Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and to recover the filing fee.

The tenants, a witness for the tenants, and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

On October 11, 2012, the hearing was adjourned as it was determined that the applicant landlord had not received the tenants evidence as the service address for the landlord had changed since the date of the landlord's application on July 26, 2012.

The hearing reconvened on November 15, 2012. At that time, both parties agreed that they received evidence from the other party and had the opportunity to review it prior to the hearing. I find the parties were served in accordance with the *Act.*

Preliminary Matter

During the hearing, the landlord withdrew a portion of his monetary claim. The portion withdrawn by the landlord actually relates to a dispute between the landlord and his former agent, which I do not have the jurisdiction to hear. The landlord withdrew his claim for $1,150.00 in unpaid rent which reduced the original monetary claim from $2,525.00 to $1,375.00.

Issue to be Decided

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

Background and Evidence

Although there was some dispute between the parties regarding the agreed upon term of the tenancy, the parties agreed that the tenancy started on or about December 1, 2011 and ended by mutual agreement on or about July 2, 2012. Monthly rent of $1,300.00 was due on the first day of each month. The tenants paid a $650.00 security deposit and a $650.00 pet damage deposit at the start of the tenancy.

The parties agree that of the original $650.00 security deposit and $650.00 pet damage deposit which total $1,300.00, and all but $102.01 was returned to the tenants. The $102.01 that was withheld by the agent for the landlord was for the agent's property management fees. The tenants did not apply for return of double their original security deposit and in their written submissions, have asked for just the return of the $102.01 balance owing to them from their original security deposit. The tenants did not agree to any deductions from their security or pet damage deposit.

The landlord's amended monetary claim is for $1,375.00 and is comprised of the following:

Item 1. Cost of new door	$375.00
Item 3. Repair of hardwood flooring including sanding and staining	$750.00
Item 4. Re-paint doors and walls	$200.00
TOTAL	**$1,375.00**

Items 1 and 2

The landlord testified that he did not install a new door and therefore, there was no labour paid to install the door. The landlord stated that he sold the home after the tenancy and felt that due to the tenant's installing a blind on the door without permission, the home was worth less, which is why he is claiming for $375.00 for the door and $50.00 to install the door.

The tenants confirmed they installed the blind without permission; however, they left the blind on the door when they vacated, and stated that the blind was not unsightly. Colour photocopies of the blind on the door were submitted as evidence.

Item 3

The landlord is claiming $750.00 to repair the hardwood flooring. The landlord submitted 2 colour copies of photos of what the landlord describe as one 42 inch gouge and a 30

inch scratch in the flooring. The tenants dispute the testimony of the landlord. The tenants stated that the scratches were not nearly that big, were minor in nature, and were a result of normal wear and tear.

The witness for the tenants inspected the wood flooring and also stated that the scratches were minor and a result of normal wear and tear. The witness, who was also an agent for the landlord during the tenancy, had a flooring contractor attend for his opinion. The witness, acting as agent for the landlord, testified that he was informed by the flooring contractor both verbally and in writing that “the floor has been taken care of, and scratches on the floor are minor and to be expected with day to day living.” An e-mail from the floor contractor was submitted as evidence by the tenants.

The witness stated that the contractor would not charge to fix the minor scratches given that such a repair would only cost about $10.00 to $15.00 in materials, filler, which the contractor would not have charged the former agent/witness for.

The landlord testified that he received a quote from a flooring company to repair the floor at a cost of $1,911.80. The landlord confirmed that he did not provide that quote in evidence in support of his claim.

The landlord stated that the amount of $750.00 was calculated based on the following:

- 4 hours of driving between his residence and the rental unit (which was in a different province) at $65.00 per hour.
- 2 hours of sanding and finishing work on the flooring at $65.00 per hour
- $50.00 for sandpaper

The landlord testified that $65.00 per hour was used in his calculation as that is the hourly rate of a licensed floor finisher. The landlord confirmed that he is not a licensed floor finisher.

