



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Radke Bros. Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Agent for the Landlord applied to amend the Application for Dispute Resolution to include a claim to retain the security deposit. The Tenant did not oppose the application and the Application for Dispute Resolution was amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, on June 14, 2013. The Tenant stated that both Tenants have viewed these documents and that he is representing the other Tenant at these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and that the Agent for the Landlord was able to view the digital evidence, and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for damage to the rental unit and to retain the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 25, 2012; that it ended on May 31, 2013; that the Tenant paid a security deposit of \$647.50; that a

condition inspection report was completed on February 25, 2012; that a copy of that report was not provided to the Tenant until April 26, 2013; that a condition inspection report was completed at the end of the tenancy; that a copy of that report was first served to the Tenant as evidence for these proceedings; that on the final condition inspection report the Tenant gave the Landlord written permission to retain \$160.00 for cleaning the rental unit; and that the Landlord is still holding the remaining \$487.50 of the security deposit.

The Landlord and the Tenant agree that their written tenancy agreement required the Tenant to "carpet all traffic areas" that were previously bare floors and to use protective devices on furniture legs and bases. The Tenant stated that there was a 2'X4' carpet in the entry and a 6'X8' carpet in the living room that covered the traffic areas in front of, and behind, the couch. The Agent for the Landlord stated that there were two carpets in the rental unit; that he thinks the carpet in the living room was only 6'X4'; and that the carpet in the living room was largely covered by a coffee table.

The Landlord and the Tenant agree that the hardwood floors in the rental unit had been refinished prior to the start of this tenancy; that the hardwood floors were in good condition at the start of the tenancy; that the hardwood floors were damaged at the end of the tenancy; and that there were "dimples" on the floor, caused by high heeled shoes. The Tenant agrees there were "dimples" in the dining room but contends there were only a few "dimples" in the living room, while the Landlord argues there were many "dimples" in both rooms.

The Landlord also contends there were many scratches on the floor, likely caused by moving furniture. The Tenant stated that there were no scratches on the floor. The parties agree that the scratches were not noticed when the rental unit was inspected at the end of the tenancy.

The Landlord submitted several photographs of the damaged floor, which the Second Agent for the Landlord stated he took on May 31, 2013 after the condition inspection report had been completed. The Tenant stated that photographs 1-8 do represent the condition of the rental unit at the end of the tenancy, but that photographs 9-16 do not represent the condition of the unit at the end of the tenancy.

The Landlord has applied for a monetary Order of \$1,557.50, \$160.00 of which is for cleaning and \$1,417.50 of which is for repairing the floor. The Landlord submitted a receipt, in the amount of \$2,082.15, which is the amount actually paid to repair the floor.

Analysis

I find that there is no need to consider the Landlord's application to retain \$160.00 from the security deposit for cleaning the rental unit. As the Tenant agreed to this deduction, in writing, the Landlord has the right to retain this amount pursuant to section 38(4)(a) of the *Residential Tenancy Act (Act)*.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damage to the hardwood floor at the end of the tenancy. In determining that the floors were damaged, I placed significant weight on the undisputed testimony that the floors were damaged and on the condition inspection report that was completed at the end of the tenancy, which indicates the floors in the living room and the dining room were damaged.

In determining the extent of the damage, I placed significant weight on the photographs that were submitted in evidence by the Landlord. Although the Tenant did not agree that all of the photographs were representative of the floor at the end of the tenancy, I find it is most likely that they were. The photographs are clearly of the same floor and are dated stamped May 31, 2013, and I can find no reason to conclude that all of the damage did not exist on that date.

I find that images submitted in evidence by the Tenant are less helpful in determining this matter, as they are taken from further away than the Landlord's photographs. They do not, in my view, serve to show that the Landlord's photographs are inaccurate.

I find that the Landlord is entitled to compensation for repairing the floor that was damaged during the tenancy. On the basis of the receipt that was submitted in evidence, I find that the Landlord has established that it cost more than \$1,417.50 to repair the floor. I therefore find that the Landlord is entitled to the full amount of the claim for \$1,417.50. I am unable to award compensation for the total cost of the repairs, as the Landlord did not claim compensation for the full amount of the repairs in the Application for Dispute Resolution

Section 23(5) of the *Act* stipulates that a landlord must give the tenant a copy of a condition inspection report that is completed at the start of the tenancy in accordance with the *Residential Tenancy Regulation*. Section 18(1) of the *Residential Tenancy Regulation* stipulates that the completed condition inspection report must be given to the tenant within 7 days of completion. On the basis of the undisputed evidence, I find that the Landlord did not comply with section 23(5) of the *Act*, as the Tenant was not provided with the condition inspection report that was completed on February 25, 2012 until April 26, 2013.

Section 24(2)(c) of the *Act* stipulates that the Landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(5) of the *Act*. As I have concluded that the Landlord failed to comply with section 23(5) of the *Act*, I find that the Landlord's right to claim against the security deposit for damage to the rental unit is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security

deposit has been extinguished, pursuant to section 24 of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage to the rental unit and the only option remaining open to the Landlord is to return the security deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. As the Landlord has not yet returned the full security deposit, I find that the Landlord did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant, which is \$1,295.00. This payment must be reduced by the \$160.00 that the Tenant authorized the Landlord to retain for cleaning the rental unit. I therefore find that the Landlord owes \$1,135.00 to the Tenant.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,467.50, which is comprised of \$1,417.50 for repairing the floor and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. This claim must be offset by the \$1,135.00 that the Landlord owes to the Tenant.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$332.50. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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 25, 2013

Residential Tenancy Branch

