Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEORGIAN HOUSE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

The landlord applies for a monetary award for the cost of cleaning and repair to the rental unit after the end of the tenancy. It claims for flooring refinishing, drapery cleaning, repainting, a bulb a garburator stopper and disposal of a microwave. A claim for a toilet seat was withdrawn at hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord is entitled to recover compensation for the items claimed?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started in September 2013. The tenants left February 24, 2015, having paid the rent for the entire month of February.

The monthly rent was $1180.00, due on the first of each month, in advance. The landlord holds a $590.00 security deposit.

The parties conducted a move-in inspection and signed a report at the start of the tenancy. Only very minor issues were noted by the parties.

A move-out inspection was done at the end but the attending tenant Ms. K.S. signed indicating that she did not agree that the report fairly represented the condition of the premises at that time. Below that she noted “cost of flooring” and “It was agreed we will not pay for bathroom.”

The landlord's representative Mr. B.M. testifies that the tenancy did not include a microwave but the tenants left one he had to dispose of.

He says the tenants left 30 nail holes in the wall of the bedroom; holes unapproved, though the tenancy agreement requires a tenant to obtain approval before making any holes.

He says the tenants failed to ventilate the unit properly by running the bathroom fan and opening the outside, balcony door. He says that as a result paint peeled in the bathroom.

He presents pictures of the parquet wood flooring showing wear on four squares, which he attributed to plastic bedframe wheels, scuffing over two or three squares, rather deep scratches in two areas and significant gouges in two squares. He says the flooring squares could be individually replaced. The entire floor had to be sanded and refinished by a professional at a cost of $735.00.

His photos show two drywall screw insert holes, an area of indeterminate size with paint peeling, two areas of indeterminate size showing paint wear on walls, an area of indeterminate size with dark scuffing, an area of a wall with scuffing and perhaps drywall tearing (allegedly from a bicycle), a picture of a dirty window and a shot of what appears to be the corner of a balcony. Additionally the landlord provided a photo of a microwave and a photo showing wall gouge of indeterminate size in an unknown location.

In late evidence the landlord presented a photo of a bedframe with its caster wheel on the floor and drapes with a small square he'd attached to it a month before the tenancy ended and which he says proves the tenants did not wash the drapes.

The landlord's representative testifies that the premises had been freshly painted prior to move-in. He says that the previous tenant had been there for twenty years and so the suite required "serious work," about $1000.00 in repairs, before it was fit for these tenants to move in. Later in his evidence he says that the floors didn't need any repair at that time because the previous tenant used carpeting.

He says the wood floors were last refinished in 1999, though that would have been during the tenancy of the previous tenant, a rather unusual time to conduct such work. He says the walls were freshly painted before this tenancy.

He says that a “pre-inspection” with the tenants was done by the landlord’s representative J. She did not give evidence.

In response, the tenant Mr. G.R. testifies that the move-in report does not accurately reflect the state of the premises at that time. He says the landlord has not complied with the 15 day period regulation require it to forward the move-out report within. He denies any moisture problem and says it was unreasonable for the landlord to require tenants to leave a door open to the outside weather in the winter.

Mr. G.R. says the microwave was there when they moved in and so they left it. He says the tenants used mats and felt pads under furniture, as directed by the landlord. He says the premises were not totally freshly painted before move in. He says that J directed the tenants to do only three things at the “pre-inspection” and those three things; dusting, deck cleaning and window cleaning, were done.

The tenant Ms. K.S. testified and objected to the landlord’s photos of the rental unit, apparently taken when the tenants still occupied the premises with their furniture intact. She knows of no occasion when the landlord could have taken the photos unless there had been an unauthorized entry. She denies there were any nail holes in the bedroom wall but admits to the two holes in the living room. She says she washed the curtains and that the small square the landlord testified about was not there when she did. She adduced photo evidence showing the state of the premises at move out.

Analysis

The move in report is meant to be an accurate assessment of the observable state of the premises, agreed to by the parties. It would take more than one side’s testimony at the end of the tenancy to form a preponderance of evidence that it was an inaccurate report.

I have concerns with some of the landlord’s evidence. Its photo of parquet floor under the bedframe plastic caster wheel, with mattress and sheets above it, does not show any wear on the floor, yet the landlord produces a photo of a floor clearly marred or worn and attributes it to the casters.

The photo of the square placed on the drapes appears to show the drapes hanging above a smooth, unfinished parquet floor, indicating that the photo was taken after floor work was commenced and not at the move out.

The landlord's representative alleged thirty nail holes in a wall. The move-out report does not seem to mention them. The photos submitted by the tenants show most walls but there is no evidence of thirty nail holes.

