



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that in late July 2013, he received the tenant's written notice to end this tenancy by August 31, 2013. The tenant sent this notice by registered mail on or about July 20, 2013. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 18, 2013. She also confirmed that she received copies of the landlord's written and photographic evidence package. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy began on September 1, 2011. Monthly rent was set at \$1,100.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenant's \$550.00 security deposit, paid on August 1, 2011.

Although the landlord conducted a move-in condition inspection on September 1, 2011 and entered into written evidence a copy of his report of that inspection, this was not a joint inspection and the tenant did not sign the move-in condition inspection report. On August 29, 2013, the landlord conducted his own inspection of the premises at the end of this tenancy. He did not obtain the tenant's signature on the move-out condition inspection report he entered into written evidence. The landlord noted that it was difficult to conduct a full inspection of the premises on August 29, 2013, because the tenant had already given the new tenants the keys to the rental unit and they had moved into the rental unit well in advance of their scheduled September 1, 2013 occupancy date.

The landlord's application for a monetary award of \$2,226.70, included the following items noted in the Details of the Dispute section of his application for dispute resolution:

Item	Amount
Kitchen Cabinets	\$604.80
Hardwood Flooring	1,269.10
Repair Drywall, Paint and Trim	280.00
Replacement of Lock	72.80
Total Monetary Order Requested	\$2,226.70

The landlord testified that he has completed some of the work to repair damage that arose during this tenancy, but has not done the rest, primarily because the tenant allowed the next tenant into the rental prematurely. He testified that some of the repairs and painting has been done and the lock has been replaced.

Although he now realizes that he should have conducted a joint move-in condition inspection with the tenant at the beginning of this tenancy, the landlord maintained that the rental unit was extensively renovated shortly before this tenancy started. His move-out condition inspection report and photographs reveal scratches on the hardwood flooring. He maintained these had been caused by the tenant's dog. He entered into written evidence estimates for the repairs that still need to be completed. He noted that he has located a company that can supply discontinued hardwood floor to match that on the floor.

At the hearing, the tenant did not dispute the landlord's claim that damage to the kitchen cabinets arose during her tenancy. She also did not dispute the amount claimed for this item by the landlord. She said that this damage arose primarily from damage caused by the storage of a bike in that room.

The tenant testified that there was a tenant with a dog who rented the suite from the landlord prior to the commencement of her tenancy. The landlord confirmed that he had a tenant with a dog for a six-month period immediately prior to the start of this tenancy. The tenant maintained that the scratches on the hardwood floor may very well have been caused by the previous tenant's dog and did not necessarily all arise from her own tenancy. She said that she had carpet covering the floor for most of her tenancy and was not certain as to the condition of the flooring at the start of her tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The tenant has not disputed that she is responsible for damage to the kitchen cabinets, nor has she disputed the amount of the landlord's claim for damage to these cabinets. As such, I issue a monetary award in the landlord's favour in the amount of \$604.80 for the damage to the kitchen cabinets.

There is disputed evidence with respect to the landlord's claim for damage to the hardwood floors. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. While the landlord submitted inspection reports of the condition of the rental unit both before and after the tenancy, neither of these were joint inspections.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 25 of the *Act* establishes that a landlord's claim for damage may be extinguished if he does not comply with the provisions of section 24 and 25 with respect to a joint move-in condition inspection.

I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in condition inspection and inspection report. I understand that the landlord may not have been able to undertake these repairs between tenants because of the tenant's premature release of her keys to the new tenants in mid-August 2013. However, as noted above, the onus is on the applicant to demonstrate actual losses incurred.

In this case, I find that the landlord has not actually incurred any expenses to repair the damage to the hardwood floor. The landlord has not demonstrated that he has lost any income from this rental unit as a result of the damage to the hardwood floor. In fact, the landlord testified that the new tenant is actually paying \$100.00 more in monthly rent than was the case with the respondent in the landlord's application. The landlord explained that this additional amount results from the landlord's inclusion of a section of the basement in the rental agreement, a basement area that the landlord had previously reserved for his own use.

In addition, I note that the landlord testified that the damaged hardwood flooring was previously renovated about five years ago. Based on this evidence, the hardwood flooring would not have been six months old when the tenant took occupancy of the rental unit. There would have been some usage of the rental unit prior to the previous tenant's six-month tenancy. This raises further questions as to when the damage to the hardwood flooring actually occurred.

Under these circumstances, I dismiss the landlord's claim for a monetary award for damage to the hardwood flooring without leave to reapply. I do so as I find that the landlord has not demonstrated any actual losses resulting from the tenant's actions arising out of this tenancy.

The Residential Tenancy Branch (the RTB) has created Policy Guideline 40, which provides Arbitrators examining claims for damage with guidance as to the Useful Life of various features of a tenancy. In this Guideline, the useful life of an interior paint job for a rental unit is estimated at four years.

The landlord testified that the rental unit was last repainted five years ago. Based on this testimony, the useful life of the existing paint job in this rental unit had expired by the end of this tenancy. As the rental unit was due for repainting by the end of this tenancy, the landlord is not entitled to recover the cost of this repainting. The landlord's failure to conduct a joint move-in condition inspection also makes it difficult to ascertain whether the repairs to drywall claimed in the landlord's application occurred before or during this tenancy. The landlord also testified that he has only completed some of this

work. For these reasons, I dismiss the landlord's application for a monetary award for repairs of drywall, painting and trim without leave to reapply.

Section 25(1) of the *Act* establishes that a landlord bears all costs of rekeying or otherwise changing the locks so that a former tenant does not retain access to a rental unit. For this reason, I dismiss the landlord's claim for the recovery of his costs to replace the locks at the end of this tenancy without leave to reapply.

As the landlord has been partially successful in his application, I allow him to recover his filing fee from the tenant. I also allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued to the landlord. No interest is payable over this period.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover a monetary award for damage and for recovery of his filing fee and to retain the tenant's security deposit:

Item	Amount
Kitchen Cabinets	\$604.80
Less Security Deposit	-550.00
Filing Fee	50.00
Total Monetary Order	\$104.80

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the landlord's claim for a monetary Order without leave to reapply.

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 12, 2013

Residential Tenancy Branch

