



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O

Introduction

This hearing was scheduled to deal with a landlord's application to retain a portion of the tenants' security deposit for damage to the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural matters

The tenants stated that they had filed their own Application for return of the security deposit but that their filing was too late to be joined with this hearing. I explained to the parties that the security deposit would be disposed of by way of this decision. The tenants requested that I consider their Application withdrawn and that I cancel their hearing. The hearing set to hear the tenants' Application has been cancelled. The tenants also specifically waived any entitlement to doubling of the security deposit if applicable. The file number assigned to the tenants' Application is provided on the cover page of this decision.

I noted that the landlord had not provided a copy of the condition inspection reports as part of their evidence package. The tenants stated that they had provided a copy of the inspection reports as part of evidence filed under their Application. With the consent of the landlord I viewed and considered the inspection reports provided by the tenants after verifying with the landlord that the reports submitted by the tenants reflected the same information as the landlord's copy in the sections relevant to this dispute.

Issue(s) to be Decided

1. Has the landlord established that the tenants damaged the rental unit and an entitlement to be compensated for the amount claimed?
2. Disposition of the security deposit.

Background and Evidence

The tenancy commenced August 1, 2012 and ended at the end of August 2014. The tenants were required to pay rent of \$2,000.00 per month and paid a \$1,000.00 security deposit. The rental unit was a newly constructed house that had been vacant prior to this tenancy. The landlord prepared a move-in inspection report on July 24, 2012. The landlord prepared a move-out inspection report on September 11, 2014 and the tenants provided a forwarding address to the landlord during the move-out inspection. The move-out inspection report was emailed to the tenants. The move-out inspection report does not indicate that there is any damage to the flooring.

By way of this Application that was filed by the landlord on October 20, 2014, the landlord is seeking compensation of \$800.00 for damage to the flooring and authorization to deduct this amount from the tenants' security deposit.

The landlord submitted that just prior to the subsequent tenants moving into the rental unit an agent for the landlord, who no longer works for the landlord, attended the rental unit and observed a very long scratch in the hardwood flooring and a section of flooring that appears to be lifting. The landlord explained that this damage was not observed during the move-out inspection because the damage is only visible when the sun is shining through at a certain angle.

The landlord testified the subsequent tenancy commenced October 1, 2014 and that the rental unit was vacant between tenancies. The tenants were of the belief the new tenants moved in to the rental unit in mid-October 2014.

The landlord testified that the tenants were notified of the landlord's observation via text message and that the landlord had requested the tenants pay \$300.00 for this damage; however, the tenants were not agreeable. The tenant had offered compensation of a much lesser amount in an effort to settle the dispute but the landlord was not agreeable. Since the parties did not resolve this dispute on their own the landlord pursued this Application and sought compensation of \$800.00 based upon the instructions of the property owner.

The landlord provided two photographs of the flooring although the date the photographs were taken was not provided. The landlord did not provide a calculation to support a claim of \$800.00 but explained that the flooring can no longer be matched and that to install new flooring on the main floor of the house and the living room and entry would cost \$4,165.36 and \$2,900.45 based upon an estimate obtained in January 2015.

The tenants stated that they did not recall seeing the damage the landlord described during their tenancy. The tenants testified that after receiving the landlord's text message about the flooring, the female tenant attended the unit. The new tenant was living there at the time and the tenant asked the new tenant if there were any scratches in the flooring. No scratches were found although the tenant acknowledged there was a mark that resembled a scuff. The female tenant also pointed out that the flooring is laminate and not hardwood as purported by the landlord. The female tenant submitted that the flooring was not installed very well as pieces of flooring that were adjacent to the lower cabinets slid and moved during their tenancy.

Ultimately, the tenants were of the position that the landlord's request for compensation is excessive and that any marks on the laminate flooring constituted wear and tear reflective of two years of normal use. The tenants further submitted that they were conscientious of wiping up any spills on the floor and they were of the position that dark laminate flooring does not stand up to kitchen use as well as other flooring materials such as tile or vinyl.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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.

A tenant who damages a rental unit and does not repair the damage is in violation of the Act. However, it is important to note that the Act provides that reasonable wear and tear is not damage. In this case the landlord has argued the tenants damaged the rental unit whereas the tenants assert that any marks on the floor constitute wear and tear and inferior installation of the flooring.

Section 21 of the Residential Tenancy Regulations provides for the evidentiary weight of a condition inspection report. It provides:

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The parties completed a condition inspection report that indicates the flooring is without damage at the end of the tenancy. Since the landlord has filed an Application on the basis there is damage to the flooring caused by the tenants, the landlord has the burden to provide a preponderance of evidence to contradict their own inspection report.

In one of the landlord's photographs I see a slight scuff on the flooring that is over 4 -5 floor boards. In the other photograph, it is possible to see three spots on the same floor board that appear to be lifted.

Despite the photographs, I find the landlord's case against the tenants is somewhat weak and, in my view, insufficient to contradict the move-out inspection report for the following reasons:

- The photographs are not date stamped and it was acknowledged that they were taken just prior to the new tenants moving in which would be weeks after the move-out inspection report was prepared.
- The landlord's agent who observed the alleged damage and took the photographs was not called to testify by the landlord and I was not provided a sworn statement by that person attesting to their observations.
- The scuff that the female tenant described was observed after the new tenants were in possession of the rental unit.

Of further consideration is that the alleged damage was apparently only observable in certain light yet the landlord seeks compensation of \$800.00 without providing any rationale as to how this amount was determined especially when the landlord's agent and the tenant were discussing settlement for much less.

In light of all of the above, I find the landlord did not establish an entitlement to compensation from the tenants for damage to the flooring and I dismiss their claim in its entirety.

Pursuant to Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, where a landlord's claim against a security deposit is dismissed, the Arbitrator will order the return of the security deposit to the tenants. Therefore, I order the landlord to return the security deposit to the tenants without further delay and I provide the tenants with a Monetary Order in the amount of \$1,000.00 to ensure payment is made.

I have made no award for doubling of the security deposit even though it is clear that the landlord violated section 38 of the Act by failing to file its Application within the time limit for doing so because the tenants specifically waived any entitlement to doubling.

Conclusion

The landlord's application has been dismissed. The landlord has been ordered to return the security deposit to the tenants and the tenants have been provided a Monetary Order in the amount of \$1,000.00 to ensure payment is made.

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: April 17, 2015

Residential Tenancy Branch

