



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property and to recover the filing fee from the tenants for the cost of this application.

The landlord and both tenants attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Background and Evidence

This month-to-month tenancy began on March 1, 2010 and ended on August 21, 2010. The tenants did not give sufficient notice to the landlord to vacate the unit in August, however the tenants paid rent in full for the month of September, 2010. A move-in condition inspection report was completed by the landlord without the tenant present, and a move-out condition inspection report was prepared with the tenant present.

Rent in the amount of \$575.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The tenants paid a security deposit to the owners in the amount of \$250.00 in 2006 and an additional \$37.50 on March 1, 2010.

The landlord testified that the tenant tried to clean the rental unit prior to the end of September, 2010, however a burn mark appeared in the living room carpet. The tenant tried to repair it, but could not. The landlord replaced it with laminate in the living room, hall and closets, stating that replacing only the living room carpet would look out of place in the design of the rental unit. He also stated that there was heavy traffic in the

hall, and the carpets were about 4 ½ years old at the beginning of the tenancy. He stated the tenant did clean the carpets, but there was no heat in the unit and he used excess water and the carpets did not dry, causing them to ripple. The landlord is claiming \$400.77 for the laminate as well as \$200.00 for installing trim and transition pieces. The landlord also provided a quote for re-carpeting all the rooms. He stated that the living room was 84 square feet and the carpet costs \$10.99 per square foot, totalling \$923.16 plus installation.

The landlord further testified that the unit had become infested with fleas. On October 27, 2010 the landlord hired a pest control company and paid \$330.40 for that service. He stated that the tenant tried a few remedies that didn't work.

He further testified that when he returned from vacation at the end of August, 2010 the tenant had already moved, without any prior notice to the landlord. The landlord claims:

- \$130.00 for removal of the carpet and trip to the local landfill
- \$125.00 for professional cleaning services
- \$400.77 for new laminate
- \$200.00 for trim
- \$575.00 for rent for the month of October, 2010
- \$330.00 for pest control

The landlord also testified that he had sent to the Residential Tenancy Branch photographs, but did not provide copies to the tenant. I have not received those photographs, and I find that since the tenant was not provided with a copy, those photographs cannot be considered in this Decision in any event.

The male tenant testified that he lived in another unit to begin with, but it sold. He did not know who to pay the rent to, so he contacted the realtor. The new owners also owned another place, and the one the tenant was renting needed alot of repairs, so he moved into the new unit and the security deposit was transferred, and the tenant paid the additional \$37.50 on March 1, 2010 toward the increased security deposit.

He stated that he believes he should pay for the living room carpet only. He had the heat turned off in April, and agrees that contributed to the carpets not drying after they had been cleaned.

The female tenant testified that about a week after moving into the unit, the landlord met her at her sister's house with the move-in condition inspection report already completed, and he wanted her to sign it, and she did.

She also testified that after they had moved out, someone had been in the unit and left the door open. She stated that her mother lives near and called her to tell her that the door had been open for 4 days. The tenants went and close the door and informed the landlord's agent. The tenants also testified that they never had any problem with fleas.

The tenants turned off the heat in April. On September 14, 2010 they were given a letter from the landlord, a copy of which was provided in advance of the hearing, which states that the unit is unliveable and un-rentable and that because the tenants had paid rent till the end of September, they would be permitted to go in and clean, remove the carpet and underlay. They rented a steam cleaner and cleaned the carpets, and no fleas were noticed. They gave the keys back to the landlord on September 9, 2010 and then received them back again on September 15, 2010 when they returned to clean.

The tenants also testified that the carpets were wavy or rippled when they moved in, and a wax stain was also present on a wall.

The tenants also stated that things were added to the move-out inspection report after it was signed by the tenants. The tenant completed it with the landlord present, but the landlord didn't give the tenant a copy. The tenants first received a copy of the report with the evidence package provided by the landlord prior to this hearing.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

- that the damage or loss exists;
- that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established,

the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The *Residential Tenancy Act* states that the landlord's right to claim against a security deposit or pet damage deposit for damage to a unit is extinguished if the landlord fails to complete a move-in condition inspection report and a move-out condition inspection report and give the tenants a copy of those reports. The regulations go into great detail about those reports, including that the landlord must give the tenants a copy of the move-in condition inspection report with 7 days after the inspection is completed and within 15 days after the date the landlord receives the tenant's forwarding address in writing, or the date the move-out condition inspection is completed. In this case, the landlord completed the move-in condition inspection report without the tenant present. The landlord did not dispute that evidence. Then the landlord failed to provide the tenant with a copy within the 7 days provided for in the regulations. The landlord then failed to give the tenant a copy of the move-out condition inspection report in accordance with the regulations, and the landlord did not dispute the tenants' evidence that items had been added to the report after the tenant had signed it. Therefore, I cannot be satisfied that the unit was in any better condition when the tenants moved in than when they moved out. I find that the landlord has failed to establish the damages claimed, with the exception of the living room floor which the tenant conceded to. The Act also states that the landlord's right to claim against the security deposit for damages to the unit is extinguished if the landlord fails to comply with the Act with respect to the condition inspection reports, and I note that the landlord has not applied to retain the security deposit.

The receipt provided by the landlord is for 200 square feet, and I find that the laminate for the living room, in the landlord's evidence is 84 square feet, and that the costs for that room sum up to \$183.25.

With respect to the landlord's claim for unpaid rent, the landlord testified that when he returned from vacation at the end of August, 2010 the tenant had already moved, without any prior notice to the landlord, but I also have the evidence that the tenant paid rent for the month of September, 2010. I heard no evidence from either party of whether or not the tenants provided written notice to vacate, however, the tenants had already moved out in August, and were therefore obligated to pay for another month, which they did. Therefore, I find that the landlord has failed to establish that the tenant is required to pay an additional month of rent.

Since the landlord has been partially successful with his claim, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application. Since I have not heard any evidence about whether or not the landlord still holds the security deposit in trust, I decline to order that the monetary order in favour of the landlord be off-set from the security deposit, and leave it to the parties to determine.

Conclusion

For the reasons set out above, I grant a monetary order in favour of the landlord in the amount of \$233.25 pursuant to Section 67 of the *Residential Tenancy Act*.

I further order that the landlord comply with Section 38 of the *Residential Tenancy Act* as it relates to any security deposit held in trust on behalf of the tenants.

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 23, 2011.

Residential Tenancy Branch