

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for damage to the rental unit; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a two bedroom, ground level basement suite. Pursuant to a written agreement, the tenancy started on October 1st, 2005. The rent was \$1192.55 and the tenant paid a security deposit of \$580.00. A condition inspection report was not completed at the start of the tenancy.

The landlord testified that the tenant gave her notice to end tenancy effective July 1st, 2011, but that she remained in the suite until July 8th. She stated that she completed a move out inspection with the tenant on July 14th, and that the tenant did not agree with all the damages identified by the landlord; she said that the tenant did agree to some,

but that none of the repairs were completed as agreed. The landlord said that the tenant refused to sign the inspection report.

The landlord provided receipts for work completed, and quotes for work yet to be completed in a summarized monetary claim itemized as follows:

- Extra prep for painting: \$ 300.00 (paid)
- Extra cleaning: \$ 120.00 (paid)
- Customs sheers replacement: \$ 656.00 + tax (estimate)
- Repair front edge of tub: \$ 200.00 - \$ 250.00 (estimate)
- Tile work: \$ 200.00 (estimate)
- Hand sprayer: \$ 29.99 (paid)
- Toilet seat : \$ 11.59
- Professional carpet cleaning: \$ 396.25 (paid)
- 4 new window screens: \$ 89.60 (paid)
- Replace washer & dryer: \$ 804.16 (paid)
- Refinish hardwood floor: \$1426.88 (estimate)
- Kitchen c-clamps: \$ 6.97 (paid)
- Total paid with washer & dryer: \$1758.57

In her documentary evidence, the landlord provided 45 photographs in support of her claim for damages, showing in part, but not limited to; scratches at the bottom of the washer and dryer caused by a wheelchair, snagged sheers; scratches on a portion of the hardwood floor; damaged door jambs from the wheelchair; wall and tile damage in the bathroom; scuffs in the toilet; and prevailing stains after the carpet was professionally cleaned.

The landlord said that the paint was 6 years old; the sheers 14 years old; the carpet 15 years old; and the hardwood floor 16 years old. She said that the tenant's pet caused the scratches on the floor and the snags on the sheers, and that the damaged hardwood floor is located on the main tracking area.

The tenant testified that she moved into the unit with her son who is confined to a wheelchair. She stated that her son's wheelchair did cause scuffing around the tub area, the toilet, the door jambs and the carpet. Concerning the hardwood floor, she stated that the scratches were caused by the movers when they moved in. She stated that the furniture most likely caused the snags on the sheers. The tenant said that the washer and dryer were defective from the start of the tenancy and that they were never repaired. The landlord agreed and clarified that she is only claiming a percentage of the claim for replacement, but did not state what amount.

The tenant also stated that she arranged for a plumber to repair 2 cracked tiles by the tub area, and that the landlord's brother stated that he would fix the damaged wall. The tenant said that her son's bench scuffed the tub, but that these scuffs were removed. She said that the black scuffs around the toilet were caused by the wheelchair, and that they could not be removed. She agreed to the damaged screens, and that she returned to the rental unit to complete the cleaning during the first week of July. She said that some of the photographs were taken by the landlord's brother before she cleaned the unit, such as under the stove. She said that she returned the key on or about July 7th, 8th, or the 9th. She stated that she gave notice to end tenancy effective July 1st, 2011; she said that she did not stay beyond that date, but that she returned to the unit over the course of the following week as agreed by the landlord to allow her to complete the cleaning.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are

not satisfied, and particularly when the parties' testimonies are at odds, the burden of proof is not necessarily met. In this matter that burden was on the landlord to prove her claim against the tenant.

Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear. The tenant testified that she left a certain amount of damage, but disagrees with the landlord on the extent of the said damages, and I am left with each party's version to determine what or how the unit ought to have been repaired.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. With this in mind, and after considering the parties' testimony and the documentary evidence, the aspects of the landlord's claims with my findings are set out below.

Section 23(3), (4), and (5) of the *Act* places the onus to complete condition inspection reports squarely on the landlord. The landlord's claim was not supported by these reports, and the *Act* states that the landlord's right to claim against a security deposit is extinguished without them. I find the landlord's documentary evidence of limited value as it does not allow me to determine whether the unit was in any better condition when the tenants moved in than when they moved out, or to ascribe a monetary value for damages beyond reasonable wear and tear caused by this tenant. I find that the landlord has failed to establish the damages to the full extent of her claim, with the exception of those which the tenant conceded to, and those caused by her son's wheelchair.

Further, the *Residential Policy Guidelines* provide an estimated useful life for various items, including finishes in rental accommodations for reasonable wear and tear. In the case of flooring that useful life is 20 years; for carpeting 10 years; for tile 10 years; for paint 4 years; for drapes 10 years; and for washer and/or dryer 15 years. As such costs attributed to wear and tear cannot be claimed against a tenant, as it is expected that

they would be offset by the landlord when assessing rent. Nevertheless, all tenants are held to the same standard on this point, and I find that the wheelchair did cause damage beyond reasonable wear and tear.

Concerning the washer and the dryer; I find that this claim has minimal merit as it is based greatly on a loss of cosmetic appeal since these appliances were defective since the start of the tenancy. For this reason I grant the landlord a nominal compensation of \$100.00.

Concerning the damages conceded to by the tenant; I grant the landlord recovery of the window screens for \$89.60; for damages caused by the wheelchair I grant the tenant \$300.00 as claimed; and \$6.97 for the clamps to repair a fallen face board in the kitchen. Concerning the toilet, I have no monetary claim concerning the scuffs with the exception of the seat. Although I consider replacement of a toilet seat as reasonable wear and tear, in the absence of receipts or any other evidence for scuffs that cannot be removed on the toilet I grant the landlord nominal compensation for \$40.00.

The carpet was well beyond its useful life and therefore I dismiss this portion of the claim. Concerning the hardwood floor, I am not persuaded that the damage was caused by the tenant and I also dismiss this portion of the claim.

Concerning the sheers; although they are past their useful life the tenant stated that her furniture was the likely cause for the snags, it would appear that their useful life could have been extended and I grant the landlord nominal compensation of \$100.00.

Concerning the extra cleaning, I am not persuaded that the photographs were taken after the tenant left and I dismiss this portion of the claim. In the absence of more substantive evidence I also dismiss the claim concerning the damage around the tub area.

The tenant gave the landlord notice that the tenancy would end July 1st. She did not return the key until a week later; however I heard oral testimony that the parties agreed that the tenant could complete cleaning of the unit beyond that date. Therefore I am not persuaded that the tenant continued to live in the unit beyond the end of the tenancy and I dismiss this portion of the landlord's claim.

Conclusion

The landlord established a claim of \$636.57. Since she was partially successful, I grant the landlord partial recovery of the filing in the amount of \$25.00 for a claim totalling \$661.57. I authorize the landlord to retain the tenant's \$580.00 security deposit and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$81.57. This Order may be registered 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: November 3rd, 2011.

Residential Tenancy Branch