



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 an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for alleged damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

This is the second matter for dispute resolution between these parties. The first case involved the Tenants' claim against the Landlord for damages done to their property in the rental unit. Neither party provided a copy of the decision or the file number for the decision, although it appears the Tenants were awarded some amount of money for replacement of their mattress.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Is the Landlord entitled to retain the security or pet damage deposits?

Background and Evidence

This tenancy began on April 1, 2013, with the parties entering into a six month fixed term tenancy agreement. The tenancy then reverted to a month to month tenancy. The

rent was \$1,095.00, payable on the first day of the month. The Tenants paid the Landlord a security deposit of \$547.50 and a pet damage deposit of \$547.50, on or about April 1, 2013.

The parties completed a condition inspection report at the outset of the tenancy on April 1, 2013.

A move out condition inspection report was completed on May 1, 2014, although the Tenants did not agree with the comments about the property condition written into the report by the Landlord.

The Landlord testified that when she was doing the outgoing condition inspection report she was shocked by the condition of the hardwood floors in the rental unit. She testified the floors were scraped and scratched. She alleges this was done by the Tenants.

The Landlord testified that the floors were original to the house from 1940. The Landlord testified she purchased the house in 1998 and the floors were refinished at that time.

In evidence the Landlord provided several photographs of the rental unit, which she claims were taken on March 2, 2013, in order to show prospective renters. The Landlord testified that in the photos marked 2, 3, 4, and 5 there are no scratches visible on the floors. In these photos the angle is wide enough to see large portions of the two walls on either side of the doorframe.

The Landlord also provided photographs marked 4 to 15, which are the scratches and marks on the floor that the Landlord alleges were done by the Tenants. In these photos the floors are shown in close up and only one contains a portion of the interior door in the rental unit to the bedroom. In one photo the Landlord has placed a CD case in order to give a size reference to the area depicted. The CD case takes up approximately $\frac{1}{4}$ of the photo frame. The photos indicate that there is significant wear on the portions of the floor shown in close up. There also appears to be three holes drilled into the floor and the parties testified these are around the area of the door frame into the bedroom.

The Landlord is estimating it will cost **\$2,500.00** to refinish the floors. The Landlord testified that this amount is an average of the three quotes she obtained over the phone. The Landlord testified that no one from the three flooring company came out to look at the floors because the companies base their estimates on the square footage of the floors.

The Landlord also submitted photographs of some shelves in the kitchen which have marks on them she alleges the Tenants did not clean. She testified she had to scrub these marks and they did come off after washing.

The Landlord testified she also had to wash the walls in the rental unit because the Tenants did not do this.

The Landlord testified she spent six hours cleaning and claims \$20.00 per hour for this work, for a total of **\$120.00** for cleaning.

The Landlord further alleges the Tenants were in the rental unit on May 2, 2014, without permission, although the Landlord stated that she could not prove this. The Landlord bases this on a date put on the back of one of the Tenants' photographs which were submitted in evidence. The Landlord testified that she did not see the Tenants taking photographs of the rental unit on May 1, 2014, when they were conducting the outgoing condition inspection report. She alleges they must have had a spare key and entered on May 2, 2014.

The Landlord alleged she did not have the Tenants' evidence containing their pictures until September 13, 2014, some four days before the hearing.

The Tenants replied they served the Landlord with their evidence by putting it in her mailbox on Monday September 8, 2014. I note the branch received this evidence from the Tenants on Thursday September 5, 2014.

The Tenants testified that when they moved into the rental unit the floors were already extremely scratched. The Tenants brought up the condition inspection report remarks from when they moved into the rental unit. In the portion of the report marked "living room floors/carpet" the notes indicate that floor was in fair condition with scratches. Next to this is a handwritten comment: "some damage in bedroom doorway", in the outgoing report column.

The Tenants testified that the Landlord told them when they moved in that the floors had been redone three times already.

The Tenants allege that any damage they might have caused to the floors were reasonable wear and tear.

The Tenants testified that the holes in the floor were there when they moved in. They thought it was strange that someone would drill holes in the floor right at a doorway.

The Tenants testified that the highest traffic area of the rental unit would be over the portion of the floors between the bedroom and the living area, and these were showing the most wear and tear. They allege these are the areas depicted in the Landlord's photos.

