



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes: MN, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order to retain the security and/or pet deposit pursuant to Section 38; and
3. An Order to recover the filing fee pursuant to Section 72.

I accept that the tenant was properly served with the Application for Dispute Resolution hearing package by way of registered mail.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Background Summary

The landlord named in this application is agent for the owner. The landlord says that this tenancy began on September 1, 2008 and ended on July 31, 2009. The tenant paid a security deposit of \$800.00. A pet deposit also paid has already been returned.

The landlord submits a condition inspection report prepared at move in and signed by the tenant EP on August 29, 2008. Under Part II of the move-in portion of the report

almost all items have a check mark. On the legend above Part II the form notes that a check mark means "satisfactory". In Part III the format changes:

_____ satisfactory or _____

In this section there is a note "wall marks, junk free", on the next page near the bottom of Part III is another notation "minor wear on hardwood flooring throughout", this item has no checkmark beside the word "satisfactory". The landlord says that this indicates that the floors were in good condition except for some minor wear and tear. The landlord says the tenant signed the move-in report accepting it. The landlord says the tenant had a number of members of his family with him when he signed the report.

The landlord says at the end of this tenancy however there was one section of the flooring that was gouged so deeply a credit card could be inserted in the gouge. The landlord says as these type of floating bevel edged hardwood flooring cannot be sanded it was necessary to replace all of the flooring. To support this statement the landlord submitted an email from The Floor Store stating in part:

Floating Floors do not accept sand and refinishing they usually fail, joints and possible delamination.

And

The damage I saw at the home was not small scratched but abuse gouges possibly from dragging furniture or some sort of moving furniture.

(reproduced as written)

The landlord submitted an estimate from The Floor Store estimating the cost of replacing the flooring to be \$9,612.96 including taxes. The landlord says they are only claiming \$2,500.00 because he feels that this is an appropriate portion which the tenant should pay. In partial satisfaction of this claim the landlord also seeks to retain the \$800.00 security deposit and accumulated interest.

The landlord produced the owner of the property as witness. The owner says the flooring was about 6 years of age and it is cherry hardwood, not laminate. The owner also states that the gouge which is the subject of this application was not there when these tenants moved into the rental unit.

The landlord also produced two other witnesses, property managers both working with the landlord who both say they had also inspected the rental unit prior to this tenancy and floors had only minor scratches when these tenants moved into the rental unit.

The tenants say the gouges were there when they moved into the rental unit. The tenants say they pointed out the gouges to the landlord at the move-in inspection and asked if they would be fixed and the landlord advised that it would not be fixed.

One witness, the son-in-law of the male tenant, testified that he was in attendance at the move-in inspection and took photographs of the condition of the rental unit. The witness says there were holes in the walls and other damage, including the gouged floors. The witness says he questioned the landlord's agent Steve about the condition of the rental unit and was told he couldn't expect the same standard with a rental unit as with a unit intended for purchase.

The photographs taken by the witness were submitted in evidence. One of the photographs shows floor scratches/gouges. The tenant's witness testified that after he took the photographs and uploaded them to his computer he offered Steve a copy of the photos but Steve advised he did not want or need copies.

The witness says he took these photographs on August 29, 2008 and uploaded the photographs to his laptop where they stayed until he received word from the tenant BW that they were required. The witness says he was in Holland at the time so he emailed the photographs to the tenant so she could provide them to the landlord to prove the damage was already there when the tenant moved in.

In evidence the tenant also submits a screen print of the data page which the tenant says shows that the photographs were all taken on August 29, 2009 between 8:33 and 8:42 a.m.

The tenant BW says she realizes now that her elderly father should not have signed the condition inspection report at move in. The tenant says she and her brother-in-law were in attendance at the inspection but were caught up inspecting the rental unit and taking photographs. BW testified that she did not take part when her father signed the report. The tenants say their father trusted Steve. The tenants say they did not worry too much about the floors because they knew they had the photographs as proof of the condition of the floors at move in. They believed that these photographs would suffice to prove the condition of the rental unit at move in.

Findings

A landlord is responsible for documenting the condition of the rental unit at move-in and move-out. The condition inspection report prepared by the landlord is in a form chosen by the landlord and is not in the same format as the one provided by the Residential Tenancy Branch. On this form of report, in addition to providing room for comments with respect to each item inspected, the landlord also has the option of checking, or not, the word "satisfactory". For instance, where the landlord writes the words "...fridge, cooktop, oven, dishwasher, microwave, washer, dryer" he has also checked the word "satisfactory". However, when he notes "...wall knicks/scuffs throughout. Dry wall screws etc." (*reproduced as written*) he does not check the word "satisfactory". Likewise, beside his notation "minor wear on hardwood flooring throughout" the word "satisfactory" is not checked. From this I conclude that at move-in the fridge, cooktop, oven, dishwasher, microwave, washer and dryer were satisfactory but the walls and hardwood floors were not. While there is some documentation in the move-in portion of the report, the move-out report is a different story. At move-out no items are checked, there are no notations nor is there any mention of the gouges in the hardwood floor that

are the subject of this claim. The only portion of the report that refers to floor damage is under the Security Deposit Statement portion of the report. Still, this notation does not detail the damage and only notes "...the floor damage to be determined..." Overall, I find the condition inspection report to be insufficiently descriptive, confusing, contradictory, and overall, of little use in determining the condition at move-in or move-out.

What I do find useful is the photographic evidence supplied by the tenants. While the landlords say that these photographs may be doctored or not taken at move in I find they have supplied insufficient evidence to support this speculation. On the other hand, I find the tenants testimony regarding photographs to be reasonable and probable. I therefore accept the photographs and I accept the tenant's version of events. That is that these photographs were taken at move-in to provide the tenants with proof of the damage already in existence. I find that this conclusion is also supported by the testimony of the tenant BW that neither she nor her father paid appropriate attention to the condition inspection report because they knew the damage was documented in photographs.

The onus or burden of proof is on the party making the claim. When one party provides testimony/evidence of the events in one way, and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has failed in his burden of proving this claim and his application is therefore dismissed.

I order the landlord to return the tenant's security deposit and interest to the date of this decision in the sum of \$804.00. The tenant is provided with a formal Order for the total monetary award made here. Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.