



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are 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?

Background and Evidence

The parties agree that this month to month tenancy started on May 11, 2011. Rent for this unit was \$650.00 per month and was due on the first of each month. The tenant paid a security deposit of \$325.00 on May 11, 2011. The tenancy ended on June 02, 2012.

The landlord testifies that the tenant caused some damage to the laminate flooring in the living room of the unit. There is an edge of one of the flooring planks which has a dent and chip out of it. This damage was in the middle of the floor and was very obvious. The landlord testifies that sometime after the tenant moved into the unit the tenant did show this damage to the landlord however the landlord testifies the floor was not damaged when the tenant moved in. The landlord had a flooring contractor repair the floor which involved removing the damaged boards and replacing them with some the landlord had as spares. The landlord seeks to recover \$131.25 for the flooring contractors labour and an invoice has been provided in evidence.

The landlord testifies that the towel bar in the basement was missing. This was one of two towel bars which the tenant packed and removed when she moved out. Later the tenant realized she had packed the towel bar and notified the landlord that she would replace it. However the tenant did not do so and the landlord had to search to find one of the same style. As the landlord could not find one that matched the existing towel bar, the landlord had to replace both towel bars so they continued to match. The landlord seeks to recover the cost of these towel bars of \$54.78 and has provided a receipt in evidence.

The landlord testifies that there was a missing window screen for the kitchen window. The landlord had to replace the screen and seeks to recover the cost of this of \$36.09. The landlord has provided a copy of the receipt in evidence.

The landlord testifies that the tenant is required to have the carpets professional cleaned at the end of the tenancy. The landlord testifies that he does not allow tenants to clean the carpets themselves as tenants have ruined carpets in the past. The tenancy agreement notifies the tenants of this requirement for professional carpet cleaning. The landlord testifies that as the tenant did not have the carpets cleaned the landlord was able to get a carpet cleaning company to clean the carpets and seeks to recover the cost for this work of \$60.00. The landlord has provided a copy of the receipt for this work.

The landlord testifies that the tenant gave notice to end the tenancy for May 31, 2013. The tenant asked for more time to move out as the house the tenant had purchased required cleaning. The landlord seeks to recover \$50.00 for two extra days the tenant overheld in the unit as the tenant did not vacate until June 02, 2013. The landlord agrees that he did not inform the tenant that he was going to charge her extra rent for two days but the tenant did tell the landlord to take any extra amounts from the security deposit.

The tenant testifies that not long after moving into the unit the tenant was sweeping the floor when she noticed some damage to the floor. When the landlord came over the tenant testifies that she showed this damage to the landlord but has no idea how it could have happened as the tenant did not drop anything onto the floor. The landlord suggested putting felt pads under the feet of the sofa which the tenant then did.

The tenant testifies that the towel bar had fallen off and the tenant would re-fix it only to have it fall off again. The tenant testifies that the towel rail was put into a cupboard and a friend who helped the tenant pack to move out, inadvertently packed this towel rail. The tenant testifies that during the walk through the landlord asked the tenant about the towel rail and the tenant testifies that she agreed to replace it but forgot to take the measurements with her. The tenant then forgot to replace it.

The tenant testifies that the window screen in the kitchen kept falling off and the tenant then left it outside. The tenant testifies that she thought the landlord's manager had picked it up and put it in storage to use on another unit. The tenant disputes that she removed or damaged this screen.

The tenant testifies that at the end of the tenancy the tenant had wanted to clean the carpets herself using her own carpet cleaner. The landlord would not allow the tenant to do so and said the tenant had to use the landlord's carpet cleaning company. The tenant testifies that she could not contact the carpet cleaner so agreed the landlord could keep the cost of carpet cleaning from the security deposit.

The tenant testifies that she had no idea that the landlord was going to charge the tenant for overholding at the unit. Later the tenant was told by the landlord that the landlord wanted \$40.00 per day.

The landlord argues that he had originally told the tenant he wanted \$40.00 a day for overholding as the landlord was a little upset with the condition of the rental unit as the tenant had not cleaned it to a reasonable standard.

The landlord asks the tenant if the laminate flooring was damaged when the tenant moved in. The tenant responds that no, she did not see any marks when she moved in.

The tenant declines to cross examine the landlord but states that if there is any monetary award to the landlord then the landlord may deduct them from the tenant's security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find the landlord has shown that the damage to the laminate floor was not there at the start of the tenancy but was there not long after the tenant moved in and continued to be there at the end of the tenancy. The tenant argues that she does not know how this damage occurred. I therefore find as the damage did occur during the tenancy then the landlord has met the burden of proof concerning this damage and I find in favour of the landlords claim to recover labour costs to replace this section of the floor of **\$131.25**.

With regard to the towel rail; the tenant agrees that this was inadvertently removed from the unit at the end of the tenancy and was not returned or replaced. I therefore find the landlord has met the burden of proof in this matter and uphold the landlords claim to recover the cost for replacing both towel rails so they continue to match of **\$54.78**.

With regard to the landlords claim for the replacement window screen; a tenant is responsible for items in the rental unit. The rental unit was provided with a window screen on the kitchen window. Even if this screen kept falling off then the tenant is responsible to a) notify the landlord and b) to ensure the screen is put in a safe location for the landlord to deal with or to find at the end of the tenancy. As the screen was missing at the end of the tenancy then the landlord has met the burden of proof in this matter and I uphold the landlords claim for replacement costs of **\$36.09**.

With regard to the landlords claim for carpet cleaning; the landlord's hand written move out report does not indicate that the carpets were unclean at the end of the tenancy. I refer the parties to the *Residential Tenancy Act* section 32(2) which states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The Residential Tenancy Policy Guidelines #1 provides further guidance on carpet cleaning and states:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Neither the Act nor the policy guidelines say that a tenant must have carpets professionally steam cleaned or shampooed. As long as the tenant leave the carpets in a reasonable clean condition then even if the landlord has a clause in the tenancy agreement which states that a tenant must have the carpets professionally cleaned that clause is unconscionable to the Act and cannot be enforced. As the landlord has not shown that the tenant left the carpets dirty or stained then I must deny the landlords claim for carpet cleaning.

With regard to the landlords claim for Rent for two days the tenant overheld at the rental unit; a landlord is entitled to recover a prorated rent for any days a tenant overholds at a rental unit after the tenant has provided written notice to end a tenancy. In this matter the landlord has claimed \$50.00 however after calculating the rent on a daily basis I find the rent is actually \$20.96 per day and therefore the landlord is entitled to recover **\$41.92** for the two days the tenant overheld at the unit.

As the landlord has been partially successful with this claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. I find the landlord is entitled to a monetary award of **\$314.04**.

As the tenant has agreed at the hearing that the landlord may deduct any monetary award from the security deposit I have done so. This leaves an outstanding balance of the security deposit of **\$10.96**.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord has been awarded the sum of **\$264.04** for damages and rent and **\$50.00** for the filing fee and this has been deducted from the tenant's security deposit of \$325.00.

The landlord must return the balance of the tenant's security deposit of **\$10.96** to the tenant within five days of receiving this decision.

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 30, 2013

Residential Tenancy Branch

