



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANDMARK REALTY MISSION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 11, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all or part of the pet and or security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed receipt of the Landlord's evidence and argued that she was not able to view the C.D. containing the photos of the rental unit. The Landlord confirmed that she did not contact the Tenant to confirm she was able to view the digital evidence.

The *Residential Tenancy Branch Rules of Procedure # 11.8* stipulates which digital evidence will be accepted and how it may be submitted as follows:

Digital evidence includes photographs, audio recordings, video recordings or other material provided in an electronic form that cannot be readily reproduced on paper.

Digital evidence must be accompanied by a written description and meet the time requirements for filing and service established in Rule 3.1 and Rule 3.5.

*The format of digital evidence must be accessible to all parties. Before the hearing, **the party submitting the digital evidence must determine that***

the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence [emphasis added]

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible and so that all parties have 5 days with full access to the evidence.

If any party is not able to hear or see the digital evidence because it was not provided in an accessible way, the digital evidence may or may not be considered.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide the Residential Tenancy Branch with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

Supporting information

The party providing the digital evidence must make the evidence available at least five full days before the hearing. This does not include the days in which the party is asking the other party if they are able to gain access to the evidence.

In this case the Landlord's photographic evidence was provided on a C.D. storage device. The Tenant confirmed receipt of the C.D. and argued that she could view the photos. Accordingly, I find the Landlord's photographic evidence was not submitted in accordance with 11.8 of the Rules of Procedure, and will not be considered in my decision. I did however consider the Landlord's oral testimony and the submissions provided in printed form.

The Tenant submitted her documentary too late and although she personally delivered the evidence to the *Residential Tenancy Branch* it had not be received on file prior to the hearing. Accordingly, I did not consider the Tenant's documentary evidence but I did consider her oral testimony.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The parties confirmed the tenancy began on January 1, 2010 and switched to a month to month tenancy after June 30, 2010. On December 18, 2009 the Tenant paid \$375.00 as the security deposit and on February 19, 2010 she paid \$187.50 as a pet deposit for her two small dogs. The tenancy ended effective June 30, 2013, after proper notice was served upon the Landlord on May 15, 2013. The parties attended the move-in inspection on December 28, 2009 and the move out inspection on June 28, 2013, during which the Tenant provided her forwarding address. The Tenant signed the move out condition inspection document indicating that she did not agree with the report.

The Landlord is claiming for damage to the living room and bedroom floor, required cleaning, and other small damages that were done to various walls and a closet door. The Landlord indicated that she has been managing this property for approximately eight years and knows that the laminate flooring was only four and a half years old as it was installed in early January 2009. The Landlord has sought monetary compensation as follows:

\$60.00 Cleaning costs – the owner conducted the cleaning himself and estimated that three hours of cleaning at \$20.00 per hour were required to wash all walls, the insides of the cabinets, light fixtures, ledges, blinds, fans, mirrors, and the sides of the appliances. The Landlord argued that her photos were taken on June 28, 2013, during the walk through so the Tenant knows what the unit looked like at that time.

\$40.00 Blind replacement – the blinds were bent and had black permanent marker. No receipt was provided because the owner had another blind to install. The age of the damaged blind was unknown.

\$10.00 Light fixture cover for bedroom # 3 – no receipt was provided as the owner had a spare one.

\$60.00 Repairs to closet door in bedroom # 2 plus repairs to walls in bedroom # 3. This work took two hours and they pay their trades people \$30.00 per hour.

\$1,168.72 Estimated cost to replace laminate flooring. The Landlord claimed an amount based on the square footage and estimates provided in their evidence to remove and reinstall laminate flooring. The owner installed a more expensive ceramic tile and therefore was not claiming the higher price. The laminate was new in January 2009 and was significantly damaged during this tenancy beyond repair. It was obvious that water had been spilled or placed on the floor and left to soak into the laminate which caused the boards to swell at edges which appear to be caught and torn. There are also numerous deep scratches all over the floors. Damage also appeared to be caused by furniture, dogs, or chairs being slid across the floor.

The Tenant disputed all of the items claimed by the Landlord. She argued that she had purchased cleaning and repair materials but her work was simply not up to the Landlord's standards. She is of the opinion that she should not have to pay the owner for labour costs of \$20.00 per hour because a contractor was not hired. She stated that she knew the walls were going to be painted so she did not think she needed to wash them. She indicated that during the walk through the Landlord went out to her vehicle and brought back a different type of cleaning sponge to show the Tenant that the dirt and grime could be washed off the door. She purchased spackle to repair the nail holes and the closet door.

