



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

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

Issue to be Decided

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The parties agreed that the tenancy began on July 27, 2008 and ended on September 2, 2010. They further agreed that the rental unit was new at the beginning of the tenancy and that the tenants paid \$1,790.00 per month in rent.

The landlord testified that in May 2010 she discovered that the engineered hardwood flooring in the rental unit were damaged. The landlord provided photographs showing raised areas in the kitchen and living room as well as dents in the floor throughout the unit which had apparently been caused by stiletto heels. The landlord provided opinion letters from 2 flooring professionals in which they state that the raised and warped areas of the flooring appear to have been damaged by standing water. The landlord provided an estimate for replacing the flooring with the same product at a cost of \$6,365.19. The landlord decided that because just two years before when she purchased the unit she had paid almost \$7,000.00 to upgrade the flooring from carpets to hardwood, she did not want to expend such a large amount of money again and chose instead to install laminate at a cost of \$3,384.39.

The tenant acknowledged that the damage to the flooring occurred during the tenancy but argued that the landlord should have known that hardwood was more susceptible to damage, particularly in the kitchen. The tenant stated that it was too risky for his guests to walk about the rental unit in stocking feet and therefore he did not ask his guests to remove their shoes. The tenant testified that the water damage in the kitchen occurred when water and foam came out of the dishwasher when it malfunctioned. The tenant asserted that he immediately cleaned the spill and that the dishwasher did not malfunction again after that one occasion.

The landlord testified that at no time did the tenant advise her that the dishwasher had malfunctioned and theorized that if foam had come from the dishwasher, it must have been the result of having used too much detergent or an agent not designed for use in dishwashers.

The landlord seeks to recover the \$3,384.39 cost of the laminate flooring as well as \$2,980.80 as the amount by which she claims the value of the rental unit was reduced because it no longer had hardwood floors.

The parties agreed that the landlord was entitled to \$150.00 for cleaning costs, \$184.80 in labour costs for repainting and \$78.09 for painting supplies.

The landlord testified that although the tenants were supposed to vacate the rental unit on August 31, they did not move out until September 2. The landlord collected 2 days of pro-rated rent for the 2 days in which they occupied the rental unit in September. The landlord maintained that she was unable to advertise the rental unit prior to vacancy because she had to replace the flooring and could not show the unit in the condition in which the tenants had left it. Tradespersons had originally been booked to begin replacing the flooring at the beginning of September, but when the tenants failed to vacate the unit on August 31 the flooring replacement had to be rescheduled to a later date.

The landlord testified that because of the damage to the flooring, she was unable to advertise the rental unit until it had been replaced and the additional cleaning performed. She argued that because of the laminate flooring, prospective tenants were not as attracted to the property and therefore she was unable to re-rent the unit until November 1. The landlord

further testified that generally the pool of prospective tenants is much higher in summer months than in the fall, which compounded the difficulty in re-renting.

The landlord seeks to recover \$1,790.00 in lost income for each of the months of September and October as well as \$33.50 in hydro costs which she had to pay while the unit was unoccupied.

Analysis

Tenants who occupy a rental unit are not expected to leave the unit in the condition in which they found it, but rather are to return it to the landlord with no damage other than that caused by reasonable wear and tear. The tenants were well aware that the unit had hardwood flooring when they began the tenancy and the tenant in attendance at the hearing professed special knowledge regarding such flooring as a result of his professional training. I find that the tenants should reasonably have known that hardwood floors are susceptible to damage from water as well as from hard soled shoes such as stilettos. I do not accept the tenants' suggestion that the landlord should have to bear the cost of repairs because hardwood flooring was a foolish choice for the kitchen. The tenants had the option of choosing to reside in a home which had a type of flooring which would require less care and was not as dangerous to their guests as suggested in the hearing. Because they chose to rent a unit with hardwood flooring, they assumed an obligation to care for that flooring, which care should have included ensuring that water was not permitted to stand on the flooring and preventing the use of hard soled shoes throughout the unit.

I find that the damage to the flooring in the kitchen was caused by water. I do not accept that the dishwasher malfunctioned. There is no reason why it would malfunction only once unless it had been misused in some fashion and there is no explanation as to why this malfunction was not reported immediately to the landlord. I find it more likely than not that the tenants used a type of detergent in the dishwasher which was not intended for that use and that as a result, excessive foam developed and escaped onto the kitchen floor. I find that the landlord cannot be held responsible for such an occurrence as there is no evidence to support a finding that the dishwasher did not work properly. I find that the tenants are responsible for

the water damage to the kitchen. I further find that the tenants are responsible for the dents throughout the unit which appear to have been caused by stiletto heels. I accept that the tenants did not intend for the water damage or shoe damage to occur. However, they remain liable for damage regardless of whether it was intentionally caused. I find that the damage goes well beyond what can be characterized as reasonable wear and tear.

Residential Tenancy Policy Guideline #37 contains a depreciation table identifying the useful life of flooring. The useful life of hardwood flooring is identified as 20 years. I find that the tenants deprived the landlord of 18 years of the useful life of the flooring and therefore should be held responsible for 90% of the cost to replace the flooring. I award the landlord \$3,045.95.

During the hearing the landlord emphasized that in her professional experience as a realtor, she is well aware that homes with laminate flooring are not considered as valuable or desirable as homes with hardwood flooring. I find that her conscious decision to install laminate flooring rather than hardwood flooring when she knew that it would reduce the value of the rental unit should not be visited on the tenants and accordingly I dismiss the claim for the depreciation of the market value of the unit. The landlord also suggested that this claim included damage to a stove top, but provided no figures showing how that damage significantly reduced the value of the unit and I therefore consider it to be minimal in the absence of evidence to show otherwise.

I award the landlord \$412.89 which represents the cleaning costs, painting labour and supplies to which the tenants agreed.

Although the landlord argued that she could not show the rental unit prior to having replaced the flooring, I disagree. I see no reason why the landlord could not have advised prospective tenants that the flooring would be replaced at the beginning of September and offer the unit for rent in mid-September. I find that the landlord failed to minimize her losses in a reasonable fashion and I find her claim must be limited to the time for lost income and hydro must be limited to the time in which repairs were actually being performed. I was not provided with the date on which the repairs were completed and as it seems from the invoices that

repairs were completed approximately mid-month in September, I find that the landlord is entitled to recover lost income and the cost of hydro from the period from September 1-15. The claim for the remainder of September and for the month of October is dismissed. The landlord has already collected rent for \$119.33 for September 1-2. I therefore award her \$775.67 for loss of income from September 3-15 and \$8.38 as 25% of the hydro bill which covered the period from September 3 – October 31.

As the landlord has enjoyed some success I find she should recover the \$50.00 filing fee paid to bring this application and I award her \$50.00.

Conclusion

The landlord has been successful the following claims:

Flooring replacement	\$3,045.95
Cleaning costs, painting labour and supplies	\$ 412.89
Loss of income	\$ 775.67
Hydro	\$ 8.38
Filing fee	\$ 50.00
Total:	\$4,292.89

I order the landlord to retain the \$895.00 security deposit and the \$5.80 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant her a monetary order under section 67 for the balance of \$3,392.09. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: January 05, 2011

Residential Tenancy Branch