



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on October 1, 2011 and ended on October 31, 2012. The Tenant, an architect, was also employed as a caretaker for the Landlord and received a portion of her rent back as pay. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. No move-in or move-out condition inspection was conducted.

The Landlord states that the Tenant left the unit damaged and claims as follows:

- \$152.88 + \$201.60 + \$42.54(taxes) for the cost of replacing and installing sheet flooring in the unit that the Tenant removed during the tenancy. The Landlord states that the Tenant was informed a year prior that the flooring would not be

replaced during other renovations to the unit. The Landlord states that the flooring purchased was the least expensive.

- \$113.97 + 73.68 + \$13.68 (taxes) for the cost of replacing and installing the subfloor that the Landlord states was damaged as a result of the removal of the previous flooring; and
- \$22.98 + 18.42 + \$2.76 (taxes) for the replacement and installation of a medicine cabinet that the Landlord states were removed by the Tenant.

The Tenant states that a previous tenant lived in the unit for fifteen years and that at the Tenant's move-in the flooring was damaged with large holes and that the floor had been covered by mats. The Tenant states that the flooring in the unit at the time was sheet flooring that has a useful life of five to seven years. The Tenant states that no work had been done on the unit during the previous tenancy. The Tenant states that renovations to the unit commenced during the Tenants occupancy as asbestos had been found in the unit. The Tenant states that as a result of these renovations, the flooring was further damaged at the location of the thresholds resulting in rips in the flooring that caused tripping. The Tenant states that only the portions of the flooring that were badly damaged and unsafe were removed. The Tenant states that the Landlord is claiming for the replacement of 168 square feet of flooring in the unit which includes a hallway and laundry area and that the kitchen floor is on 82 square feet. The Tenant states that the Landlord never came to the unit to see the flooring. The Landlord states that whole the floor was not in great condition, the Tenant never told the Landlord that the floor was not functional and did not inform the Landlord of the removal.

The Tenant states that there was nothing wrong with the subfloor and that the Landlord selected the most expensive subfloor materials at a cost of \$37.99 per sheet as opposed to a lower grade of subflooring at \$12.00 per sheet.

The Tenant states that the medicine cabinet was not removed, only the door which was covered by a mirror and that the mirror was mounted beside the cabinet. The Tenant

states that the cabinet door was removed as such since it did not open. The Landlord states that the Tenant did not inform the Landlord of this problem and did not have permission to make the changes that were made and that as the mirror did not fit the cabinet a whole cabinet was required.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Based on undisputed evidence, I find that the move-in condition report was not completed or a copy provided to the Tenant and that the Landlord's right to claim against the security deposit has been extinguished. As such I order the Landlord to return the security deposit of **\$450.00** plus zero interest to the Tenant forthwith.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the lack of a move-in condition report, considering the Tenant's evidence that the flooring to the kitchen was significantly damaged at move-in, and considering the undisputed evidence that the previous tenancy was 15 years long, I find on a balance of probabilities that the Tenant did not damage the flooring. While the Tenant does not dispute removing some of the flooring, given the age of the floor and the evidence of the Tenant that more flooring was replaced than was damaged, I find that the Landlord has not substantiated that the Tenant is responsible for replacement of the flooring. It required replacing regardless of the actions of the Tenant. Given the undisputed

evidence that the subfloor was significantly more expensive than another product that would have been sufficient, I find that the Landlord failed to take reasonable efforts to minimize this loss in relation to the subflooring. I therefore dismiss the Landlord's claim for both the flooring and subflooring.

Based on the undisputed evidence that the Tenant removed the cabinet door without permission and accepting that the cabinet could not be returned to its previous state, I find that the Landlord has substantiated a monetary entitlement to **\$44.16**. As the Landlord's application has met with significantly limited success, I decline to award recovery of the filing fee.

Monetary orders will be provided to each Party and the Parties may set off the amounts ordered.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$450.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for the amount of **\$44.16**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 27, 2013

Residential Tenancy Branch

