



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with applications by both the landlord and the tenant. The landlord applied for a monetary order for damage to the unit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; for an order to keep all or part of the security deposit; and to recover the RTB filing fee. The tenant applied for the return of his security deposit.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence. The tenant was assisted with English translation by his daughter.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit and/or for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Is the tenant entitled to the return of his security deposit?

Background and Evidence

The tenancy agreement signed by the parties on September 30, 2012 indicates the tenancy started November 1, 2012 and was for a one-year fixed term until October 30, 2013 with the tenants being obligated to move out at the end of the fixed term. The tenants were obligated to pay rent of \$1,700.00 monthly in advance on the first day of the month. The tenants also paid a security deposit of \$850.00.

No other tenancy agreement was put into evidence, so I have assumed that the tenancy continued on a month-to-month basis on the same terms after the end of the fixed term.

The parties agree the tenancy ended on February 28, 2014. The landlord gave evidence that he received the tenant's forwarding address in writing prior to the end of February 2014. The landlord filed his application to make a claim against the security deposit on March 5, 2014.

The landlord claims the tenant caused damage to the engineered hardwood flooring and to the paint. The landlord's evidence is that new flooring was installed in the main floor living room, dining room, family room, and kitchen in approximately September or October 2012. The tenants were the first to occupy the rental unit after the new flooring was installed.

The landlord gave evidence that the tenants extensively damaged the flooring in the family room and dining room. He says there were heavy dents and deep scratches. The landlord gave evidence that when he conducted a move-out inspection, the tenant appeared to be trying to repair the damage with some kind of crayon and clear varnish. He says this was not appropriate since engineered hardwood has a factory finish. The landlord provided photographs which apparently show dents from the feet of a piece of furniture, and scratches. The damaged areas appear to be covered with a glossy substance.

The landlord gave evidence that the installed engineered hardwood has been discontinued but he was able to obtain three boxes of old stock and used that to have the damaged sections replaced. He provided an estimate of \$1,391.00 in support of his claim.

The tenant says there were two areas where the flooring was marked. He says one area was the dining room; they placed furniture pads under the chair legs but not the table legs. The tenant's evidence is that the table is big and heavy so will not move. The tenant says that an area on the living room floor was damaged when a couch was delivered.

The tenant says he consulted a handyman about the best way to repair the damage to the flooring. He was told the best option was to use a crayon and oil to match the wood, however it is engineered hardwood and they were not able to find a perfect match. He says he was told that without taking out the floor, it could not be completely fixed. The tenant says there was wear and tear after more than a year of tenancy, and they tried their best to fix the damage and dents.

The landlord's evidence is that the tenant's repair attempt is very obvious because it is more glossy and the colour is wrong. The area cannot even be sanded.

The landlord gave evidence that the interior walls were painted in September or October 2012 with Benjamin Moore designer colours. He says the tenant was told to not put anything on the walls. The landlord provided an Addendum to the tenancy agreement which includes a term "No items to be hung on walls" however the Addendum is not signed by the tenant.

The landlord gave evidence that the tenant posted things on the walls, and repainted two partial walls before moving out. However, the tenant used a different paint and only repainted parts of walls. The landlord claims \$320.00 as the cost of repainting the two full walls with the original brand and colour of paint. The landlord provided an estimate from a painter in support of his claim. The landlord also provided photos which appear to show parts of two walls painted in a different tone than the rest of those walls.

The tenant agreed they were not supposed to use nails in the walls, so he put up maps with pushpins. When the maps were taken down, pinholes could be seen on the walls and so the tenant hired a handyman to repaint. The tenant says that even if the same paint was used, it could look different. Also, the landlord's photos were taken right after the painting was done and it will match after it is fully dry.

The landlord says that the wrong product and colour was used and it will never blend with the original paint.

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on February 28, 2014 and the landlord complied with Section 38(1) by applying for dispute resolution to make a claim against the security deposit within 15 days.

I find that while the tenant made efforts to repair the damage to the engineered hardwood floors, his efforts were not successful. I find the landlord was justified in replacing the damaged sections of flooring. He is therefore entitled to his claim of \$1,391.00 for flooring.

Similarly, I find the tenant made efforts to match the paint but this was not successful. I find the landlord is justified in having the two walls repainted with the original paint and colour. I accept the painting estimate provided by the landlord of \$320.00. The landlord is also entitled to recover his RTB filing fee of \$50.00.

The total amount due the landlord is \$1,761.00. I order that the landlord retain the security deposit of \$850.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$911.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$911.00. The landlord may also retain the security deposit.

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: July 17, 2014

Residential Tenancy Branch

