



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord under the Residential Tenancy Act, (the "Act"), for a monetary order for damages to the rental unit, site or property, compensation for damage and loss under the Act, regulation or tenancy agreement and recovery of the filing fee

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damages to the rental unit, site or property, compensation for damage and loss under the Act, regulation or tenancy agreement and recovery of the filing fee?

Background and Evidence

The Landlord and Tenants agree that they had a tenancy which commenced on April 01, 2009 and ended on September 01, 2011 when the Tenants moved out. The parties agree that the rent was \$2,500.00 per month due on the first of each month. The Landlord provided a copy of the tenancy agreement which was signed on February 10, 2009 into evidence. The parties had a prior hearing on December 01, 2011 which resulted in a decision of the same date granting the Tenants return of double their security deposit.

The Landlord stated that the floors had been restored in 2009 before the Tenants moved in and were in excellent condition. The Landlord stated that the Tenants are responsible for the damage to the floors which occurred during their tenancy. The Landlord filed their application on February 08, 2012, stating that the Tenants damaged the wood flooring in the rental unit during their tenancy. The Landlord testified that they did a final walkthrough of the rental unit with the Tenants on September 01, 2011, however, a formal move out inspection report was not documented between the parties. The Landlord stated that they advised the Tenants of some scratches they noticed in the flooring. The Landlord stated that their new tenant arrived at the rental unit the same date after the Tenants had left, and did a move in condition inspection with the

Landlord. The Landlord stated that their new tenant is paying a higher rent for the rental unit than the Tenants were. The Landlord stated that their new tenant was unhappy with the condition of the wood floors in the rental unit and identified many scratches throughout the bedrooms and living areas of the rental unit that she wished documented as pre-existing her tenancy. The Landlord noted all of the scratches for the new tenant and took photographs of each of the damaged areas. The Landlord provided copies of the photographs of the scratched floors into evidence. The Landlord stated that she had a floor repair and refinishing quote done in September 2011, which is provided into evidence. The Landlord stated in February 2012 she obtained an opinion on how the damage originated from the company who did the flooring quote, which is also provided into evidence. The Landlord stated that the professional flooring company opined that the damages and scratches to the floors were consistent with furniture that did not have felt protectors installed. The Landlord acknowledged that the professional flooring company is operated by her brother. The Landlord stated that she has not had the wood flooring in the rental unit repaired and refinished at this time as the rental unit is currently tenanted and the current tenant has no plans to move out. The Landlord stated that she would like to have the flooring repaired and refinished in the future when the rental unit is vacant.

The Tenants stated that the floors were not new when they moved in but were heritage floors in good condition. The Tenants stated there could have been scratches in the floors before they moved in but nothing was documented. The Tenants stated that the floors were not refinished in the spring of 2009 as the flooring company letter says, as the Tenants stated they were at the rental unit and signed the tenancy agreement on February 10, 2009 and there was no work done on the floors between February 10, 2009 and when they moved in on April 01, 2009. The Tenants testified that they did not damage or scratch the floors in the rental unit. The Tenants stated that they used rugs and felt protectors under furniture during their tenancy. The Tenants stated that the Landlord did not do a formal move in or move out inspection report with them and nothing was documented. The Tenants stated that the Landlord only mentioned a couple of minor scratches in one room to them at move out and did not discuss any other floor issues with them. The Tenants stated that the Landlord's family member operates the flooring company that provided the quote and opinion on the condition of the floors and they question these documents. The Tenants stated that a new tenant moved into the rental unit immediately after they moved out and that the Landlord has had no work done on the floors. The Tenants dispute the Landlord's claim and request it be dismissed.

The Landlord is claiming \$2,475.00 plus HST of \$297.00 for the flooring work to be done and \$2,550.00 for the one month of rental income loss she predicts she will incur when the floor repair and refinishing work occurs in the future, plus the filing fee for this application.

Analysis

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

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities. To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord provided written estimates for the wood floors in the rental unit to be repaired and refinished and photographs of the condition of the floors, however, they confirmed that they have not had this work done and a new tenant moved in September 01, 2011. The Landlord stated that they do not plan to have the work done until after the current tenants move out, and that they expect to incur rental loss of one month when the work is done. The Landlord stated that the current tenant in the rental unit has no plans to move out in the foreseeable future. The Landlord stated that the current tenant is renting the rental unit for a higher monthly rent.

The Landlord has not incurred any costs at this time and the floor repair and refinishing has not been done. I find that the Landlord failed to provide sufficient evidence to support the floor repair and refinishing costs and rental income loss claimed. As a result I dismiss the Landlord's claim.

Conclusion

I dismiss the Landlord's claim.

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: April 16, 2012.

Residential Tenancy Branch