



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, 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 unpaid rent - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Witness also provided evidence under oath.

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 March 14, 2010 for a fixed term ending April 30, 2012 with a second tenancy started on May 1, 2012 for a fixed term ending April 30, 2013. The Tenants moved out of the unit on March 14, 2012. Rent of \$1,500.00 was payable monthly on the first day of each month and at the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Tenant's paid \$1,000.00 for rent for April

2013. The Parties mutually conducted a move-in and move-out inspection with reports completed.

The Landlord states that the Tenants failed to provide the Landlord with a month's notice to end the tenancy and claim unpaid rent of \$500.00 for April 2013.

The Landlord states that in January 2013 the parties discussed the purchase of the unit by the Tenants and that the Tenants also informed the Landlord that they would not renew another term tenancy agreement at the end of the term as they only wanted to rent on a monthly basis. The Landlord states that the Tenants were informed in February 2013 about the planned sale of the unit.

The Tenants state that in mid February 2013 the Landlord's husband spoke to the Tenant on the phone, was frustrated that the Tenants did not want to purchase the unit and told the Tenants that they would have to move out of the unit as the Landlords would be listing it for sale. The Tenant states that four days later the Landlord and a real estate person visited the unit and stated that the unit would not be listed until repairs were made. The Tenants state that on February 23, 2013 the Landlord's husband asked the Tenant to move out of the unit as soon as possible or put their belongings in storage. The Tenants states that given this request, the Tenants found another rental unit for April 1, 2013. The Tenants state that although the Tenants wanted to do a move-out inspection at the end of April 2013, the Landlord's requested a move-out inspection early in order to start the repairs and so the Tenants only paid the \$1,000.00 as they no longer had possession of the unit after the inspection on April 15, 2013.

The Landlord disputes that the Tenants were asked to leave early and states that the Tenant were only told that the unit required work before the sale.

The Landlord states that the Tenants left a two inch gouge on one panel of laminate flooring in the master bedroom. The Landlord states that they are aware that laminate

flooring is soft and marks easily. The Landlord states that a flooring company informed them that this gouge cannot be repaired or patched as it is in the middle of the flooring and all the panels require removal in order to repair the damaged panel. Further, even if they were able to patch the floor, the Landlord states that the type of laminate in the unit is no longer available. The Landlord states that the bedroom with the gouge is 160 square feet. The Landlord states that the unit would also need a new underlay. The Landlord states that they did not obtain a second opinion for the floor and did not investigate alternative repairs. The Landlord claims \$3,000.00 out of the estimate of \$4,198.00 for the replacement of all the flooring and underlay. The Landlord withdraws the claim for costs to repair exterior panels.

The Tenant states that the flooring estimate is based on a floor covering area of 900 square feet and the unit is only 1,000 square feet. The Tenant states that the gouge was present since move-in and that although the gouge not noted in the move-in report, at the time of the move-in inspection the Landlord had been cleaning the unit and buckets were on the floor, possibly covering the gouge. The Tenants state that there were pre-existing scratches on the master bedroom floor and that the all the rest of the flooring in the unit was damaged prior to their tenancy. The Tenant questions the Landlord's evidence of the flooring company's advice or recommendations on the extend of the replacement need as this is only coming from the Landlord.

The Landlord states that the Tenants replaced the carpets on the stairs with tiles without the Landlord's permission and that the Tenant left gaps and tile pieces missing. The Landlord claims the cost of the box of tiles purchased to repair the missing tile and the cost of the trim. The Tenant states that they had asked the Landlord to replace the carpet for the stairs for over two years and that in September or October 2012 the Landlord orally permitted the Tenants to replace the carpet at the Tenants' cost. The Tenant states that that when the Landlord attended the unit h the real estate agent to make a list of items for the Tenants to repair, no mention was made about the stairs. The Landlord states that the Tenants never informed the Landlord that the carpet on the stairs was dirty.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. 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 undisputed evidence that the Landlord obtained possession of the unit on April 16, 2013, that the unit was to be repaired prior to being listing for sale, and that the Tenants paid for more than a half month's rent for April 2014, I find on a balance of probabilities that the Landlords benefited from the early possession of the unit and has therefore not substantiated the loss claimed. As such, I dismiss the claim for unpaid rent.

Given the move-in inspection report that does not identify a gouge on the bedroom floor, I find on a balance of probabilities that the Tenants caused the gouge. Although the Landlord claims that the entire flooring requires replacement due to the one gouge, considering that the Landlord's evidence of this requirement comes from a source that stand to benefit from such advice, and considering the undisputed evidence of additional pre-existing damage to the flooring, I find that the Landlord has not substantiated the Tenants caused damage to the extent claimed or for the costs claimed. I therefore dismiss this claim.

Although the Landlord denied giving the Tenants permission to replace the carpet on the stairs, given the photos of the condition of the carpet on the stairs, I find that the Tenant's evidence that the Landlord accepted their offer to replace the carpet with tiles at the Tenant's expense to be believable. Given the photos of the unfinished nature of the work done by the Tenants however I find that the Landlords have established that

the Tenants failed to make those repairs to completion and that the Landlord has therefore substantiated its claim of **\$73.20** and **\$61.04** for the costs of completion.

Given the utility bill provided to support the Landlord's claim for unpaid utilities and considering that the bill was for usage from March 19, 2013 to April 9, 2013, while the Tenants has occupancy of the unit, I find that the Landlord has substantiated a monetary entitlement of **\$54.61**.

As the Landlord's application has met with limited success, I decline to award recovery of the filing fee. Deducting the total entitlement of **\$188.85** from the security deposit plus zero interest of \$750.00 leaves **\$561.15** remaining to be returned forthwith to the Tenants.

Conclusion

I Order the Landlord to retain the amount of \$188.84 from the security deposit plus interest in the amount of \$750.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$561.15**. 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: September 3, 2013

Residential Tenancy Branch