I note that the landlord's representative indicated that though he had received the tenants' CD disk containing the photos, he was unable to open it on his computer. It appears that he took no steps to consult with the Residential Tenancy Branch about it or to inform the tenants. I determine that he is taken to have duly received the evidence contained on the disk.

The items of the landlord's claim will be dealt with in order.

Floor

Though there are some discrepancies about caster damage, on the whole the evidence shows that the tenants left some marring as well as at least two deep scratches and two gouges in the wood flooring. In my view the damage is beyond reasonable wear and tear. The tenant Ms. K.S.'s note on the move-out report regarding the cost of floor repair appears to acknowledge that repair work was required.

On the landlord's representative's undisputed evidence, refinishing the floor was the reasonable solution to repair the damage.

Residential Tenancy Policy Guideline 40 "Useful Life of Building Elements" indicates that the useful life of a wood floor is 20 years. Even assuming the floors were last refinishes in 1999 (and not prior to the previous twenty year tenancy), the floors have 16 years of use since last refinished.

The landlord's representative says that the last tenant used carpet throughout and so the floors have another twenty years of life. This is an opinion perhaps at odds with his claim that the rental unit needed "serious work" after that long term tenant left.

In all the circumstances, I award the landlord one-third of the refinishing expense; an award of $245.00.

Window Cover Cleaning

On the competing evidence the landlord has not proved this claim on a balance of probabilities and I dismiss it.

Paint.

I discount the fact of paint pealing on a bathroom wall or ceiling. If the paint pealed because of moisture over the eighteen months of this tenancy then, in my view, there is either a ventilation problem inherent in the rental unit or the paint was not of a type suitable for that application. I would not that a tenant should not normally be required to leave an exterior door open during the winter to alleviate moisture.

The tenants' photos show the premises in reasonable clean condition and without wall damage. I can find no basis to prefer the landlord's evidence over the tenants' on this point.

The tenants did leave two screw anchor holes in one wall. They were not prohibited from doing so, however the tenancy agreement clearly states they must receive prior approval and direction. They didn't. There is no other evidence about landlord rules regarding picture screws or that the tenants' screw anchors would have been refused had the landlord's approval been sought.

Policy Guideline 1 "Landlord & Tenant – Responsibility for Residential Premises" notes:

> If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

In these circumstances, the fact that the tenants place the two screw anchors in the wall without approval does not automatically mean they are responsible for repair. I dismiss this item of the claim.

Microwave, Garburator Stopper and Bulb

The landlord's representative did not testify about bulbs. The tenants say none were missing. I dismiss this item.

The tenancy agreement does not say that a microwave is included nor does it say that it is an appliance not included in the tenancy. I think it more likely that vacating tenants would take their microwave with them and so I conclude that whether or not the microwave was the landlord's, it was there in the premises at move-in and the tenants were not wrong in leaving it there. I dismiss this item.

There was no evidence about a garburator stopper and so I dismiss this item.

The tenants argue that the move-out report was not received until more than 15 days after the end of the tenancy.

Section 36(2) of the *Act* provides;

> (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
>
> (b) having complied with section 35 (2), does not participate on either occasion, or
>
> (**c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

(*emphasis added*)

Section 18 of the Residential Tenancy Regulation provides:

> **18** (1) The landlord must give the tenant a copy of the signed condition inspection report
>
> (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
>
> **(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of**
>
> **(i) the date the condition inspection is completed, and**
>
> **(ii) the date the landlord receives the tenant's forwarding address in writing.**

(*emphasis added*)

The penalty for noncompliance is “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property” is extinguished. It is to be noted that it is not the landlord’s right to claim for damage to the residential property that is extinguished. Rather, it is the landlord’s right to claim against the deposit for that damage.

Arguably, a non-compliant landlord could be exposed to a claim for double the deposit amount under s.38 of the *Act*, if he lost the right to claim against the deposit and held it past the 15 day period imposed by that section.

However, in this case the landlord also claimed for cleaning costs in addition to costs relating to damage. They are different things, as is made plain by the fact that the *Act*

refers to each separately. Since the landlord claimed against the deposit for cleaning costs, a claim not extinguished, he was entitled to retain the deposit money until the matter was decided at the hearing.
Whether or not the landlord was in breach of the 15 day rule requiring it to give the tenants a copy of the move-out report, a point I need not determine, it would have no effect on the outcome in this matter.

Conclusion

The landlord is entitled to a monetary award of $245.00. As it has had only very limited success I authorize recover of $25.00 of the filing fee.

I authorize the landlord to retain the total of $270.00 from the $590.00 security deposit. The tenants will have a monetary order against the landlord for the balance of $320.00.

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: August 02, 2015

Residential Tenancy Branch