came off the stair end during the tenancy. The tenant was of the position that she did not deliberately or intentionally cause the

damage. Upon review of the pictures of the carpet I note that the carpet is of a berber style. Berber carpet is susceptible to becoming unraveled should a snag be caught a vacuum cleaner. However, I must consider how the snag originated. I find it more likely than not that the snag occurred during the tenancy and that causing a snag is more than normal wear and tear. Therefore, I do find the tenant responsible for causing the fraying at the edge of the carpet.

Without sufficient evidence to the contrary, I accept the tenant's testimony that the carpet piece at the stair end was only glued on and it came off through no fault of the tenant. However, had the piece of carpet been retained for the landlord it could have been re-glued. Therefore, with respect to the missing carpet piece I find the tenant partly responsible.

As I heard the tenant kept dogs in the rental unit I find it more likely than not that the carpets took on an odour. Although I heard the carpets were cleaned, I was not provided sufficient evidence to find that the tenant had the carpets deodorized for pet smells.

An award for damages is intended to put the party who suffered the damage in the same position they were in immediately prior to the damage. Normally, damages are measured by repair costs or replacement cost, less depreciation, whichever is less. At the end of the tenancy the carpets were 5 years and 4 months old. According, to the Residential Tenancy Policy Guideline 37, carpets have a normal useful life of 10 years in a rental unit. To award the landlord replacement cost without recognition of the age of the existing carpets would unjustly enrich the landlord with many more useful years at the expense of the tenant. Therefore, I will consider the age of the carpets that were replaced in determining the award for carpet damage.

Also of consideration is that upon review of the carpet invoices I note that in December 2002 the cost of the carpet, regular underlay and installation was \$953.98 compared to a cost of \$2,276.63 in 2008 for different carpet, superior underlay and a trim package not including installation. While I appreciate that prices may have increased since 2002, the huge amount of the increase indicates to me that the landlord replaced the existing carpet with superior carpeting. Therefore, in assessing the damage to the carpet I did not use cost of the replacement carpets and I used the cost of the carpets that were replaced.

In considering the whole of the evidence and testimony of the parties, I hold the tenant responsible for one-half of the damage to the carpets as I find there is a reasonably likely possibility the carpets could have been salvaged, at a cost, but that the landlord wanted to upgrade the carpets for either use by the landlord's daughter or for re-sale or for the landlord's own use. I calculate the tenant's share of the carpet damage and replacement to be:

$$\begin{array}{l} \$ 953.98 \text{ original cost of carpets} \\ \underline{(508.78) \text{ less depreciation of 5 years, 4 months}} \\ \text{X 50\%} \\ \underline{\$ 222.60} = \text{tenant's share of carpet replacement} \end{array}$$

Bathtub

Although the landlord provided photographs of the bathtub I am unable to see any puncture holes. Nor did the landlord produce a witness to affirm the existence of punctures. Also of significance is that the landlord failed to conduct move-in and move-out inspections with the tenant as required by the Act. The onus is upon the landlord to offer the tenant the opportunity to do an inspection with the landlord. One of the benefits of doing an inspection together and preparing an inspection report in proper form is that it establishes the condition of the rental unit at the beginning and at the end

of the tenant. In this case, the tenant claims to have no knowledge of punctures and has not had the opportunity to see them with the landlord before the old bathtub was replaced. The notes made on the tenancy agreement by the landlord and the documents prepared by the landlord after the tenancy ended do not meet the report requirements of the Act.

While most landlords do not replace fixtures that are undamaged, this case is unique in that I have heard that the landlord is extensively renovating the rental unit in many areas and even upgrading some areas, as I found with the evidence pertaining to the carpet. Accordingly, I do not find the evidence of the bathtub replacement in itself to be sufficient evidence that the tenant damaged the existing bathtub.

The landlord's evidence concerning the existence of punctures is largely comprised of her own verbal testimony that the tenant, or someone the tenant permitted on the property, caused the punctures. While verbal testimony is a form of evidence, the tenant also provided verbal testimony that she was not aware of any punctures in the bathtub at the end of her tenancy and did not observe any leaks as alleged by the landlord. Therefore, I am left with opposing verbal testimony in order to determine whether the bathtub was damaged by the tenant.

The onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I found that the landlord's description of the bathtub and the tenant's description of the bathtub to be equally probable. Therefore, the landlord has not met the burden to prove that her version of the events is more likely than the tenants and the claim for compensation for a replacement bathtub fails.

Filing fee

As each party was all or partly successful with her application, each party will absorb the costs of making her application.

Summary

The tenant was successful in her application and is awarded \$1,100.00 under section 51(2) of the Act.

The landlord was partly successful in her application and is awarded \$222.60 for damages to the carpet.

Pursuant to section 72 of the Act, I net the amount owed to the landlord against the amount owed to the tenant and provide a Monetary Order to the tenant in the net amount of \$877.40.

The tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was successful in establishing entitlement to compensation of \$1,100.00 under section 51(2) of the Act. The landlord was partially successful in establishing entitlement to compensation for a portion of the damages to the carpet in the amount of \$222.60. The tenant was provided with a Monetary Order in the net amount of \$877.40.

January 2, 2009

Date of Decision

Dispute Resolution Officer