The Tenants do not dispute that the cupboards looked like the photos the Landlord had taken. They say the marks the Landlord complains of were caused just by moving the pots and pans across the base of the cupboards. They testified they cleaned the cupboards to a reasonable standard, as well as the rest of the unit.

The Tenants testified that they did not enter the rental unit anytime after May 1, 2014. The Tenants claimed the date of May 2 on the back of the photo must have been put on there by error. They testified they gave the Landlord all the keys they had for the rental unit, and they told her this.

The female Tenant explained she took the photos when the Landlord was in another room during the condition inspection report. They testified they did not trust the Landlord to return their deposits because they had won their case against her previously so they took photographs of the rental unit during the outgoing condition inspection report.

The Tenants alleged that the claims of the Landlord are simply retaliatory because they were successful against the Landlord in their claim about a damaged mattress.

The Landlord replied that she saw the Tenants take pictures of the condition inspection report but she did not see them take any photos of the rental unit. The Landlord further replied that she did not have the floor refinished three times since 1998 and that the rental unit had been occupied by renters since 1998, the year she purchased the property and that was when the floors were last refinished.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find that the Landlord has insufficient evidence to prove the Tenants damaged the floor or left the rental unit unreasonably dirty. I dismiss the Landlord's Application without leave to reapply for the following reasons.

The evidence indicates that the parties agreed in the incoming condition inspection report that portions of the floor were in "fair" condition and "scratched". Therefore, there were already some scratches agreed to by both parties at the outset of the tenancy.

The Landlord testified that there had been renters in the rental unit since 1998 and that she had not refinished the floors since she purchased the property. With renters in place for the past 16 years I find it is likely that there will be some scratches and surface damage to the floor made by all the renters during this time, and therefore, I find the Landlord failed to prove these scratches were all caused by these Tenants.

I also find the photographs the Landlord submitted in evidence which she stated were taken before the Tenants took possession, are of little value in assessing the condition of the floors prior to this tenancy.

The photographs are framed at a wide angle to display the size and character of the room to prospective renters. While the Landlord would likely have not included any flaws in the rooms as she was trying to attract renters, the photographs are simply too wide to provide a clear indication of the condition of the area of the floor in question in any event.

Even if the Landlord had proven these scratches were caused by the Tenants (which I find she has not proved), I find the Landlord had insufficient evidence to prove the cost of refinishing the floors is what she claimed for. The Landlord's evidence that she called three different floor companies, none of which attended the unit, and has averaged their quotes received over the phone is insufficient to prove such a loss. One would at least expect written quotes to establish such a claim, which the Landlord did not provide.

Lastly, the floors are very near the end of their useful life expectancy of 20 years. Even if the Landlord had proven these scratches were caused by the Tenants (which I find she has not proved), they would not be responsible for the entire amount claimed, only a portion of their remaining usefulness. Policy guideline 40 sets out that,

"When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."

[Reproduced as written.]

Regardless of this, I find the Landlord simply did not prove the Tenants caused these all scratches and surface finish damage to the floors.

I further find the Landlord has failed to prove the Tenants left the rental unit unreasonably dirty.

Under section 37 of the Act, the Tenants were required to leave the rental unit reasonably clean. I find the Landlord has not proven they did not meet this standard. The photographs of the marks in the cupboards do not support the Landlord's claim it took six hours to clean these, and the Landlord had insufficient evidence regarding the condition of the walls. Therefore, I find the Landlord has failed to prove her claim for cleaning.

Lastly, I note that this decision referred to the Landlord's documentary evidence as I find the Tenants failed to prove they served the Landlord on time for the hearing with their documentary evidence.

As the Landlord still holds the Tenants deposits, I order the Landlord to immediately repay the Tenants the sum of **\$1,095.00**, comprised of their security and pet damage deposits (2 x \$547.50). Pursuant to the policy guidelines, I grant the Tenants a monetary order in this amount.

This order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord had insufficient evidence to prove the Tenants damaged the floors or left the rental unit unreasonably dirty, and the Application is dismissed without leave to reapply.

The Landlord is ordered to return the deposits to the Tenants immediately, and the Tenants are granted a monetary order which they must serve on the Landlord and which they may enforce in Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 23, 2014

Residential Tenancy Branch

