



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Town Centre Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The landlord's agent (hereafter "landlord") and the tenant attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter- The evidence was discussed and the tenant denied receiving the landlord's additional 5 pages of documentary evidence, which was received at the Residential Tenancy Branch ("RTB") on September 26, 2013. The tenant did not ask for an adjournment and I have evidence that the landlord served the tenant with their additional evidence in accordance with the Rules; I therefore allowed the landlord's documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence is that the tenancy initially began on May 1, 2012, to run for a one year fixed term, a second tenancy agreement was signed by the parties for another

fixed term which was to run through April 30, 2014, the tenancy ended on August 31, 2013, when the tenant vacated the rental unit, the ending monthly rent was \$1038, and the tenant paid a security deposit of \$500 and a pet damage deposit of \$500.

The landlord's monetary claim listed in their application was \$3066, comprised of \$1155 for refinishing and repair of hardwood floors, cleaning of the suite for \$231, and repainting of suite in the amount of \$1680.

The landlord's original relevant documentary evidence included a move-in and move-out condition inspection report, a written tenancy agreement, a letter to the tenant referencing smoking in the rental unit, proof of a move-in cleaning and painting of the rental unit, quotes for cleaning and repairs, and photos of the condition of the rental unit at the move-in and move-out.

In the landlord's supplemental documentary evidence, the landlord increased their claim for refinishing and repairing of the hardwood floors, to \$1207.50.

I have declined to consider the increased amount due to the tenant not receiving the landlord's documentary evidence and due to the landlord's failure to amend their application, as a monetary claim may not be amended through evidence.

In response to my question, the tenant testified that he did not wish to contest the landlord's request for cleaning of the suite.

As to the balance of the claim, the parties submitted the following:

Refinishing and repair of hardwood floors-

In support of this claim, the landlord testified that the hardwood flooring was in good condition when the tenant moved in and that the tenant caused damage to the flooring, which required refinishing, and in some respects, replacing of the parquet tiles.

The landlord submitted that the tenant used product on the flooring which caused some damage.

In response to my question, the landlord submitted although the flooring was quite old, they were refinished 4-5 years ago.

In response, the tenant said that in the process of cleaning, a cleaning product he used caused discolouration, and that he stopped cleaning.

The tenant disagreed that the entire floor required refinishing and replacing, as the damaged part was very small in area.

Repainting of suite-

The landlord submitted that the entire suite was painted at the beginning of the tenancy, and that it was required to be completely repainted after the tenancy was over due to the excessive nicotine damage caused by the tenant smoking in the rental unit.

In response, the tenant denied smoking in the rental unit as he had not smoked in 15 years, and that his partner did smoke, only on the patio. The tenant contended that he did not stay in the rental unit very much, and that his partner was the primary occupant.

The tenant questioned the use of oil paint said to be used by the painter as that type of paint had been declared illegal two years ago. The tenant failed to supply proof of this statement.

The tenant said that the parties had a walk through inspection of the rental unit two months before the tenancy ended, and nothing about cigarette smoke was mentioned.

The tenant testified that he used a cleaner called "tsp" on the walls before he left, and that the rental unit did not need repainting.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Refinishing and repair of hardwood floors-

While I accept that the tenant did commit some damage to the hardwood flooring, I am not convinced the landlord is entitled to full reimbursement of their costs. In making this decision, I considered the photographic evidence of the landlord, which consisted of long range shots of the flooring at the beginning of the tenancy, showing no details; yet the photos taken at the end of the tenancy were taken at an up-close angle. I therefore

found I could not rely on the photographs to prove that the marks were not there at the beginning.

I also considered that the landlord admitted that the parquet flooring was quite old, and that he had no substantive proof of the age of the refinishing. It may very well be that the last floor refinishing had surpassed its useful life, which I equate to painted walls, which has a useful life of 4 years, according to Residential Tenancy Branch Policy Guideline #40.

I also am unable to grant the landlord compensation for replacing the parquet tiles, as I find it very likely that the hardwood flooring had been fully depreciated according to #40 of the Guidelines, or 20 years in this case for hardwood floors. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

Considering the age of the hardwood flooring and the unproven age of the refinishing, I find a reasonable amount to compensate the landlord for refinishing to be \$400, as the tenant confirmed damaging a small portion of the flooring and I therefore find the landlord is entitled to a monetary award in that amount.

Repainting of suite-

I find the landlord submitted sufficient evidence that it was necessary to have the rental unit repainted, due to nicotine damage. Although the tenant stated that his partner was the primary occupant and that she smoked on the patio, I do not accept that the tenant would have been aware of whether or not his partner actually smoked in the rental unit as he primarily did not live there.

In reviewing the landlord's documentary evidence, they submitted an invoice for painting at the beginning of the tenancy for all walls, closets, bathroom and kitchen, for a total amount of \$840.

The invoice supplied by the landlord for repainting at the conclusion of the tenancy was \$1680, double the amount as at the beginning. Included on this invoice was a charge for \$900 for painting the ceilings as well as a charge of \$700 for painting the walls.

I find the landlord submitted insufficient evidence of the age of the paint on the ceiling, as the painter did not paint the ceiling at the beginning of this tenancy, according to the invoice. As the landlord failed to prove that the paint on the ceiling was less than 4 years old, the useful life of paint, I decline to award the landlord recovery of the painting of the ceiling.

As to the painting for the walls, as I have accepted that the walls required painting due to tenant responsibility, I find the landlord is entitled to compensation. As the useful life of paint is 4 years, or 48 months, I find the paint has been depreciated in this case by 16 months (May 2012 - August 2013, the life of the tenancy). I therefore find the landlord is

entitled to monetary compensation in the amount of \$466.72 ($\$700 \text{ painting charge} \div 48 \text{ months} = \$14.58 \text{ monthly devaluation} \times 16 \text{ months of depreciation} = \233.28 . $\$700 - \$233.28 = \$466.72$)

I also award the landlord recovery of their cleaning charge of \$231 as there was no dispute concerning this charge.

I further award the landlord recovery of their filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$1147.72, comprised of a partial recovery for the floor repair and refinishing of \$400, painting for \$466.72, cleaning charge of \$231, and their filing fee of \$50.

Conclusion

The landlord's application for monetary compensation is granted in part.

At the landlord's request, I direct them to retain the tenant's security deposit and pet damage deposit of \$1000 in total, in partial satisfaction of their monetary award of \$1147.72, and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$147.72, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from 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* and is being mailed to both the applicant and the respondent.

Dated: December 16, 2013

Residential Tenancy Branch

