



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, O

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation for damage – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. Other.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing the Tenants objected to the filing of late evidence by the Landlords. This evidence was filed on October 21, 2011 and consisted of photos of the yard and of the sink. The Tenants objected to the inclusion of the evidence as they did not have sufficient time to respond, the Landlords could have provided those pictures earlier and there is no relationship between the photos of the yard and exterior of the unit to the claim contained in the application. The Landlord states that they intended to include those photos to support their claim made in relation to the back yard and stated that although the application was not amended to include this claim, it was not amended as the damages to the yard and exterior were not noticed until after a landscaper was called in. The Landlord requests that the application be amended to include the claim for damages to the exterior of the unit. The Tenant objects to this amendment and states that the Landlord had several months to amend the application and that they had no notice until this hearing that the Landlord’s sought to amend the application.

Considering the length of time that has passed since the end of the tenancy and the date of the hearing, and given the late request to amend the claim, I accept that an amendment at this time would prejudice the Tenants and their ability to respond to this claim and I therefore decline to accept an amendment to the application. For this reason, I also decline to accept the late filed evidence in relation to a claim not included in the application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on November 17, 2008 and ended on May 17, 2011. Rent in the amount of \$1,389.00 was payable in advance on or before the 17th day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$650.00. A move-in and move-out inspection was conducted. The Landlord provided a copy of a move-out inspection conducted May 18, 2011. The Tenants filed three copies of differing move-out inspection reports dated May 18 and May 24, 2011. The Landlord confirms that the move-out inspection was conducted on May 24, 2011 and states that the report filed by the Landlord included her personal notes about the state of the unit.

The Landlord states that the Tenants damaged the carpet in a bedroom by setting heavy furniture on the Berber rug without casters, leaving permanent dents. The Landlord initially has the rug cleaned but on May 24, 2011, informed the Tenants that the cleaning would not remove the dents and claim the replacement of the rug in the estimated amount of \$967.32 and the cost of the steam cleaning \$89.60. The Tenants agree that the rug was not steam cleaned at move-out. The Tenants further state that the indents in the rug are normal wear and tear from the usual use of the carpet and that the Tenants have not damaged the carpet and that there is no indication that their furniture was out of the normal range of weight for furniture.

The Landlord states that one bedroom has paint torn off a wall from what appears to be the use of scotch tape. The Landlord claims the amount of \$270.00 for the cost of painting all the bedroom walls and states that they had to incur a cost to paint the entire bedroom in order to have all the walls the same color paint. The Tenants state that a shelf had been on the wall with the marks, that the Tenants had fixed the holes before move-out and that the Landlord told the Tenant not to bother painting the wall because the Landlord would paint the wall himself.

The Landlord states that the kitchen sink was scratched and required replacement, claiming the estimated amount of \$442.40. The Landlord states that when the house was purchased it was in immaculate condition and the sink had no scratches therefore the Tenants must have damaged the sink by using a scouring pad on the sink. The Tenants state that no abrasives were ever used on the sink and that it was scratched at the beginning of the tenancy. The Tenant's also refer to the move-in report that notes the condition of the sink to be fair.

The Landlord states that nine floor tiles in the kitchen were cracked by the Tenants. The Landlord submitted a note from a person who lays tiles and who indicated that it appears that the tiles were cracked by the dropping of a heavy object on the floor. This note also indicates that the tiles were mortared to a cement pad causing the tiles not to have any flex. The Landlord states that the cost to repair the kitchen floor is unknown as the tiles can no longer be matched to any existing tiles on the market.

The Tenants state that no furniture had ever been dropped on the tiles and that a thick rug was between the tiles and the furniture. Further, the Tenant states that the crack covers three tiles, is located at the front entrance, is not anywhere near where the furniture was placed and that this crack was noticed a week after moving into the unit. The Tenants state that this was reported to the Landlord as soon as it was noticed and that the Landlord did nothing at the time. The Tenants argue that if the Landlord had believed that the Tenants were responsible for the damage, it should have been raised this when first noticed. The Tenant argues that if the Landlord had wanted this fixed it

should have attended to their claim for damages against the Tenant's at the time when the crack was noticed.

Finally, the Tenants submitted two letters as evidence: A person visiting from Germany, a contractor, provided a letter that submits that the cracks on the tiles are caused by incompetent installation. Another person submitted a letter on the Tenant's behalf, indicating that the tiles were cracked at his first visit to the house during December 2008 and that as a home builder, this person believes that the problem with the tiles lies in the improper construction and laying of the tiles.

Analysis

Section 21 of the Regulation provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Further, in a claim for damage or loss under the Act, the party claiming costs for the damage or loss must prove the following: damage or loss exists, the damage or loss claimed was caused by the actions or neglect of the responding party, costs for the damage or loss have been incurred or established and steps were taken by the claiming party to minimize or mitigate the costs claimed. While it can be found, based on the agreed evidence of the Parties, that the move-out inspection was conducted on May 24, 2011, given the confusion surrounding the accuracy of any of the three different move-out reports, I find that the move-out report of May 24, 2011 can only be given limited value and that more reliance must be had on the extraneous evidence offered by the Parties.

As the Parties have agreed that the carpet was not steam cleaned at move-out, I find that the Landlord has substantiated their claim to the amount of **\$89.60**. Accepting that wear and tear, including wear and tear arising from the normal placement of furniture on carpet, can be expected over the length of the tenancy, I find that Landlords have not substantiated a loss to the carpet and I dismiss this part of the Landlord's claim.

Given the undisputed evidence of the Parties that one wall in a bedroom had some damage, I find that the Landlords are entitled to compensation for loss related to that wall only and find therefore that the Landlord is entitled to $\frac{1}{4}$ of the cost of painting the walls in the amount of **\$67.50**.

Given the move-in report that notes the kitchen sink to be only “fair”, and considering the normal wear and tear that could be expected on such a sink, I find that the Landlords have not proven on a balance of probabilities that the sink was damaged by the Tenants and I dismiss this part of the application.

Accepting the Tenant’s evidence that the crack in the tiles was brought to the attention of the Landlord at the outset of the tenancy, I find that the Landlord did not act in a timely manner to pursue a claim against the Tenants for this damage. Further, considering the consistency of evidence from both the Landlord and the Tenant surrounding the original poor construction and placement of the tiles in the unit, I cannot find that the Landlords have substantiated that the tiles were cracked as a result of any out of the ordinary actions by the Tenants and I therefore dismiss this part of the application.

As the Landlord has been only minimally successful with their application, I decline to make an award for the recovery of the filing fee.

The Landlord currently holds the amount of \$651.20 as the security deposit plus interest. I order the Landlord to retain the amount of **\$157.10** from this security deposit in satisfaction of the claim and to return the amount of **\$494.10** to the Tenants forthwith. I grant the Tenant a monetary order under section 67 for this sum.

Conclusion

I order that the Landlord retain the amount of \$157.10 from the **deposit** and interest of \$651.20 in full satisfaction of the claim and I grant the Tenant an order under Section 67

of the Act for the balance due of **\$494.10**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 25, 2011.

Residential Tenancy Branch