

Dispute Resolution Services

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

Decision

Dispute Codes: OPL, MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Although the landlord initially applied for an order of possession, at the hearing the parties agreed that the tenants vacated the rental unit on May 31, 2009. As an order of possession is not required, I consider that claim to have been withdrawn.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2008 and ended on May 31, 2009. A security deposit of \$1,250.00 was paid at the outset of the tenancy. During the tenancy, the tenants did not deal directly with the landlord, but with the property management company hired by the landlord to manage the property. At the hearing there was some discussion as to whether the property manager was the agent of the landlord or the tenants.

The landlord and his witness testified that at the beginning of the tenancy, there were some superficial scratches on the hardwood floors. The landlord and his witness testified that at the end of the tenancy, the floors were badly scratched, with scratches extending through the finish exposing the wood. The landlord provided evidence that the floor had been installed in 2006 and also provided photographs showing the damage to the floors. The landlord provided a copy of an email from the property manager in which he stated,

Although there were numerous scratches that were present prior to occupancy by this tenant (which damage was noted by us at the commencement of the tenancy), it would appear that there is excessive wear and tear on the living room floor.

The tenants testified that the floors were in poor condition at the beginning of the tenancy and denied having caused additional damage during the tenancy. The tenants testified that at the beginning of the tenancy a condition inspection report was completed which noted that the floors were badly damaged. Neither party entered a copy of the condition inspection report into evidence. The tenants testified that at the end of the tenancy, the property manager did not complete a written condition inspection report, but verbally told the tenants that everything looked OK and accepted the keys from them.

The landlord testified that at the end of the tenancy, the walls of the rental unit were stained with what appeared to be food residue and that the walls required repainting. The landlord testified that the rental unit had been repainted prior to the commencement of the tenancy. The landlord provided a photograph showing small chips to what appear to be baseboards and a second photograph showing a mark on a wall.

The tenants denied having caused damage to the walls of the rental unit and testified that they noticed that at the time they moved in, there was an area in a bedroom in which plaster had been applied to a wall.

Analysis

In order to be successful in his claim, the landlord must prove on the balance of probabilities that the tenants caused damage to the rental unit and that the damage exceeded what may be considered reasonable wear and tear. The evidence clearly shows that the floors sustained damage, but I find that the landlord has not proven on the balance of probabilities that the tenants caused this damage. It is clear to me that the property manager was the agent of the landlord. The manager represented the landlord in all dealings with the tenants during the tenancy and it was his responsibility to fulfill the obligations the Act places upon the landlord. The Act places the burden of conducting condition inspections on the shoulders of the landlord and requires the landlord to produce a written report of those inspections. In this case, the manager

apparently generated a report at the beginning of the tenancy, but failed to do so at the end. It was the landlord's obligation to produce the report to show the condition of the unit at the beginning of the tenancy in order to prove that the condition of the unit at the end of the tenancy was different than it was at the beginning. Based on the evidence before me, I am unable to conclude that the floor was damaged by the tenants and accordingly I dismiss the landlord's claim for compensation for floor repairs.

I find that the landlord has also failed to prove that the walls or paint sustained damage beyond reasonable wear and tear. The landlord provided two photographs which do not show significant damage and again, did not provide a condition inspection report from the end of the tenancy showing that the walls were damaged in any way. I dismiss the landlord's claim.

As the landlord's claim has been denied in its entirety, I hereby order the landlord to return to the tenants the security deposit and interest of \$1,256.25. A formal order has been provided to the tenants and may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's claim is dismissed and the landlord is ordered to return the security deposit and interest to the tenants forthwith.

Dated September 29, 2009.