The Tenant confirmed that the window blind was bent and did get black permanent marker on it during the tenancy. She argued that blinds get bent all the time and the mark from the black marker was very small so she was of the opinion that the blind did not need to be replaced.

The Tenant indicated that the move-in inspection had not been completed correctly and she informed the Landlord of other deficiencies she noticed shortly after moving in. This supports her argument that there was never a light cover in bedroom # 3 from the beginning. She denied that the light fixture went missing from bedroom # 3 during the tenancy.

The Tenant stated that the closet door in bedroom # 2 was never attached to the closet properly which caused it to fall and hit her son's bed. It was this fall which caused the door to become dented. It was not a hole punched into the door, it was a dent, which she argued was normal wear and tear. She noted that she purchased new hardware to reattach the closet door properly.

The Tenant argued that the damage referred to as wall damage in bedroom #3 was nothing more than the paint coming off the wall when her daughter removed her posters. She confirmed the posters were attached to the wall with tape and when they were removed pieces of the paint/wall tore off which she believes is normal wear and tear.

The Tenant argued that the floor was not perfect at move in as there were several small scratches which are indicated on the move-in inspection. She believes the excessive damages were caused by the moist damp air that was trapped inside the unit. She argued that there was not enough ventilation in the suite as there were only two small windows in the basement suite. She was also of the opinion that the damage was normal wear and tear caused from washing the floors and moving furniture. She acknowledged that she initially had two small dogs and later only one, who were inside dogs. The one section of damage in the master bedroom was never noticed until she moved out because it was located under her dresser.

In closing, the Landlord argued that the Tenant was provided a list of required cleaning. The Tenant never reported problems with the closet door falling off and there was never any notice about the damage that was caused. She explained the extent of the floor damage of entire laminate boards swelling and lifting up, which can only be caused by excessive water being left on the floor. If the Tenant was washing the floors with that much water she ought to have known that she should dry them with a towel. It is possible that that damaged section was under a dresser but again there had to have been excessive water placed on the floor for it to have pooled in that area under the dresser, which is not wear and tear. The Tenant repair the closet with spackle which is for drywall and not wood. The Landlord argued that they did not claim all the costs incurred to repair this unit. They only claimed items that were caused by negligent damage which were not normal wear and tear.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and

4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Upon review of all the evidence before me, notwithstanding the Tenant's arguments that the damages were the result of normal wear and tear, I find based on the aforementioned, that the Tenant breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

In this instance, I find the Landlord provided insufficient evidence to prove or verify the value of the loss or damage claimed for the replacement blind and the light fixture cover. I make this finding in part because the Landlord failed to provide invoices or receipts for these items; furthermore, there is insufficient evidence to prove the items were actually replaced.

In an instance where a party is relying on estimated costs or items they have in stock, I would expect to see the receipts of when the items were actually purchased. The amounts claimed were, simply put, guesses made by the Landlord. Accordingly, I dismiss the claims for the replacement blind and the light cover, without leave to reapply.

In this case the evidence supports that the owner conducted the additional cleaning required and claimed three hours at \$20.00 per hour; while a tradesperson employed by the Landlord conducted the wall and door repairs in two hours at \$30.00 per hour. Despite the Tenant's argument that she cleaned and repaired the unit to the best of her ability, I find the Landlord has met the burden of proof that the work was not performed in accordance with the Act and I find the amounts claimed to be reasonable. Accordingly, I award the Landlord labour costs in the amount of **\$120.00**.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

In this case the evidence supports the laminate flooring is 4 ½ years old and had some scratches on it at the start of the tenancy. I accept the Landlord's submission that the damage to the floor was the result of extensive water damage and that scratches were excessive that were caused either by moving of furniture or from the dogs scratching.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The normal useful life of a laminate is normally less than hard wood or parquet, and is approximated to be fifteen years. The estimated cost to remove and replace the laminate flooring was \$1,168.72. Accordingly, I award the Landlord compensation for damaged laminate flooring in the amount of **\$736.29** (\$1,168.72 x 10.5/15 the remaining useful life, less 10% (\$81.81) for pre-existing damage).

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and pet deposit plus interest as follows:

Labour for cleaning and repairs	\$120.00
Damage to laminate flooring	736.29
Filing Fee	<u>50.00</u>
SUBTOTAL	\$906.29
LESS: Pet Deposit \$187.50 + Interest 0.00	-187.50
LESS: Security Deposit \$375.00 + Interest 0.00	<u>-375.00</u>
Offset amount due to the Landlord	<u>\$ 343.79</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$343.79**. This Order is legally binding and must be served upon the Tenant.

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: October 17, 2013

Residential Tenancy Branch

