



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 a landlord's application for a Monetary Order for damage to the unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. 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.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenants?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced September 1, 2013 and ended August 31, 2014. The tenants paid a security deposit of \$480.00 and were required to pay rent of \$965.00 on the 1st day of every month. A move-in and move-out inspection report was prepared by the landlord. The tenants did not authorize any deductions from the security deposit and provided the landlord with a forwarding address via email on September 3, 2014. The landlord filed this Application on September 16, 2014.

The tenancy agreement provides that there is to be no smoking in the unit, on the balcony or anywhere on the property. During the tenancy the unit was sub-let and the sub-letters allegedly smoked in the rental unit or on the balcony.

Below I have summarized the landlord's claims against the tenant and the tenants' responses.

Flooring damage

The landlord seeks \$1,069.60 from the tenants to replace the laminate flooring in the living room.

It was undisputed that during the tenancy an inspection took place and a scratch was noted on the living room floor.

The landlord submitted that the laminate flooring was new at the beginning of the tenancy and that at the end of the tenancy there was a significant and deep scratch across a number of floor boards, likely due to the metal furniture brought in to the rental unit. The landlord submitted that matching floor boards cannot be obtained and the landlord obtained a quote to replace all of the flooring at a cost of \$1,069.60. After the tenancy ended the unit was re-rented and the flooring has not yet been replaced.

The tenants submitted that the scratched area is approximately 2 square feet and the tenants questioned whether the entire floor needs to be replaced. The tenants were of the position the floor is not deeply scratched and it cannot be felt under bare feet. Rather, the scratch it is more of a cosmetic issue.

The tenants stated that they requested that the landlord provide them with a sample of the flooring so they could seek out replacement boards but the landlord did not provide them with any. Nor, did the landlord inform them as to where the flooring was purchased. Rather, the landlord told them to take a picture of the flooring in order to find replacement boards.

In response, the landlord stated that he informed the tenants that the flooring was from a large retail home improvement store but that flooring styles change frequently. Alternatively, he told the tenants to contact a floor installer.

The landlord had taken photographs of the floor but the landlord faxed the photographs to the Branch and the faxed copies are of very poor quality.

The move-out inspection report notes a floor scratch in the living room and the landlord indicates the floor requires replacement on the report. On the move-out inspection report the tenants indicate the floor could not be replaced because samples were not provided to them despite repeated requests.

Painting

The landlord seeks to recover \$336.95 plus \$195.00 for labour and materials to repaint the ceiling in the living room, walls in the two bedrooms, and trim throughout the rental unit. The landlord submitted that the unit was freshly painted prior to the start of this tenancy but that repainting was required because the sub-letters smoked in the unit and that cleaning, ozone treatment and re-painting was required by the landlord and communicated to the tenants in July 2014. The landlord acknowledged that the tenants did have the living room walls re-painted.

The tenants submitted that when the landlord informed them that the sub-letters were accused of smoking the tenants approached the sub-letters and the sub-letters denied smoking in the unit. Regardless, the tenants attempted to meet the landlord's demands by ozone treating the rental unit and painting the unit. However, the tenants claim they ran into difficulty meeting all of the landlord's demands for re-painting as the landlord would not provide them with a sample of the paint colour or provide the paint code, only that they were to use an eggshell. Due to the difficulty in obtaining a paint code or sample from the landlord they attempted to match the paint by taking a small sample of paint from the wall and having it matched at the home improvement store. However, this effort was time consuming and they did not have time to re-paint the entire unit.

The tenants also submitted that the ozone treatment took place for the better part of one day and that the purpose of ozone treatment is to remove smells from all surfaces so that re-painting the entire unit was not necessary.

The landlord acknowledged that he did not provide a specific paint colour to the tenants and that he advised them to use a similar colour in an eggshell finish. The landlord pointed out that the tenants had from June 25, 2014 to accomplish the painting.

The landlord did not deny that ozone treatment took place but pointed to the landlord's letter to the tenants whereby they were instructed to not only ozone treat the unit but also clean and re-paint all the painted surfaces.

The tenancy agreement provides the following term, in part, with respect to smoking on the premises: "This is a NO Smoking Building. The Tenant agrees that smoking is NOT permitted in the premises at all, including Balcony and all common areas...

The landlord will charge Tenant costs incurred in cleaning, painting, carpeting and other costs incurred as a result of smoking...

The tenants pointed to a document in the landlord's evidence package. The document was signed by the sub-letters on June 25, 2014 at the urging of the tenants. It acknowledges that there was a breach of the tenancy agreement by smoking in the premises and that no further smoking would take place. However, the sub-tenants also included the following notation:

“This letter has been signed after the communication with Building Manager [name], who conveyed us that this letter is understand between Tenants/Subtenants and landlord and there are no further consequences of this other than if there are any damages inside the house.”

[reproduced as written]

Then in different handwriting it states “(Damage due to smoking is chargeable)”.

On the move-out inspection report the landlord provided the notation “to paint” or “painting required” beside several rooms including the entry, kitchen and bedrooms. On the summary page the landlord writes: “paint scratching in closets Bed 1, Bed 2 + [illegible]” and “painting not completed, ceiling not painted, [illegible] not painted”. On the move-out inspection report, the tenants comment “no foul odour” and “scratches as claimed are just marks in Bed I and II” and “no paint sample/or code given for colour – matching could not be done.”

