



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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 damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

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

Although there is a written tenancy agreement, this document was not provided by the Landlord as evidence. The tenancy started on June 15, 2010 and ended on May 30, 2013. Rent of \$1,025.00 was payable monthly on the first day of each month and at the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The Parties mutually conducted a move-in and move-out inspection and report. The Tenant owes **\$1,025.00** for May 2013 rent and **\$80.00** for the replacement of a fob.

The Landlord states that the tenancy agreement provides for a \$25.00 late rent fee and claims late fees for late rent paid for April and May 2013. The Tenant states that she does not recall any such provision. The Tenant states that no copy of the move-out report was provided to the Tenant. No copy of either the move-in or move-out report was provided as evidence by the Landlord.

The Landlord submits that the unit was clean and undamaged prior to the tenancy and that prior to the tenancy the Landlords had occupied the unit since they purchased it new in December 2008. The Landlord states that the Tenant left the carpet with multiple stains and that although both the Tenant and the Landlord had the carpets cleaned at move-out the stains could not be removed. The Landlord states that the carpet was pulled up and the underlay was also found to be stained. The Landlord claims \$1,800.00 to replace the carpet and provided one quote for a carpet and pad. The Landlord provided a photo of the carpet taken before the Tenant and the Landlord cleaned the carpet and a photo of a small area of the carpet after the cleaning. No photos were provided for the underlay. The Tenant agrees that some stains were left but not to the extent claimed by the Landlord. The Tenant states that given new tenants are in the unit with the same carpet, the Tenant does not agree to pay for a carpet that could be furthered damaged by the new tenants. The Landlord states that the new tenant has a small child and was happy to have the carpet as is as the new tenant expects more damage may occur due to the child. The Landlord states that there is no plan to replace the carpet while the current tenancy is ongoing. The Parties agree that stains to the carpets were noted on the move-out report.

The Landlord states that the Tenant failed to keep the dishwasher filter clean and that as a result, in April 2013 the dishwasher became clogged causing the motor to fail and water to flood the floor. The Landlord states that the Tenant should have had the common knowledge to keep the filter clean and that the appliance manual containing care instructions was left with the Tenant. The Landlord claims \$153.24 for the cost of the dishwasher repairs made about a week after the flood and provided a receipt for this cost.

The Tenant states that when she arrived home and discovered the flood she never knew there was any problem with the dishwasher and that the dishwasher continued to work following the flood and up to the date the dishwasher repair person attended. The Tenant states that at no time was she informed that she had in any way caused the dishwasher to require repairs, that this was not mentioned at the move-out inspection nor indicated as damages left in the move-out report. The Tenant states that the property manager told her that the damage to the laminate floor was due to the dishwasher malfunction and not to worry about it. The Tenant states that the repair person told the Tenant that the flood occurred due to a garbage disposal problem. The Tenant states that no manual was provided for the care of the dishwasher.

The Landlord states that as a result of the flood from the dishwasher the kitchen floor was damaged in about a 6' x 6' foot square area by lifting laminate. The Landlord states that they do not know if their previous property manager inspected the floor after the flood. The Landlord states that the laminate floor is made of click laminate and that individual pieces cannot be removed for repair. The Landlord states that the entire floor requires replacement and provided an invoice that indicates a "very rough estimate" for the cost to replace the flooring. The Landlord claims \$900.00 based on this estimate and states that they could not obtain another estimate without paying for such an estimate as this would require a visit to the unit to visually see the floor. The Tenant agrees that the flooring was raised due to the flood but states that she had no control over what may have caused the flood and that the damaged area is only approximately 3' x 3'. The Tenant states that it would not be reasonable for her to assume the cost for replacing the entire flooring that covers the hallway and dining room in addition to the area that was damaged by the flood.

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 that no copy of the tenancy agreement was filed as evidence and considering that the Tenant does not recall a provision in relation to a late fee, I find that the Landlord has not established an entitlement to late fees and I dismiss this claim.

Given that the Tenant provided evidence that some stains were left on the carpet but not to the extent claimed by the Landlord and considering that the Landlord did not provide photo evidence of the extent of stains claimed left after the cleaning beyond one small stain, and taking into account that the carpet is still acceptable for the new tenancy, I find that the Landlord has only substantiated an entitlement to a nominal amount of **\$200.00** to compensate the Landlord for a reduction in the value of the carpet.

There is no dispute that a flood occurred and damaged the flooring. However, the Landlord has only provided indirect and hearsay evidence about the cause of the malfunction of the dishwasher and the cause of the flood. Considering the Tenant's undisputed evidence that this damage was not noted to be her fault on the move-out report nor was she ever informed that she was responsible for either the flood or the dishwasher malfunction, I find that the Landlord has not proven on a balance of probabilities that the Tenant caused the damages to the dishwasher or the laminate flooring and I dismiss the claims for these costs.

Given the Tenant's agreement that monies are owed for rent and a fob replacement, I find that the Landlord has substantiated an entitlement to **\$1,105.00**. As the Landlord has been successful with part of its application, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,355.00**. Deducting the **\$500.00** security deposit plus zero interest from the entitlement leaves **\$855.00** owed by the Tenant to the Landlord

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$855.00**. 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: November 4, 2013

Residential Tenancy Branch