

## Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **DECISION**

#### **Dispute Codes:**

MND

#### **Introduction**

This hearing was convened in response to an application by the landlord for a monetary order for damages to the rental unit.

Both parties attended the conference call hearing and fully participated in the proceedings with prior submissions and sworn testimonies.

#### **Issue(s) to be Decided**

Is the damage to the rental unit claimed the result of the actions or neglect of the tenant? If so, what amount, above reasonable wear and tear and depreciation, is the tenant responsible to compensate the landlord?

Generally, is the landlord entitled to the monetary amounts claimed for damage to the rental unit during the tenancy?

#### **Background and Evidence**

It is noteworthy that the parties engaged in a prior dispute resolution hearing in respect to the security deposits. Therefore, the relevant information and evidence in respect to only this application are as follows:

- The tenancy began January 01 2008 and ended November 30, 2008
- Soon after the outset of the tenancy in January 2008, the tenant paid a pet damage deposit in the amount of \$500.00 to the Landlords – for which the tenant was then permitted to have a dog in the suite.

- The landlord claims the tenant breached the tenancy agreement by having a larger (heavier) dog than implied by the tenant, and one larger than was agreed to and permitted by the stipulation in the tenancy agreement of, “small pet”.
- After the tenant vacated the suite, the landlord determined that in addition to normal wear and tear, some of the approximately 500 sq. ft. of wood flooring had apparent damage resembling dog scratches on it's surface; and, one of the upstairs walls had been damaged in several places, which appeared to have been the result of tape having been pulled off the wall and exposing some of the drywall underneath the wall's finish.
- The landlord amended the original monetary claim on application to **\$2894. 83** - which is comprised of:

\$2500            - for remediation / refinishing the wood floor

\$394.83        - repair to the wall / drywall and painting

The landlord provided 4 closely taken photographs of the floor taken 10 weeks after the tenancy ; and, 2 photographs of the floor taken from 1 – 3 meters away, one month before the tenancy.

The landlord also provided several quotes for refinishing the wood floor: e-mail quotes of \$2600 and \$2400 and one verbal quote of \$1375 - all based on Information provided by the landlord. Also, several quotes were provided to repair and repaint the purported damage to the wall. The landlord's claim is for his own work which is also the least costly of all the quotes - \$394.83, and which the tenant does not dispute.

- The Tenant testified that neither they, nor their dog, caused damage to the rental unit; but rather, under the circumstances, reasonable wear and tear occurred. The tenant emphasized her evidence that the floor in the suite is not a 'hardwood floor', but one of the softer types of wood floors. The parties agree the wood type is fir; and, the floor was constructed in 2005 using older reclaimed fir. The tenant submits that in light of its soft characteristic, most, if not all marks showing on this type of floor could be considered by the arbitrator as normal wear and tear. The

tenant does not dispute that the floor contains marks, scratches, nicks, and indentations; but thinks they should not be held liable for its remedy. The tenant also testified that the floor was not new when she moved in – that the landlord herself pointed to existing damage to the floor – with which the landlord agrees. The tenant disputed the landlord's monetary claims, generally, as they were obtained by, "quick e-mail quotes", without actual onsite estimates.

## **Analysis**

In this type of application, of a claim by the landlord for damage to property, the *normal* measure of damage is the cost of repairs, or replacement (less depreciation), whichever is less. The onus is on the tenant to show that the claimed costs or expenditures are unreasonable.

Section 32 (3) of the Act states a tenant's and landlord's responsibility as follows – emphasis on tenant's obligations:

### **Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in

state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

**(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.**

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

It must also be emphasized that in order to claim for damage or loss under the Residential Tenancy Act (the *Act*), the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate and minimize the damage or losses incurred.

**I prefer** different aspects of testimony from both parties. On the balance of probabilities and on reflection and preponderance of the evidence, **I find** that the wood flooring has suffered excessive wear above what would be considered normal wear and tear: damage, which is undisputed by both parties to exist. However, I find what has been presented as damage in addition to normal wear and tear did not occur solely due to the

actions or neglect of the tenant. **I find** the tenant is responsible for causing damage in addition to normal wear and tear to the wear and tear which already existed when the tenant moved in. This is noteworthy, because the landlord seeks the tenant be held fully responsible for returning the floor to 'like new'; when the flooring is at least several years old and was not 'new' and without some damage when the tenant moved in. The landlord must also bear some responsibility for approving and allowing the tenant to have a dog (a clawed pet) without due diligence as to whether the dog was a sufficiently "small pet", as required by the tenancy agreement. On this basis **I find** the landlord's claim lacks mitigation.

Therefore, in answer to the question of what amount is the tenant responsible for the floors remediation, **I find** it reasonable for the tenant, and the landlord to share the responsibility: **60%** tenant, and **40%** landlord.

**I accept** the quotes submitted by the landlord. All quotes to the landlord were given sight unseen, and by, purportedly, all equally professional refinishers. Therefore, **I find** the quote of \$1375 for floor refinishing is then equally valid as any of the other quotes, and best mitigates and minimizes the loss.

As per Residential Tenancy Branch Policy *Guidelines*, I base the average expected life span for the wood's finish at 12 years. As the finish is purported to be 4 years old, I deduct 33% from the quote of \$1375, and I grant the landlord 60% of the balance of \$916.57 in the amount of **\$549.94**.

On preponderance of the evidence, **I find** that the damage to the wall, undisputed by both parties, occurred solely because of the actions or neglect of the tenant, and for which the tenant is solely responsible. **I find** the landlord's own work to repair the wall best reasonably mitigates and minimizes the loss claimed. Therefore, I find the landlord is entitled to **\$394.83** for damage to the wall in the suite.

The quantum of the landlord's entitlement is **\$944.77**

**Conclusion**

I grant the landlord a Monetary Order under Section 67 in the amount of **\$944.77**. The order must be served on the tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Dated July 27, 2009