The witness for the tenants testified that he attended the rental unit on November 15, 2012, just prior to the hearing. The witness for the tenants stated that he asked the new tenants whether the flooring was refinished. According to the witness, the new tenants advised him that the floors had not been refinished, which the landlord did not dispute during the hearing. The landlord did not submit any photos to show the refinished hardwood flooring.

The landlord was asked about the age of the flooring. The landlord purchased the home in 2009 from previous owners and was unsure of the age of the flooring. The landlord

testified that he refinished the flooring in 2009 when he purchased the home. The landlord has since sold the home.

Item 4

This item being claimed by the landlord is for re-painting the rental unit doors and walls in the amount of $200.00. The landlord testified that the paint in the rental unit was one year old at the start of the tenancy. The tenants were unaware that there was any damage to the paint. The landlord stated that there was moisture from a window being left open on the window that faced the rear alley. The tenants stated that they did not leave the window open so were unaware how any damage could occur in that room. The landlord submitted a single colour copy of a photo that is labelled “window open water damage”. The photo does not show an open window and was taken at a close distance.

The landlord stated that his claim for $200.00 is comprised of the following:

- 2 hours at $65.00 per hour for a total of $130.00
- $43.00 for paint
- $10.00 for paint brushes

The tenants stated that the walls and doors were in good condition at the end of the tenancy and that they were not advised of a move-out inspection until after they had vacated the rental unit. The witness for the tenants stated that in his opinion, the home was very nice and clean. The tenants stated that they cleaned everything prior to vacating the rental unit. The landlord did not submit receipts or other corroborating evidence in support of the value of his alleged loss for this portion of his claim.

The condition inspection report submitted as evidence by the landlord was not signed by the tenants or the landlord at the start of the tenancy, and was not signed by the tenants at the beginning of, or at the end of the tenancy. The landlord confirmed during the hearing that he conducted his own condition inspection report without the tenants being present only at the end of tenancy. The report, however, was completed by the landlord using the column on the form that relates to the condition at the beginning of the tenancy, rather than the end of tenancy.

The tenants submitted a their copy of a condition inspection report that was signed by the tenants and the agent for the landlord at both the beginning of the tenancy and the end of the tenancy. The landlord’s condition inspection report does not match the condition inspection report signed by the tenants and the agent for the landlord. On the

condition inspection report submitted by the tenants, both the tenants and the agent signed agreeing that there were “scuffs on walls” both at the start and the end of tenancy in the master bedroom and that on the exterior there were “some loose paint and paint chips” both at the start and end of the tenancy. There is no evidence of paint or wall damage in the tenants copy of the condition inspection.

Other evidence from both parties

On the condition inspection report signed by the tenants and the agent, it notes that the carpets were not cleaned before the tenants moved in. The tenants testified that they had the carpets professionally cleaned after they vacated the rental unit on July 3, 2012, which is supported by an invoice dated July 3, 2012 for $280.00 for carpet cleaning. The landlord did not dispute that the tenants had the carpets professionally cleaned. The tenants stated that they feel the landlord is trying to get money from them versus going after the property management company the landlord hired as his agent.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 sections 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.

In the matter before me, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

The landlord has made the following monetary claim against the tenants:

Item 1. Cost of new door	$375.00
Item 3. Repair of hardwood flooring including sanding and staining	$750.00
Item 4. Re-paint doors and walls	$200.00
TOTAL	**$1,375.00**

Items 1 and 2 – The landlord, by his own testimony, confirmed during the hearing that a new door was not installed. As a result, **I find** that the landlord did not suffer a loss and, therefore, is not entitled to compensation under the *Act.* I reject the landlord's testimony that the home was worth less due to the blind being installed on the door as the landlord failed to provide any evidence to corroborate that aspect of his claim. Furthermore, in reviewing the photo of the blind on the door, **I find** that the blind does not appear to be unsightly.

I dismiss items 1 and 2 of the landlord's claim in full due to insufficient evidence, without leave to reapply.

