Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MND, MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking compensation due to alleged damage caused to the rental unit by the tenant. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issues(s) to be Decided

Has the landlord established a monetary claim due to loss or damage under the *Act*?

Background and Evidence

This tenancy began on November 1, 2008 and ended May 31, 2009. The monthly rent was $2,100.00 and a security deposit of $1,050.00 was paid on October 15, 2008.

The landlord did not complete the move in condition inspection report with the tenant, contrary to the *Act*, but instead gave the tenant the document to complete on her own. Once the tenant completed the report it was returned to the landlord who signed the document agreeing to the condition of the rental unit as notated by the tenant. Unfortunately, because the parties did not conduct the inspection together, they did not agree upon the condition of the flooring at the start of the tenancy. This difference has now become the centerpiece of this dispute.

The parties did complete a move out condition inspection together; however, once again the landlord failed to conduct the inspection as required by the *Act*. The parties had a discussion on May 31, 2009, about the cleanliness of the rental unit but did not complete the written report until June 2, 2009. The landlord submits that on May 31, 2009 she verbally discussed the condition of the living room hardwood floors with the tenant and that the tenant was unavailable to complete the condition report at that time. The tenant submitted that at the end of the tenancy, the condition of the living room flooring remained in the same condition as it was when she originally occupied the rental unit.

The landlord then proceeded to move into the rental unit and her possessions were in the rental unit at the time the written inspection was completed in June 2, 2009. The tenant has speculated that some of the alleged damage to the rental unit may have occurred during the landlord's moving into the rental unit. The landlord strenuously denied this supposition.

Regardless, on June 2, 2009 the landlord expressed her position that the hardwood flooring in the living room was damaged beyond normal wear and tear, with deep scratches and gouges in the flooring. In addition, the landlord also stated that the rental unit required 10 hours of cleaning at the cost of $200.00 and that there were multiple light bulbs which were not replaced for the sum of $27.57. In addition, as part of this application the landlord seeks the sum of $162.00 for alleged outstanding rent, but did not provide any calculation as to why this sum was outstanding. In the hearing the landlord submitted that the parties had an agreement for the rent to be paid on a biweekly basis and there was allegedly a two day short fall in the monthly rent.

During the move out condition inspection the landlord submitted that it was her impression that the tenant agreed to the landlord's perception of the damage to the hardwood flooring and lack of cleaning. As a result, there was a discussion that the parties would investigate the cost of the damage and also an indication that the tenant would investigate whether her tenant insurance would cover any of the damage. In addition, through e-mail correspondence the tenant also offered a sum to settle the dispute. This suggestion was not received or accepted by the landlord. However, the tenant disagrees with this and indicated that she never signed the condition inspection report. The tenant submits that she felt under attack and under pressure and was being threatened with excessive damages by the landlord.

The landlord provided one estimate from a flooring company which states two possible methods to repair the flooring:

1. To have the hardwood flooring, which is engineered, sanded and refinished at the estimated cost of $1,890.00; or
2. To have the hardwood flooring replaced and returned to its original condition at the estimated cost of $4,200.00.

The landlord did not provide any explanation as to why she claimed the sum of $4,450.00 in damages to the flooring versus the sum provided by the professional flooring company. The landlord submitted that the tenant should be responsible for total replacement of the flooring as the landlord purchased the rental unit because the flooring had a bevelled look and this would be lost in the process of refinishing the flooring.

The tenant submitted that the flooring is in the same or similar condition as when she moved into the rental unit. She points out that she wrote in the move in condition inspection report that there were “some light markings” in the flooring in the living room. The tenant states that these light marking were how she perceived the scratches in the flooring which the landlord now alleges has “scratches/scoring/denting”. The tenant states that she believed that the flooring was original hardwood flooring that was quite old and that this was a normal look. The landlord has pointed out that the flooring is engineered and was originally installed around 2005/2006. The tenant stated that she was generous in her assessment of the flooring at the time. The tenant also pointed out that the alleged damage is in the centre of the room but her furniture was placed around the edges of the room. All the photographs supplied by the parties show that there was an area rug in the centre of the room. There is no direct picture of the condition of the flooring at the time this tenancy began.

