



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant both attended the hearing, and no issues with respect to service of documentation or evidence was raised during the hearing.

The parties each gave affirmed testimony and the landlord provided evidentiary material prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the testimony given and evidence provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on October 1, 2010 and expired on September 30, 2011. The tenancy ultimately ended on June 30, 2012 by mutual agreement by the parties, even though the tenancy agreement, a copy of which was provided for this hearing, states that at the end of the fixed term, the tenant was required to move from the rental unit. A copy of a Mutual Agreement to End a Tenancy was also provided for this

hearing which is signed by the landlord and the tenant on June 30, 2012 for a tenancy to end on June 30, 2012.

Rent in the amount of \$1,525.00 per month was originally payable in advance on the first day of each month, which was increased to \$1,560.00 per month effective October 1, 2011, and there are no rental arrears. On September 1, 2010 the landlord collected a security deposit from the tenant in the amount of \$762.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment style condominium.

The landlord testified that a move-in condition inspection report had been completed by the parties at the commencement of the tenancy and a move-out condition inspection report was completed at the end of the tenancy, and provided a copy for this hearing. The landlord testified that the hardwood floors at the end of the tenancy contained deep scratches in the rental unit and the landlord believes it was caused by a computer desk and by moving furniture out of the rental unit. Photographs and a DVD were provided by the landlord prior to the commencement of the hearing. The condition inspection also states that blinds and windows were not cleaned and burned out light bulbs in the rental unit were noted, but the tenant corrected those items at the landlord's request.

The landlord contacted a few floor companies and stated that some would not repair it because they didn't install it. The landlord received a quote from one company, and provided a copy of the quote for this hearing, in the amount of \$700.00 and testified that personnel at the flooring company advised that there was no guarantee that all scratches could be repaired. The landlord stated that the quote does not include HST, and the claim is for \$784.00 including HST. The quote is dated July 10, 2012 and shows a cost of \$700.00 for "Screen and recoat floors, 1 coat of basic coating streetshoe water based polyurethane, satin." The portions of the form that allow for filling in the square footage are left blank, and no other information is contained in the estimate.

The rental unit was re-rented and new tenants were moving in the same day that this tenant was moving out. The new tenants would be required to move all of their furniture out of the rental unit and the landlord would be required to pay for their hotel stay, which was not affordable. The floor had to be re-coated and no furniture or walking on the floor would be permitted for about 48 hours. The new tenants refused to allow it, and the floor has not yet been repaired. The landlord is waiting until the tenants move out.

The tenant testified that everything was cleaned prior to moving out. The landlord was very picky during the move-out condition inspection, and it was very stressful. The landlord told the tenant he wouldn't get back the security deposit because the blinds and windows weren't clean enough and bulbs were burned out. The tenant went back to the rental unit and cleaned the windows and blinds and replaced burned out bulbs, but the landlord was confrontational and nothing was good enough. The landlord also accused the tenant of giving back the wrong keys to the rental unit and that the key fob didn't work. The tenant had to prove to the landlord that they were the right keys and the fob does work if one holds it correctly.

The tenant further testified that the rental unit was treated with respect throughout the tenancy, and carpets were placed in traffic areas and the tenant put felts under the legs of furniture to ensure the floors would not be damaged. The photographs provided by the landlord are magnified to illustrate more damage than there actually was.

The tenant also testified that the landlord's photographs were taken to a floor company, and an employee there told the tenant that the floor was a Brazilian hardwood which is not recommended for a rental unit due to its soft nature, and that a landlord would have to expect scratches from normal wear and tear. The scratches are on the finish only and not in the wood grain and can be sanded out. The flooring employee also told the tenant that it appeared to be a manufacturer defect and should not have happened and should be covered under warranty.

One area of the flooring appears to be a circular scratching which is where the tenant had a chair with plastic rollers. The tenant claims that the marks are normal wear and tear.

The tenant also asked the flooring employee about the landlord's estimate for the repairs. The employee advised that the repair would cost about \$60.00. It's a 3-stage process for a do-it-yourself kit and 1 litre of the product would cover 800 square feet. The tenant played a demonstration during the hearing from a computer, which was easily heard. The demonstration described the process for completing the repair.

Analysis

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy, not in a pristine condition the landlord may want in order to show the rental unit to prospective tenants. The parties both agree that the landlord wanted the tenant to complete more cleaning and the tenant did so.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Further, any award for damages in favour of the landlord must not place the landlord in a better financial position than the landlord would be if the damage or loss had not occurred.

I have reviewed the move-in/out condition inspection report and the photographs provided by the landlord, and regardless of the magnification there is no doubt that scratches appear on the wood floors. Whether or not the floors are made from hardwood is really a question. The tenant testified that a flooring company advised that the floor is a Brazilian floor, which is a soft wood, and that the photographs provided to that person caused him to have an opinion that there was a manufacturer's defect and the repair should be covered under warranty. That testimony was not disputed by the landlord, and the landlord provided no evidence or testimony that he checked to see if the floor would be covered by warranty.

The landlord testified that the floor has not been repaired due to the rental unit being re-rented and new tenants refusing the repairs. The landlord relies on a single written estimate in the amount of \$700.00 plus HST and testified that he had shopped around but provided no evidence of that. The tenant provided evidence of a much less expensive fix, however I accept that the landlord may not want to complete the repairs himself. I do not accept that the landlord has established that the only fix is to have the rental unit vacant for days with no furniture or that the only fix is a cost of \$700.00. A landlord must do whatever is reasonable to mitigate any loss suffered, and absence of any evidence that the landlord attempted to have the floor covered by warranty or that he obtained other estimates to establish that the cost is reasonable; the landlord's application cannot succeed. Further, I am not satisfied that the landlord has proven that the tenant failed to comply with the *Act* or the tenancy agreement. In the circumstances, I find that the landlord has failed to satisfy elements 2, 3 and 4 in the test for damages.

With respect to the security deposit, the parties agree that the landlord received the tenant's forwarding address in writing on June 30, 2012 and the Landlord's Application for Dispute Resolution was filed on July 11, 2012, and I therefore find that the landlord

has complied with Section 38 of the *Residential Tenancy Act* by filing the application within 15 days of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing. I hereby order the landlord to return the tenant's security deposit in the amount of \$762.50 forthwith, and I hereby grant a monetary order in favour of the tenant in that amount.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$762.50.

This order is final and binding on the parties and may be enforced.

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: September 21, 2012.

Residential Tenancy Branch