



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Should the landlords be permitted to retain the security deposit?

Background and Evidence

The parties agreed that the tenancy began on or about February 26, 2013 and ended on September 30, 2014. They further agreed that at the outset of the tenancy, the tenant paid a \$350.00 security deposit. The landlords are parties who rented the unit from the owner and sublet the unit from the tenant.

The landlords testified that at the end of the tenancy, there were 2 orange spots on the linoleum in the kitchen. They stated that the linoleum was new at the beginning of the tenancy and that they were unable to remove the spots. The landlords testified that they hired the owner of the unit to replace the linoleum which he did at a cost of \$400.00. The owner provided an invoice which shows that he charged \$220.00 for materials, \$160.00 for labour and \$20.00 for GST and PST.

The landlords testified that at the end of the tenancy, they discussed the stains with the tenant and he indicated that he wanted to get his own estimate for the cost of repairing the floor because he believed the landlords' estimate was too high. The landlords gave the tenant 9 days in which to obtain an estimate and when he failed to do so, they filed their application for dispute resolution against the security deposit.

The tenant testified that he believes the stains were caused when there was a flood in the rental unit while he was away for a month during the tenancy. He testified that he

came home and found water in the bathroom and kitchen and said that he cleaned everything, but there must have been water under the garbage can in the kitchen, which is where one of the stains is positioned. The tenant could not explain why there was a second stain of the same colour in the middle of the floor.

The tenant testified that he intended to get his own estimate, but upon speaking to an information officer at the Residential Tenancy Branch, he chose instead to send his forwarding address to the landlord and request that the landlord provide him with a written estimate which broke down the cost of labour and materials. The landlord did not provide this estimate until 14 days before the hearing. The tenant testified that he did not get an estimate when offered by the landlord because he was waiting to receive their estimate and did not contact a professional to obtain an estimate when he received the landlords' estimate because he believed he had to submit all of his evidence 14 days before the hearing.

The tenant argued that the invoice appears to be bogus and while he does not dispute that the work was done, he believes the flooring itself should have been sold by the square foot rather than as a lump sum. He asked me to telephone the owner of the property so the tenant could question him. I asked the landlords whether they had asked the owner to appear as a witness and they advised that they had not asked him to serve as a witness.

I declined to add the owner to the conference call because he had not agreed to be a witness and because the Rules of Procedure would have permitted the tenant as a respondent to submit his evidence 7 days before the hearing and therefore he had time prior to the hearing to make any necessary queries.

The landlords seek to retain the security deposit and to recover the \$50.00 filing fee paid to bring their application.

Analysis

At the end of a tenancy, tenants are responsible to leave the rental unit in reasonably clean condition except for reasonable wear and tear. I find that the orange spots on the floor go beyond what may be characterized as reasonable wear and tear and because of their position on the floor, are not able to be hidden. I do not accept that the flooding caused the orange spots. While water trapped under a garbage can may have explained one of the spots, it does not explain the second spot, which is the same colour. I find it more likely than not that some action of the tenant caused the spots to appear on the linoleum and I find that the tenant is liable for the cost of repairs.

The fact that the owner of the property performed the repairs does not mean that the charges are unreasonable, nor does the fact that the invoice does not express the cost of materials in square footage. The tenant also argued that the owner charged \$1.00 more in tax than he was entitled to do.

I find that the tenant had opportunity to obtain an independent estimate at the end of the tenancy but chose not to do so. While I can appreciate that he wanted the landlords' estimate in writing, the landlords also had only 15 days from the end of the tenancy to file their claim or be held liable for returning double the deposit. If the tenant had wanted an estimate, he should have taken advantage of the opportunity provided by the landlords. Further, the tenant could have questioned the owner about his invoice prior to the hearing or arranged with the owner to appear at the hearing as a witness. I find that the tenant had ample opportunity to gather evidence in support of his claim that the invoice is too high but he simply failed to do so.

I agree with the tenant that the owner charged \$1.00 too much for tax, but otherwise, I am not persuaded on the balance of probabilities that the invoice is too high. There is no dispute that the work was performed and a charge of \$400.00 to replace linoleum in a kitchen seems reasonable to me. I award the landlords \$399.00 which reflects the accurate GST charge.

As the landlords have been successful in their claim, I find they should also recover the \$50.00 filing fee paid to bring their application for a total award of \$449.00. I order the landlords to retain the \$350.00 security deposit in partial satisfaction of the claim and I grant them a monetary order under section 67 for \$99.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order for \$99.00. The landlords will 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: May 20, 2015

Residential Tenancy Branch