Item 3 – This portion of the landlord's claim relates to a $750.00 claim for hardwood flooring repair. The parties disputed the testimony of the other party during the hearing, however, the landlord did not dispute the witness for the tenants testimony that he attended the rental unit before the hearing on November 15, 2012, and asked the new tenants whether the flooring was refinished. The witness testified under oath that the new tenants confirmed the new flooring was not refinished.

I find that the landlord submitted a condition inspection report that was not signed at the beginning of the tenancy and was completed in the "Condition at beginning of Tenancy" column, which **I find** to be confusing and invalid and, therefore, afford it no weight in my decision.

I prefer the condition inspection report submitted by the tenants as it was signed by the tenants and the agent for the landlord at the start and the end of tenancy. Based on that inspection report, I also prefer the testimony of the tenants and the witness for the tenants that the marks on the flooring were minor in nature and that the landlord did not accept the agent's offer to have the flooring repaired at no cost to the landlord.

One of the colour copies of the photos provided by the landlord of the flooring was blurry and the other copy of the photo was taken so close that it is difficult, if not impossible, to determine the size of the mark on the flooring without a ruler or some

other item to provide perspective or a measurement. As a result, I afford the colour copies of the photos provided by the landord of the flooring little weight in my decision.

The landlord is claiming for his driving time from another province to the rental unit as part of this portion of his claim. **I find** there is no remedy under the *Act* for this type of expense and that such an expense is a general business expense related to being a landlord. As the landlord owned the home at the time, and was in the process of selling the home, **I find** that it is reasonable that the landlord would have attended the rental unit regardless of the condition of the flooring. Therefore, **I dismiss** the travel time associated with this portion of the landlord's claim, without leave to reapply, as there is no remedy under the *Act* for such a claim.

The landlord testified that he was unsure regarding the age of the flooring. As a result, I am unable to determine whether the hardwood flooring has exceeded its useful life pursuant to policy guideline #40 – Useful Life of Building Elements, which indicates the useful life of hardwood flooring at 20 years.

The landlord did not dispute the witness testimony that the witness attended the rental unit prior to the hearing on November 15, 2012 and confirmed with the new tenants that the flooring had not been refinished as claimed by the landlord.

Based on the above, and taking into account that the landlord's testimony was disputed regarding the condition of the flooring, that the landlord was unsure regarding the age of the flooring, and the undisputed testimony of the witness stating that the floors had not been refinished, **I find** the landlord has failed to meet the burden of proof to prove that the tenants violated the *Act,* the value of the loss, and whether the landlord suffered a loss. Therefore, **I dismiss** the remainder of this portion of the landlord's claim in full due to insufficient evidence, without leave to reapply.

Item 4 – The final portion of the landlord's claim is for $200.00 to re-paint walls and doors. The landlord's testimony regarding the condition of the walls and doors was disputed during the hearing. The landlord submitted a colour photocopy of a photo of a wall that the landlord stated shows water damage, however, I do not find that the photo clearly shows water damage.

As I have already found the landlord's condition inspection report to be confusing and invalid, I will rely on the condition inspection report submitted by the tenants and signed by the agent for the landlord. In that report, the only items that indicate "scuffs on walls" and "some loose paint" and "paint chips" indicate that those items existed at the

beginning of the tenancy. The landlord also did not submit any receipts for the paint or paint brushes in support of his claim.

Based on the above, **I find** the landlord has not met the burden of proof to prove the tenants violated the *Act* or prove the value of the damage or loss. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Return of the tenants' security deposit and pet damage deposit – The parties agree that the tenants were not paid $102.01 of their original $650.00 security deposit and $650.00 pet damage deposit. Therefore, **I order** the landlord to return the remaining $102.01 owed to the tenants within 15 days of receiving this decision.

Should the landlord fail to comply with my order, **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **$102.01**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the landlord was not successful with his application, **I do not grant** the landlord the recovery of the filing fee.

Conclusion

I dismiss the application of the landlord in full, without leave to reapply.

I grant the tenants a monetary order in the amount of $102.01 pursuant to section 67 of the *Act.*

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2012

Residential Tenancy Branch