Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlords' application to retain a portion of the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the tenant indicated he had not received the landlord's evidence package. I determined that the landlords sent their evidence package to the tenant's forwarding address via registered mail on May 29, 2012. Although sending the evidence via mail on May 29, 2012 is late service; the tenant indicated he wished to proceed with this hearing rather than adjourn it. The tenant also indicated he was agreeable to the evidence being admissible provided the content of the evidence was described to him. I described the evidence to the tenant, provided the tenant the opportunity to respond to the evidence; thus, I have considered the evidence in making this decision.

Issue(s) to be Decided

Have the landlords established an entitlement to receive compensation from the tenant for damage caused by a water leak?

Background and Evidence

The landlords have made this application seeking authorization to retain $720.00 from the security deposit as compensation for damage to the flooring caused by a water leak. The $720.00 is comprised of $500.00 for an insurance deductible and $220.00 the landlords paid to upgrade the new flooring so that it would better match the remaining flooring in the unit.

I was provided undisputed evidence that the tenants paid a security deposit of $1,050.00 on June 14, 2011 for a co-tenancy set to commence July 1, 2011. On August 14, 2011 a water leak occurred in the laundry closet and damaged the laminate

flooring in the laundry closet, hallway, sitting area and living room. Both the landlords and tenants carried insurance and representatives from both insurance companies inspected the unit. A restoration company undertook the remediation of the unit. The landlords' insurance company paid for the restoration, less a $500.00 deductible. The landlords also paid $212.77 to upgrade the laminate flooring as they were not satisfied with the choice of replacement laminate flooring covered by their insurance since it did not adequately match the undamaged flooring that remained in the bedrooms.

The tenants vacated the rental unit March 31, 2012. The female co-tenant and the landlords participated in a move-out inspection. On the move-out inspection report the female co-tenant signed in the space used to authorize deductions from a security deposit but also indicated that the tenants did not agree with the landlord's assessment of the rental unit and did not agree with being charged for floor damage of $720.00.

Landlords' position

The landlords attended the property the same day the tenant reported the flood to them. Upon arriving at the rental unit the landlords observed heavy luggage pushed up against the washing machine and drain hose. The landlords are of the position that the placement of heavy luggage is what caused the water to leak from the drain hose.

The landlords submitted that the washing machine was professionally installed in March 2008 and there were no previous issues with the installation. The landlords further submit that the tenant was not forthcoming to the insurance companies by not disclosing to them that he had put heavy luggage against the washing machine and/or drain hose.

The landlords acknowledged that there is an area adjacent to the laundry machines for storage but submitted that common sense would dictate that a person would not squeeze items in like the tenant did.

The laminate flooring that was replaced was installed approximately 4.5 years prior at an approximate cost of $3,000.00.

The landlords provided copies of the following evidence for consideration: the tenancy agreement; the last page of the condition inspection report; the scope of repairs performed by the restoration company; the loss paid by the landlord's insurance company; verification of the $500.00 deductible; a receipt for the laminate upgrade; a receipt for the purchase and installation of the laundry machines in March 2008; and email communication between the landlords and the insurance adjuster and the landlords and tenant.

Tenant's position

The tenant submitted that there is an area adjacent to the washing machine intended for storage purposes. He was not advised by the landlords he could not use the area for storage. The tenant denied that he had heavy luggage pushed up against the washing machine or drain hose. Rather, the tenant had empty luggage stored in that space along with a coat. When the landlords attended the property a few days after the flood these items had been removed from the closet and stored elsewhere in the rental unit.

The tenant submitted that he agreed to let the insurance companies decide liability or cause of the water leak. The insurance companies for both parties inspected the unit and the insurance companies attributed the cause to improper installation of the drain hose. The tenant was informed by one of the inspectors that the drainage hose was too short and was not sufficiently attached. In fact, the slightest touch caused the hose to come away from the drain and the inspector indicated that it was only a matter of time before such a flood occurred. When the unit was repaired the drain hose was more security attached. The tenant submitted that had the landlords provided a photograph of the laundry closet for me to review his submissions would be apparent.

The tenant acknowledged that he did not inform he insurance companies that he had stored luggage in the laundry closet immediately before the leak occurred.

Analysis

Upon review of the last page of the move-out inspection report I find it evident that the parties were in disagreement as to the responsibility for the floor damage and the female tenant did not agree or authorize a deduction of $720.00 from the security deposit. I accept that the landlords took action in accordance with the requirements of the Act to make a claim against the security deposit within 15 days of receiving the tenants' forwarding address. Accordingly, I proceed to consider whether the landlords have proven, on the balance of probabilities, whether they are entitled to recover compensation from the tenants for floor damage by way of a deduction from the security deposit.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence to substantiate his/her position, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, I was provided disputed testimony as to the cause the water leak and disputed reasons why the landlords' insurance company paid for the restoration work as opposed to the tenant's insurance company.

Based upon the evidence before me, I accept that both parties contacted their respective insurance companies to report the water leak and arrange for an inspection of the rental unit. Although the landlords pointed out that the tenant failed to disclose to the insurance companies that he stored luggage in the storage area, the landlords did not provide me with any evidence that they reported their observations to either insurance company.

If the landlords did report their observation of luggage in the storage area apparently such disclosure did not have an impact on their insurance companies' decision with respect to responsibility for remediating the water damage. If the landlords did not report their observation to the insurance companies I find this to be imprudent and indicative of a failure to mitigate their loss if they were of the belief that tenant's actions caused the water leak.

Given the landlords' insurance company did ultimately take responsibility for remediating the water damage, in the absence of evidence from the landlord's insurance company that would explain the reason the landlord's insurance company took responsibility, I find the landlords have not satisfied me that the tenant's actions caused the water leak. I have considered the email from the landlord's claim adjuster where the adjuster confirms the tenant did not admit to "storing or moving heaving luggage in the area"; however, I do not find it sufficient to make a determination as to the reason the landlords' insurance policy accepted responsibility for the remediation. In other words, even if the tenant had disclosed storage of empty luggage, which is what the tenant admitted to during the hearing, I am not convinced such disclosure would have impacted the insurance company's decision. In addition, in the absence of photographic evidence I find the landlords did not refute the tenant's submissions that

the hose was more securely attached after the leak and I find I cannot ignore this possibility that the hose was too short or not security attached when originally installed.

Of further consideration is the landlords must establish that they suffered a loss in the amount they claimed pursuant to paragraph 3. in the criteria outlined above. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced flooring, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

The policy guideline described above provides that carpeting and tile flooring has a useful life of 10 years and hardwood flooring has a useful life of 20 years. In this case, the flooring was laminate and I find that a reasonable approximation of the useful life of laminate flooring to be 10 years.

Having heard the landlords installed the laminate flooring 4.5 years prior at an approximate cost of $3,000.00 I find the depreciation to be at least the amount claimed by the landlords. In other words, the landlords now have the benefit of new laminate flooring, as opposed to 4.5 year old flooring, at a cost to them of $720.00. Thus, I am not satisfied the landlords have suffered a loss when depreciation of the original flooring is taken into account.

In light of the above, I dismiss the landlords' claims against the tenant and I order the landlords to immediately return the full amount of the security deposit to the tenant.

Provided to the tenant with this decision is a Monetary Order in the amount of $1,050.00 to enforce as necessary.

Conclusion

The landlords' application is dismissed and the landlords are ordered to return the entire security deposit to the tenant immediately. The tenant is provided a Monetary Order in the amount of $1,050.00 to ensure payment is made.

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: June 14, 2012.

Residential Tenancy Branch