

DECISION

Dispute Codes MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlords seeking a monetary claim due to damage caused to the rental unit by the tenants and a request to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Did the tenants cause damage to the rental beyond normal wear and tear entitling the landlords to monetary relief?

Are the landlords entitled to retain the tenants' security deposit in accordance with section 38 of the *Act*?

Background and Evidence

This tenancy began on September 1, 2008 for the monthly rent of \$4,300.00 for a one year fixed term. At the end of the initial tenancy, the parties entered into a second one year tenancy beginning September 1, 2009 for the monthly rent of \$3,900.00. The tenants paid pet and security deposits in the amount of \$4,300.00. The security deposit was paid on August 15, 2008 and the pet deposit was paid in May 2009. The tenancy ended effective August 30, 2010. A move in condition inspection report was completed on August 31, 2008 and a move out condition inspection report was completed on August 30, 2010.

The landlords are seeking compensation to repair the hardwood floors in the rental unit which they submit also requires that the base boards and doorway mouldings must all be removed and requiring that the walls all be repainted. In addition the walls also

suffered some dings .The landlords have submitted estimates to complete this work in the amount of \$9,780.12.

The landlords also allege that the tenants damaged the hardwood flooring in one of the bed rooms by spilling green paint on the floor. The landlord submits that to repair the damage the entire floor needs to be refinished at the estimated cost of \$2,347.23.

The landlords submitted that there is damage to the handrail and in order to repair the damage the wood will require sanding and then touch up painting. The landlords estimate the cost at \$784.00.

The landlords seek replacement of a plastic wall vent which has been damaged in the amount of \$78.40.

The landlords stated that one of the bedroom doors has been damaged, as there is a crack running through the door. The landlords submitted that the door needs to be replaced and painted for the estimated cost of \$672.00. In addition, a blind in one of the bedrooms no longer opens and the landlord submits that the cost to repair is estimated at \$50.00.

The landlords seeks that the outside deck be repaired due to apparent dog bites in the amount of \$134.40 and that two holes in the stucco be repaired in the amount of \$784.00. The landlords seek to recover the cost of carpet cleaning related to a stain on the carpet in the basement recreation room. Finally the landlords seek the sum of \$268.80 for cleaning the house as the oven, basement fridge and other areas were not properly cleaned. In total the landlord seeks damages in the amount of **\$15,143.48**.

The landlords acknowledged that the move out condition inspection report does not reflect any of the damages claimed in this application. The landlord stated that they did not notice the extent of the damage to the rental unit during the inspection on August 30, 2010 because it was held at 5:30 p.m. and the light was not as good as it was the next day. The landlord contacted the tenants and requested that they view the newly discovered damages in the rental unit. The parties exchanged some e-mails where the tenants have submitted that the damages claimed by the landlord represent normal wear and tear.

While the condition inspection report is given evidentiary weight pursuant to section 23 of the regulations, the landlords argued that they have a preponderance of evidence to demonstrate that the rental unit was significantly damaged and they did not detect the

damage until after the move out inspection occurred. The landlords argued that the lighting at the time of the inspection was not sufficient to see the scratches to the hardwood floors. The landlords also indicated to the tenants that they would be inspecting the rental unit more thoroughly after the tenancy ended. The landlords appear to believe that section 38 provides them the right to assess damages in the 15 day time frame provided to return the security deposit.

The tenant disputes the landlords' application and submits that there is no damage to the rental unit beyond normal wear and tear. The tenants argued that no damage or problems were identified during the move out condition inspection, that during the tenancy the landlords inspected the rental unit regularly without raising any concerns about damage to the rental unit and pointed to an e-mail from the landlords dated July 4, 2010 which described the rental unit as looking great during showings of the rental unit to prospective new renters.

Despite no issues being raised during the move out inspection, in the tenants have agreed to cover the costs of the broken blind, the carpet cleaning and having the house cleaned, in the amount of \$534.24, which the landlords raised with them after the tenancy ended.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 32 of the *Act* provides that a tenant must repair damage to the rental unit or common areas that is caused by actions of the tenant but a tenant **is not required to make repairs for reasonable wear and tear.**

Section 21 of the *Residential Tenancy Regulations* states that a condition inspection report completed is evidence of the state of repair and condition of the rental unit on the date of the inspection unless a party has a preponderance of evidence to the contrary.

Although I accept that the landlords were dissatisfied with the condition of the rental unit on September 1, 2010, on August 31, 2010 when the move out condition inspection was completed, there was no damage noted in the report and **both** the landlords and the tenants signed the document. The move out condition represents an agreement by both parties of the condition of the unit at the time of the inspection. Section 21 of the *Regulations* provides that evidentiary weight is given to the condition inspection report because it represents the condition of the rental unit at that time in the presence of both

the landlord and the tenant. Section 38 of the *Act* does not provide the landlords the right to continue assessing the rental unit for damage in the absence of the tenants. The opportunity to assess damage is when both parties are inspecting the unit at the end of the tenancy.

The landlords have submitted that they have provided a preponderance of evidence to demonstrate that the move out condition inspection report is not accurate reflection of the condition of the rental unit but I do not agree with this argument. The parties conducted the inspection and signed the report agreeing that there was no damage to the unit and finalizing the end of the tenancy. I do not accept the landlords' argument that the time of day had any appreciable impact on their completing an accurate inspection.

In addition, based on the photographic evidence provided by both parties, I am persuaded that the rental unit was in excellent condition given its character and age. I accept that there was some minor wear and tear. I find that landlords claim that the tenants caused extensive damage to the rental unit without merit and not supported by the move out condition inspection report or the photographic evidence.

Therefore, pursuant to Regulation 21, I place evidentiary weight on the move out condition inspection report and deny the landlords' monetary claim for damage except for the items agreed to by the tenants. Therefore, I find that the landlords have the consent of the tenants to deduct \$534.24 from their security deposit plus interest of \$4,312.25.

I grant the tenants a monetary Order for the remaining sum owed to them in the amount of **\$3,778.01**.

I dismiss the landlords' application without leave to re-apply. I have issued a monetary Order to the tenants for the return of their security and pet deposits plus interest less the amount they agreed the landlords were entitled to for cleaning the rental unit and repairing a broken blind.

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: February 16, 2011.

Residential Tenancy Branch