DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage or loss under the Act, to retain the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 24, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on July 29, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord, the Landlord's wife, and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony was carefully considered.

Preliminary Issues

The Tenant testified that she did not receive copies of the Landlord's evidence.

The Landlord confirmed that he did not send the Tenant copies of his eleven page evidence package and argued that the Tenant would have received copies of some of this evidence in the past.

I find that the Landlord has failed to comply with the *Residential Tenancy Branch Rules of Procedure* which provides that a copy of the applicant's evidence must be served on the respondent and the Residential Tenancy Branch (RTB) a minimum of five days before the hearing. Based on the aforementioned I hereby refuse to consider the

Landlord's documentary evidence in this decision, in accordance with section 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure.* The following decision will be based on the testimony provided by both parties.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts provided at the hearing are the fixed term tenancy began on October 15, 2008 and was set to expire on October 31, 2009. The rent was payable on the first of each month in the amount of $935.00 and the Tenant paid a security deposit of $467.50 on October 11, 2008. The Tenancy ended on May 31, 2009, by mutual agreement between the Landlord and Tenant, rent was paid in full up to May 31, 2009 however the Tenant vacated the rental unit on May 15, 2009. A written move-in inspection report was completed on or before October 15, 2008 and signed by both parties. A move out inspection was conducted on June 6, 2009 however a written report was not signed off by both parties as the Tenant refused to complete the form.

The Landlord testified that the move out inspection was scheduled for June 6, 2009 and not May 15, 2009 because the Landlord was out of town when the Tenant moved out. The Landlord argued that during the move-out inspection walk through he pointed to the floor to show the Tenant damage that had occurred to the hardwood flooring. The Landlord stated that the Tenant admitted to the Landlord that most of the damage was caused by the Tenant's rocking chair and that the remaining damage was caused by normal wear and tear.

The Tenant confirmed that her rocking chair caused some damage to the floor and that the other dents were not visible to her unless she knelt down on the floor. The Tenant argued that she felt all of the damage was considered normal wear and tear, even though the larger marks were knowingly caused by her rocking chair.

The Landlord testified that he provided the Tenant with a written quote to repair the damage and offered the Tenant an opportunity to gather her own quotes. The Landlord argued that the Tenant did not return his e-mails to offer additional quotes and did not respond to the Landlord's written request for the Tenant to attend the rental unit on the day the repairs were being conducted.

The Tenant argued that she did not know in advance of the date the repairs were being completed and the Tenant admitted to not gathering additional quotes for the cost of the repair.

The Landlord is seeking a monetary claim of $525.00 for the floor repair, claiming that a minimum charge of 250 square feet repair is standard in the industry and that he was charged a minimum of $2.00 per square foot. The Landlord argued that two hardwood flooring boards had to be replaced the rest of the floor sanded and refinished to repair the smaller dents. The Landlord testified that the repair person told the Landlord that the smaller dents were caused by people walking on the floors while wearing hard shoes.

The Landlord has also requested $120.00 ($30.00 x 4 hours) for his time to meet the floor contractors and attend the unit on the day the repairs were conducted.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord 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 Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In the presence of undisputed testimony I find that the Tenant was aware that her rocking chair caused damage to the hardwood floor and that by refusing to repair the damage the Tenant is in contravention of section 32(3) of the Act which provides that a Tenant is responsible to repair damage to the rental unit caused by their actions or neglect. In this case the Tenant should have taken measures to protect the hardwood floor from her rocking chair by placing felt pads or a throw carpet under the legs of the chair.

With respect to the remaining damage to the floor, testimony from the Landlord supports that the smaller marks were likely the cause of someone walking on the floor with their shoes on. That being said, there is no provision under the Act that restricts a Tenant or their guests from wearing footwear in a rental unit. I find that damage caused by wearing normal footwear in a rental unit constitutes normal wear and tear which a tenant is not required to repair, as per section 32(4) of the Act.

As per the above, I have found that the Tenant is responsible for the damage caused by her rocking chair. That being said, there is the possibility that the Landlord could have

purchased pre-finished hardwood boards which match the color of the remaining floor, eliminating the need to sand and resurface the remaining floor. This would also eliminate the minimum charge which was charged as a result of refinishing the floor. I note that the invoice referred to in the Landlord's testimony did not break down the costs between board replacement and floor refinishing.

Based on the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, for 80% of the damage and I hereby approve the Landlord's claim in the amount of $420.00 (80% of $525.00).

The Landlord is seeking $120.00 (4 hours @ $20.00 /hr) for his time spent to have the repairs completed. I find that this claim amounts to the cost of performing a landlord's normal course of business and that there is no evidence before me to prove the test for damage or loss as listed above. I hereby dismiss the Landlord's claim of $120.00, without leave to reapply.

As the Landlord has been partially successful with his application I find that he is entitled to recover the $50.00 filing fee from the Tenant.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit and interest, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Repairs to hardwood floor	$420.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	**$470.00**
Less Security Deposit of $467.50 plus interest of $1.57 from October 11, 2008 to November 10, 2009	-469.07
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$0.93**

I will not be issuing a monetary order to the Landlord as the off-set difference is less than one dollar.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim and Order the Landlord to retain the Tenant's security deposit plus interest, in full satisfaction of the Landlord's claim.

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: November 10, 2009.

Dispute Resolution Officer