Range rings

The landlord seeks \$36.92 to replace the four rings around the elements on the range. The landlord submitted during the hearing that the rings were very dirty from burned on food and that it was more economical to replace them than try to clean them.

The tenants responded by stating the rental unit was cleaned after the sub-tenants left and that any marks were a result of normal wear and tear.

On the move-out inspection report the landlord notes that the rings need replacing but a reason is not indicated. The tenants made no comment about the stove rings on the move-out inspection.

Summary

During the hearing, the landlord acknowledged and was agreeable to reducing his claim by the estimated depreciation of 10% for the flooring and 25% for the painting in

recognition of useful lives of building elements as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

The tenants are of the position that the landlord's claim is excessive and suggested that their security deposit is more than enough to compensate the landlord for the damage for which they are responsible.

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 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.

Awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation the expected useful life of the many building elements is provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Section 21 of the Residential Tenancy Regulations provides that 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.

Section 20 of the Residential Tenancy Regulations also provide for the information that must be contained on a condition inspection report, including a statement as to "the state of repair and general condition of each room". The Residential Tenancy Branch provides generic condition inspection reports for landlord's to use that comply with the requirements of the Act and Regulations. It is not mandatory to use for the forms generated by the Branch but if a landlord uses their own version the landlord's condition

inspection report must meet all of the information requirements specified under the Regulations.

Upon review of the landlord's move-out inspection report, I note there is a legend to describe the condition of items in each room but the landlord did not use the legend in completing the move-out report. Rather, the landlord provided conclusions but not reasons for that conclusion. For example: the landlord writes "to paint" next to several rooms but does not indicate the reason. Similarly, the landlord indicates the stove rings need replacement but does not indicate the reason for this determination. I find this lack of detail problematic especially since the condition and the need for replacement or repainting is in question. I find the move-out inspection report also problematic since the space provided to describe the condition at the time of move out is very small since the landlord merely used the move-in inspection report and wrote comments in the margins at the time of the move-out inspection and as a result the landlord's handwriting is very small and difficult to read. Further, on the security deposit summary page, I was unable to read some of the landlord's handwriting.

Aside from the deficiencies of the move-out inspection report, the landlord provided very poor quality photographs of flooring for my review.

Taking the above into consideration, upon deliberation of everything presented to me, I provide the following findings and reasons with respect to the landlord's claims against the tenants.

Flooring damage

Under the Act a tenant is required to repair damage they cause by way of their actions or neglect. If a tenant does not make the repair, the landlord may seek compensation for their damages or loss that resulted from the damage.

From the condition inspection report, the photographs, and the testimony of both parties it is undeniable that the flooring had a scratch at the end of the tenancy and I accept that the scratch exceeds normal wear and tear. The primary issue under dispute is the landlord's damages and loss that result from the damage.

In this case, the flooring is still functional as demonstrated by the fact the flooring remains in place and the unit was re-rented in that condition. Thus, I find the landlord's request for compensation equivalent to the full replacement cost of the entire room, even after deducting 10% for depreciation, to be excessive and that it is more reasonable to award the landlord compensation equivalent to diminished value.

Unfortunately, the landlord did not provide evidence to suggest the unit was re-rented for less rent due to the damage or that the value of the property is diminished by a certain amount. However, in recognition that the tenant's damaged the property, I find the tenants' suggestion that the security deposit more than fairly compensates the landlord for the flooring damage as the best indication of diminished value and I award the landlord the equivalent to the security deposit or \$480.00.

Painting

As pointed out previously in this decision, the landlord's condition inspection report lacks information with respect to the condition of the rooms that require painting. I find it insufficient to merely note "to paint" or "painting required" without a statement as to the condition or a reason for this determination. I find it compelling that the landlord makes no notation that the unit smells of smoke on the move-out inspection report, but does indicate that there were some scratches in the bedroom closets. In contrast, the tenants noted at the time of the inspection that there is no foul odour and that the scratches in the bedrooms are wear and tear.

I accept that there was smoking that took place either in the unit or on the balcony as I find the sub-letters would not have signed the document on June 25, 2014 if in fact they did not smoke on the property. While smoking on the property was a breach of the tenancy agreement, the landlord's entitlement to compensation, as provided under the Act and the tenancy agreement, is based upon the losses that resulted from that breach. Having heard undisputed testimony that the tenants ozone treated the unit and there is no record of a lingering smell, I find there is insufficient evidence that the painting was required due to smoking as opposed to covering up scratches that amounted to wear and tear.

Therefore, I find I am unsatisfied the landlord is entitled to recover painting costs from the tenants and I dismiss this portion of the landlord's claim.

Range rings

Although the landlord provided evidence that the range rings were purchased, given the deficiencies on the move out inspection report as described previously in this decision, the landlord did not provide a reason for replacing them on the move-out inspection report and I am left with disputed verbal testimony to determine whether the range rings were so dirty they required replacing. I find disputed verbal testimony is insufficient to meet the landlord's burden of proof and I deny this portion of his claim.

Summary

The landlord has been awarded compensation of \$480.00 for flooring damage and the remainder of the landlord's claims against the tenants have been dismissed. I make no award to the landlord with respect to the filing fee.

The landlord is authorized to retain the tenants' \$480.00 security deposit in full satisfaction of this Application.

Conclusion

The landlord has been awarded compensation of \$480.00 and has been authorized to retain the security deposit in full satisfaction of the landlord's claims against the tenants.

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 01, 2015

Residential Tenancy Branch

