



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, FF

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for the return of the security deposit and to recover the filing fee from the landlord for the cost of this application

The tenant, an interpreter for the tenant, the landlord and the landlord's witness attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The original hearing was adjourned as the Arbitrator had not received the landlord's evidence. The landlord was permitted to re-send the evidence and this was received prior to the reconvened hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the tenant entitled to recover all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on August 30, 2013 for a fixed term tenancy until February 28, 2014. The tenancy then reverted to a month to month tenancy. Rent for this unit

was \$890.00 a month due on the last day of each month. The tenant paid a security deposit of \$445.00 on August 31, 2013.

The landlord testified that at the start of the tenancy the tenant and landlord checked the unit and the landlord completed a move in condition inspection report. The tenant signed to agree that the report fairly represented the condition of the unit. The tenant gave notice to end the tenancy on February 04, 2014 and moved out on March 30, 2014. The landlord testified that the tenant did not attend the move out inspection. The tenant left early in the morning and returned the keys but did not return to the unit to take part in the move out inspection. The landlord sent the tenant a text message and the tenant's 13 year old daughter came with a third party. The landlord's wife started to do an inspection and the tenant's daughter and this third party acknowledged that the laminate flooring was damaged. The tenant's daughter said she would speak to her mother about it and get back to the landlord; however, the tenant has not done so.

The landlord testified that the tenant did provide a forwarding address on February 04 and February 07, 2014 on the tenant's letters of notice to end the tenancy and this address was confirmed by the tenant's daughter. The landlord documented it on the move out condition inspection report which was completed in the tenant's absence.

The landlord testified that the laminate flooring throughout the unit was left damaged by the tenant. The top layer of the flooring has bubbled at the edges and is coming away. It looks like hot water has been used on the flooring which has delaminated the flooring. The flooring has to be removed and the same quality flooring installed. The landlord testified that the flooring was about four years old. The landlord testified he has had a quote to replace the flooring of \$7,000.00; however agreed that this quote was not provided in documentary evidence.

The tenant testified through her interpreter, that the tenant had informed the landlord in January or February, 2014 that the fridge was leaking and asked the landlord to come and take care of this problem. The landlord did not come and any damage to the floor in the kitchen is due to the leaking fridge. The tenant disputed that the flooring in the rest of the unit is damaged.

The tenant testified that she had to rely on her daughter to attend the inspection with the landlord at the end of the tenancy as the landlord was made aware through text messages that

the tenant was leaving on March 30 and asked the landlord to attend at the unit at 9.30 a.m. The landlord did not attend; the tenant sent the landlord a text message asking him to come within 20 minutes. The tenant waited until 10.30 a.m. and then went upstairs to the landlord's unit and knocked on the door. The landlord appeared and the tenant gave the landlord the keys to the unit. As the tenant does not speak English she told the landlord as best she could that they were leaving and did the landlord want to come down to see the unit. The landlord did not understand and the tenant had to leave as she was moving out of town and the landlord did not offer another time for the inspection. The tenant refers to her documentary evidence showing the text messages sent to the landlord.

The tenant seeks to recover the security deposit of \$445.00. The tenant testified that she has not given the landlord permission to keep all or part of the security deposit.

The landlord testified that when the tenant came to the landlord's unit on the morning the tenant was leaving it was early. The landlord testified that he was not ready and said they needed to do the inspection. The landlord agreed that he did not specify another time to do the inspection as the tenant said she would come back later but failed to do so. The landlord then sent the tenant a text message and that's when the tenant's daughter and a third party came back. The landlord disputed that the tenant had asked the landlord to be there at 9.00 a.m. the landlord disputed that the tenant had ever mentioned to the landlord that the fridge was leaking. If this damage was caused by the fridge then why was the rest of the flooring damaged in other areas.

The landlord's witness testified that the tenant's daughter came to the unit with another person and when they saw the flooring damage the tenant's daughter said she would let her mum know about it. The witness testified that the floor is all bumpy and the edges of the laminate are raised and wavy. This damage is in the kitchen, the living room and close to the bedroom. One area is on a higher level so could not be caused from a water leak. The witness testified that there was an occasion when the landlord's unit had no hotwater so the witness went to the tenant's unit and the tenant had told the witness that she had been washing everything including the floors in hotwater. The witness testified that she told the tenant not to do this. The witness testified that she does not recall the tenant ever notifying the landlord about the fridge leaking.

The tenant cross examined the witness and asked the witness why the witness said the tenant had not notified the landlord about the fridge leaking. The witness responded that if this damage to the floor in the kitchen was caused by the fridge leaking how was the rest of the flooring damaged including the flooring on a higher level. The witness testified that they had sent someone to check the fridge after the tenancy ended and found there was not a problem with the fridge.

The tenant testified that she did not clean the flooring with hotwater and did not intentionally damage the flooring.

Analysis

With regard to the landlord's claim for damages to the flooring in the unit I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Residential Tenancy Act (Act)* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have considered the evidence and testimony before me of the landlord and the landlord's witness. It is clear that there is some damage to some areas of the laminate floor; however, it is

not clear how far this damage extended through the photographs and inspection reports or that this damage was caused by the tenant's negligence. Furthermore, the landlord has not provided any quotes or invoices for the \$7,000.00 claimed to replace the flooring. Subsequently I am unable to find that the landlord has met the burden of proof in this matter to establish a claim for \$7,000.00 and the landlords claim is dismissed.

With regard to the tenant's claim to recover the security deposit of \$445.00; I refer the parties to s. 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 35(2) of the *Act* requires a landlord to give the tenant at least two opportunities to attend an inspection of the unit at the end of the tenancy. I am satisfied from the evidence presented that the tenant arranged to meet the landlord at the unit at 9.30 a.m. on March 30, 2014. The landlord failed to attend at that time and the tenant had to go upstairs and speak to the landlord who did not then go down and do the inspection with the tenant or offer a second opportunity for the inspection. In failing to provide the tenant with two opportunities to attend a move out inspection of the unit, I find the landlord contravened s. 35(2) of the *Act*. Consequently, s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on February 04, 2014 and the tenancy ended on March 31, 2014. As a result, the landlord had until April 15, 2014 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return

of double the security deposit to an amount of **\$890.00**, pursuant to section 38(6)(b) of the *Act* even though the tenant has not applied for the doubled provision.

As the tenant's claim has merit I find the tenant is also entitled to recover the filing fee of **\$50.00**.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$940.00**. The Order must be served on the landlord. If the landlord fails to pay the Order, the Order is enforceable through the Provincial Court 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: October 09, 2014

Residential Tenancy Branch

