



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to a monetary for damages to the unit?
Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenancy began on April, 1, 2010. Rent in the amount of \$3,200.00 was payable on the first of each month. A security deposit of \$1,600.00 was paid by the tenants.

The tenants acknowledge the underlay they used to protect the concrete floor in the rental unit, somehow reacted with the concrete and melted into the floor causing damage to an area of 80 square feet.

The tenants acknowledge that they agreed to pay the invoice, which was an attempt to remove the melted underlay from the concrete floor in the amount of \$140.00. However, this was unsuccessful.

The parties agreed that there are two estimates to repair the concrete floor and both estimates are in the amount of \$1,500.00. The first estimate indicates 524 square feet will be repaired and details the work required to be performed. The second estimate does not list the square footage and does not details the work required to be performed. Neither party filed a copy of the estimates as evidence for this hearing.

The tenant testified that they are concerned that the whole floor is being redone when they should only be responsible to repair the 80 square feet and maybe the surrounding area to ensure the color is blended.

The landlord testified that he is uncertain why the first estimate indicates 524 square feet is to be repaired. The landlord stated the second estimate is from the original contractor who installed the floor and this contractor has the best chance to restore the floor to its original state as he already knows the color tint used. The landlord stated that even though this estimate is not detailed the estimate is only to repair the floor.

Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove 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.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

The tenant's agree that they are responsible for the invoice which was an attempt to remove the melted underlay from the concrete floor. Therefore, I grant the landlord compensation in the amount of **\$140.00**.

In this case, the tenants have acknowledged the underlay they used to protect the concrete floor in the rental unit reacted with the concrete and melted into the floor causing damage to an area of 80 square feet. The tenant stated they should only have to pay to repair that area and the area surrounding to blend the color of the concrete.

As the landlord has provided two estimates to repair the damage concrete floor, the onus is on the tenants to show that the cost is unreasonable.

The parties agreed both estimates were for \$1,500.00. The evidence of the landlord was the second estimate of \$1,500.00 to repair the concrete floor was provided by the original contractor. This contractor would have the best knowledge to repair the floor to its original state. This estimate does not have a detailed list as to how much square footage would be required to fix the floor as in the first estimate; however, it is possible that this cannot determine until restoration begins.

In this case, I do not find that the cost is unreasonable to repair the floor. While the repairing and blending may only be to a portion of the floor, it is possible that the entire concrete floor may have to be sealed with the finishing coat to ensure the same consistency runs throughout the floor. Therefore, I find the landlord is entitled to be compensated based on the estimates provided.

Policy Guideline 37 states the useful life of a concrete floor is ten years. In this case the floor was three years old. The evidence of the landlord was it will cost \$1,500.00 to repair the floor. As the floor was three years old, the landlord is entitled to the depreciated value of seventy percent. Therefore, I find the landlord is entitled to compensation for the cost to repair the floor in the amount of **\$1,050.00**.

The landlord has established a monetary order in the amount of **\$1,240.00** comprised of the above amounts and the \$50.00 paid to file the application.

I order that the landlord retain \$1,240.00 from the security deposit in full satisfaction of the claim and I order the landlord is to return the balance of \$360.00 to the tenants forthwith. Should the landlord fail to return the balance of the tenants' security deposit, I grant the tenants an order under section 67 for the balance due of **\$360.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted permission to retain a portion of the tenants' security deposit in full satisfaction of his claim and the balance of the security deposit is to be returned forthwith to the tenants.

The tenants are granted a monetary order for the balance of the security deposit.

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: May 14, 2012.

Residential Tenancy Branch