The tenant also argued that the landlord had pre-filled out the move out inspection and once again they did not go through it together. The tenant disputes the landlord’s perception that the flooring is beyond normal wear and tear. The tenant disputed the other claims by the landlord indicating that the landlord arranged and agreed to the bi-weekly rent and never indicated that there would be any shortfalls. The tenant only conceded to the burnt out light bulbs.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, proof of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 1 of the *Residential Tenancy Policy Guidelines Manual* states in part the obligations of landlords and tenants respecting the care and maintenance of a rental unit as follows:

> *The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the*

Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Section 16 of the manual states in part:

The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

If a claim is made by the landlord for damage to property the normal measure of damage is the cost of repairs, with some allowance for loss of rent or occupation during repair, or replacement (less depreciation), which ever is less. The onus is on the tenant to show that the expenditure is unreasonable.

The landlord breached the *Act* by failing to conduct the move in condition inspection with the tenant and as a result there is no consensus as to the original condition of the flooring at the start of the hearing. I find that the photographs submitted by the parties also do not establish the condition of the floors at the start of the tenancy. I am also satisfied from the photographs provided by the tenant that she took appropriate measures to make her furniture safe from damaging the flooring by using felt pads and carpet strips.

Therefore, I am must determine whether any actual damage occurred to the flooring or whether the alleged damage to the flooring is a difference in perception. In addition, if I find that there was some damage to the flooring, I must determine if it is normal and expected wear and tear or if it goes beyond normal wear and tear. Finally, I must determine whether the landlord has taken reasonable measures to mitigate her loss.

I am satisfied that the flooring was already damaged, or had some wear, before this tenancy began, as depicted in the move in condition inspection report. From the

photographic evidence I am also satisfied that the tenant took reasonable measures to protect the flooring.

By signing the move in condition inspection report completed by the tenant, the landlord agreed that some level of wear existed at the start of the tenancy. The landlord has not provided any evidence to quantify the damage to the flooring. The landlord failed to complete the move in condition inspection report in person with the tenant as required and therefore failed to establish the actual wear that existed before the tenancy began. The landlord also failed to schedule a move out condition inspection as the end of the tenancy and the parties did not conduct the move out inspection until after the landlord had moved into the rental unit. This raises some probable doubt as to whether the flooring was damaged during the landlord moving into the rental unit, although, I have no direct evidence that this was the case.

As a result of the landlord's failure to conduct the inspections as required by the Act, there is insufficient of evidence to establish that any damage was caused to the floor by the tenant. The depiction of the floors in the photographs provided by the landlord can be, as stated by the tenant, the condition of the floors at the time of the tenant moved in. If the landlord had properly completed the move in condition inspection report this dilemma would not exist. I find that the landlord has failed to prove her claim that the tenant damaged the hardwood flooring.

Turning to the other claims made by the landlord I find from the photographic evidence that the rental unit required some additional cleaning; however, I find that 10 hours of additional cleaning was not reasonable. I find that the landlord seeks a standard of cleanliness not expected by the *Act*. I also find that the tenant is not responsible for cleaning off moss from the patio. Therefore, I find that the landlord is entitled to five hours of cleaning for the sum of $100.00. I accept the charge for light bulbs which the tenant did not dispute. I reject the landlord's claim for loss of rent as this was not contemplated or communicated in any way when the parties originally agreed to bi-weekly rent payments and the landlord failed to submit any evidence to support this claim.

Conclusion

I find that the landlord has established a monetary claim for the sum of **$127.57**. I Order that the landlord may retain this sum from the tenant's security deposit plus interest of $1,053.36. The remaining sum of $925.79 of the tenant's security deposit must be returned to the tenant immediately. Based on my determinations I grant the tenant a monetary Order for the sum of **$925.79**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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, 2009.

Dispute Resolution Officer