



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened in response to joint applications filed by both the landlord and the tenant.

The landlord seeks:

1. A monetary Order for damages;
2. An Order allowing the landlord to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

Total monetary award sought by the landlord is: \$3,000.00 plus the filing fee.

The tenant seeks:

1. An Order to recover the filing fee; and
2. Recovery of the filing fee paid for this application.

Total monetary award sought by the landlord is: \$1,125.00 plus the filing fee

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

The facts are that this tenancy began on May 1, 2009 and ended on May 1, 2011. The tenant paid a security deposit in April 2009 of \$1,125.00. The tenant testified that he provided his forwarding address to the landlord on May 1, 2011.

The landlord made application on May 13, 2011 seeking the costs of repairs with respect to damages that the landlord says the tenant caused. The landlord has supplied two estimates for the repairs to cabinets of \$1,038.56 and repair to floors of

\$970.00. The landlord testified that there are other damages which have not yet been estimated. The landlord testified that some of the repairs are very expensive but the landlord claims \$3,000.00 in total for the repairs required.

The landlord submitted a Condition Inspection Report prepared at move-in. The landlord testified that there is no notation on the report of any damage to the kitchen cabinets or laminate floors. However, at move out there were damages such as damage to the floors, the cabinet doors and other damage as noted on the report submitted in evidence. The landlord speculates that the tenants left the glass sliding doors open and rain soaked the floors. Further, the landlord says that it seems that the tenants did not place a protective pad under their office chair and the rolling of the chair has caused damage to the floor in the office as well. With respect to the kitchen cabinet doors the landlord says the finish has worn off and it appears that the tenants did not wipe accumulated water off the doors and this caused the finish to deteriorate.

The tenant argues that the preparation of the Condition Inspection Report at move-in was performed with the previous owners who were the landlords when the tenants move in. The tenant states that the preparation of the report was very casual and it is likely that all damage was not noted.

The landlord responded that the tenant took the time to note on the move-in report a yellow felt marker stain he noticed a window sill. The landlord submits that given this level of inspection certainly the tenant would have noted floor and/or cabinet damages had this damage been there at the start of the tenancy.

The tenant admits he should be held responsible for the burnt out light bulbs but says the rest is normal wear and tear. The tenant notes that the landlord's estimate for repairs to the cabinets includes many cabinets not just the kitchen cabinets.

Analysis

The parties completed a move-in and move-out Condition Inspection Report. At move-out there is a note with respect to the kitchen "cabinet finish poor water has removed finish"; with respect to the cook top on the glass/ceramic stove it is noted "top not maintained burnt on"; further that the refrigerator was not cleaned and has a "scratch on front". On the second page there is a note of "laminate water damage" in the dining room; in the main bathroom "water damage to doors". Both parties have signed the report but it is noted that the tenant does not agree that the report fairly represents the condition of the rental unit for the following reasons: "The tenant believes the apartment is in good condition the items mentioned here at end of tenancy constitute regular wear & tear in our view".

I find that there was damage at the end of this tenancy that was not present at the start of this tenancy. I make this finding based on the signed Condition Inspection Report. Further I find that the tenant has agreed that the damages existed both by signing the report and by noting on the report that the tenant regards the damages as “normal wear and tear”. I also find, based on the landlord’s photographs, that the damage is reasonable and probably caused by standing water.

With respect to the tenant’s submission that it may be that not all of the damages in the rental unit were recorded in the move-in report, I find this improbable. I make this finding because I accept the landlord’s observation that if the tenant was vigilant enough to note a yellow marker stain he found on a window sill, that he would have likely noted other more significant damage such as water damage to the cabinet doors and/or floors had these damages existed at the start of this tenancy.

Having made the determination that there were damages at the end of this tenancy that were not present at the start of this tenancy, I conclude that the damages were caused by the tenants use of the property. I must now determine whether those damages constitute “normal wear and tear” as the tenant believes.

Residential Tenancy policy describes normal or reasonable wear and tear as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

I find that the deterioration and staining has occurred not by aging or other natural forces but by failing to promptly and thoroughly wipe water off laminate flooring and/or wood cabinets such that eventually the laminate flooring became stained and the finish on the cabinets wore off.

With respect to quantum, the landlord has claimed \$3,000.00 in damages, however he has provided only two written estimates. Without estimates for each item claimed I decline to make an award. However with respect to the estimates supplied I will make an award.

With respect to the cabinets, the landlord supplies an estimate that the cabinet repairs will cost \$1,038.56. The tenant has argued that the cabinets listed on that estimate are

too numerous and amount to all of the cabinets in the rental unit. There are 19 cabinets listed on the estimate and I find that it is reasonable and probable to conclude that the cabinets/drawers that are damaged by standing water would be the lower cabinets located in and around the kitchen and bathroom sinks. Upper cabinets would not likely be affected at all. I will therefore allow for the costs of repairs to the lower cabinets/drawers beneath the kitchen and bathroom sinks. Without sufficient detail in the estimate of which cabinet/drawer is which I will use my own calculation. I will allow for 2 cupboard doors and 2 drawers below each of the 2 sinks for a total 4 cupboard doors and 4 drawers. Taking the grand total estimate cost of \$1,038.56 and dividing that figure by 19 items I will allow a rounded figure of \$55.00 per cabinet/drawer; 8 x \$55.00 for a total of \$440.00.

With respect to the floors the landlord has submitted an estimate of \$970.00 to replace 700 square feet of flooring. The floors were not brand new and the damage is limited to a few areas. As such I do not find that the tenant should be held responsible for the cost of installing new floors in the entire rental unit. However, I have insufficient evidence as to whether 700 square feet is the size of the entire rental unit or only a portion of it. In any event, I will allow the landlord only partial recovery of the \$970.00 and make a financial award of \$635.00.

The financial awards made are \$440.00 plus \$635.00 together amounting to \$1,075.00. As the landlord has been successful in this claim I will allow him recovery of the filing fee in the sum of \$50.00. Together these sums amount of \$1,125.00 representing the damage deposit paid by the tenants and I will therefore allow the landlord to retain the deposit in its entirety.

Having found in favour of the landlord and having awarded the security deposit to the landlord I dismiss the tenant's claim for recovery of the security deposit and the filing fee paid for this application.

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*.
