



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant participated in the conference call hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in January 2013, as a fixed term tenancy to end on December 31, 2013, with monthly rent of \$2,000. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$2,000. On January 1, 2013, the landlord and the tenant carried out a joint move-in inspection and completed a condition inspection report.

On June 1, 2013, the tenant informed the landlord that she would be moving out of the rental unit in September 2013, before the end of the lease. The landlord was able to find a new tenant for August 2013. The tenant moved out of the rental unit on July 25, 2013.

Landlord's Evidence

The landlord stated that he gave the tenant three different dates to do the move-out inspection, and the tenant agreed on July 25, 2013 at 1:00 p.m. In the morning of July 25, 2013 the tenant sent the landlord an email, indicating that she would not be available to do the move-out inspection. The landlord stated that he informed the tenant that she needed to be there. The landlord attended at the rental unit at 1:00 p.m. and waited for the tenant for one hour. When the tenant did not show up, the landlord inspected the unit himself. The landlord found damage to the wood floors, walls and stains on the carpet, which he estimated would cost \$1,800 to repair.

The landlord broke down his claim as follows:

- 1) \$300 estimated cost for stains on the carpet in the bedroom and the area rug in the living room – the landlord stated that the move-in condition inspection report does not indicate these stains were present at that time, and he obtained quotes ranging between \$300 and \$500 from three different carpet cleaning companies. The landlord also included an invoice for \$187.95 for carpet cleaning that was done only in the bedroom, where a permanent stain could not be removed;
- 2) \$1350 estimated cost for scratched wood flooring – the landlord received estimates between \$1200 and \$2000 to repair scratches in the wood floor by sanding and refinishing. The landlord has not yet done this work;
- 3) \$150 estimated cost for materials for the landlord to repair holes, scratches and dents in the walls and trim – the landlord did the work himself and he submitted a receipt for paint in the amount of \$33.57.

In support of his claim, the landlord provided photographs of the damaged areas of the rental unit.

The landlord submitted that the tenant extinguished her right to return of the security deposit when she failed to attend the move-out inspection.

Tenant's Response

The tenant stated that she wanted to move out of the rental unit on July 31, 2013, but the landlord asked the tenant if she could move out early and she agreed to move out on July 25, 2013. The only date that she could do the move-out inspection was July 25, 2013, but then something came up and she was not able to make it. The tenant stated that in the last email that the landlord sent to the tenant, the landlord agreed to do the inspection alone.

The tenant acknowledged that she did make one scratch on the hardwood floor when she was moving out, but she went online and found that scratches can be easily fixed with a little sanding. The tenant believed that the landlord's photos all showed the same scratch, not multiple scratches. The tenant submitted a quote from a flooring company in the amount of \$100 to \$150, for fixing a single scratch that is fairly minimal and not too deep.

The tenant stated that she had the landlord's permission to hang a painting, and she did so using holes that were already there from the previous tenancy. The tenant agreed to pay the landlord \$37.55 for his materials.

Analysis

Upon consideration of the evidence, I find as follows.

I find that the tenant did not extinguish her right to return of the security deposit. If a tenant does not agree to a time or date for a move-out inspection, the landlord is required to give the tenant written notice, in the prescribed form, of the final opportunity to schedule a move-out inspection. If the landlord does so and the tenant then does not attend, the tenant will have extinguished their right to return of the deposit. In this case, the tenant informed the landlord on July 25, 2013 that she would not be able to do the move-out inspection that day. The landlord did not then serve the tenant with a notice of final opportunity to schedule a move-out inspection in the prescribed form.

In regard to the landlord's monetary claim, I find that the landlord is entitled to some of the monetary amounts claimed. The landlord suffered losses of \$187.95 for carpet cleaning, and \$33.57 for paint. It is clear from the landlord's evidence that he would have had to use more materials than simply paint to repair the walls, and I therefore find it reasonable to grant the landlord a further \$50 for materials that he had previously purchased. I therefore find that the landlord is entitled to \$187.95 for carpet cleaning and \$83.57 for paint and repair materials for the walls.

The tenant acknowledged that she caused one scrape in the hardwood flooring, which she believed could be repaired for \$100 to \$150. I therefore grant the landlord \$150 for the hardwood floor. I find that the landlord did not provide sufficient evidence to establish the degree of work that would be required on the floors, or the age of the floors, in order to account for depreciation. Additionally, he did not incur any loss for repairing the hardwood floors. For that reason I find that he is not entitled to the remainder of his claim for floor repairs.

As the landlord's claim was only partially successful, I find he is not entitled to recovery of the filing fee for the cost of his application.

I remind the landlord that under the Act, a security deposit may only be a maximum of half of one month's rent.

Conclusion

The landlord is entitled to \$421.52. I order that the landlord retain this amount from the security deposit. The tenant is entitled to the balance of the security deposit. I grant the tenant an order under section 67 for the balance due of \$1578.48. 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 29, 2013

Residential Tenancy Branch

