



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on January 22, 2016 for:

1. A Monetary Order for compensation - Section 67.

The Landlord applied on August 12, 2016 for:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. The Witness gave evidence under oath.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Landlord entitled to the compensation claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on April 18, 1995 and ended on June 30, 2015. Rent of \$900.00 was payable monthly. At the onset of the tenancy the Tenant conducted a move-in inspection and completed a report with the previous landlord. Neither Party has a copy of that report. The Landlord purchased the property in October 2014 and collected a security deposit of \$450.00 from the Tenant. The Tenant had paid the original landlord a security deposit of \$300.00 but the Tenant has never claimed this amount. No move-out inspection was offered to the Tenant and no move-out report was completed by the Landlord. After the end of the tenancy the Landlord made renovations to the unit over a 2 month period. The Tenant wrote a letter allowing the Landlord to retain the \$450.00 security deposit for a half month's rent that was owed. The Landlord does not make any claim for rent.

The Tenant states that the tenancy ended following the service on the Tenant of a two month notice to end tenancy for landlord's use. The reason for the notice was that the son of the

Landlord, the Witness, intended to move into the unit. The Tenant states that he drove by the unit on several occasions over days and nights for two months after the end of the tenancy and that the son never moved in. The Tenant states that no body lived in the unit until October 2015 when the renovations were done. The Tenant states that he only saw "Sam" brining things in and out of the unit during this time. The Tenant states that he lives nearby the unit.

The Landlord's Witness, the son, states that he moved into the unit on July 1, 2015 and moved out on February 28, 2016. The Witness states that prior to this date he was living with his mother and sister and that the space was too small. The Witness states that he moved out of the unit on February 28, 2016 because he found another unit closer to the school he was attending. The Witness states that in July 2015 the Tenant brought in a mattress and his lap top and that he worked on the renovations over the summer months. The Witness states that the renovations were completed on September 6, 2015 and that he returned to his classes then, leaving at 7 a.m. and returning at 11:00 p.m. every day.

The Witness states that when he moved into the unit tenants were living in the upper unit and that these tenants moved with the next tenants moving in immediately. The Witness states that these tenants are still residing in that upper unit.

The Landlord states that they have no receipts for any of the items claimed as damaged other than the flooring. The Landlord states that laminate or hardwood flooring was in the unit when it was inspected a year prior to the Landlord's purchase of the unit. The Landlord states that the previous owner told them that the Tenant had put the flooring in to offset rents owed. The Landlord states that after the Tenant moved out the flooring was gone. The Landlord claims replacement cost for new laminate flooring. The Landlord states that they have no idea how old the flooring was.

The Tenant states that in 2002 he brought used flooring to his unit from a job site and placed this flooring over the existing linoleum without nails or glue. The Tenant states that the flooring was at least 5 years old at time he put it in the unit. The Tenant states that he did not put this flooring in the unit for unpaid rent because he always paid his rent. The Tenant states that he placed the flooring there because the linoleum was "crummy".

Analysis

Section 51 of the Act provides that if:

- steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice; or
- the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice;

the landlord, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Given the Witness's plausible evidence of living in the unit for approximately 8 months from end tenancy and the lack of any supporting evidence from the Tenant that the Witness was not living in the unit, I find that the Tenant has not substantiated on a balance of probabilities that the unit was not used for the purpose stated on the notice to end tenancy. I therefore dismiss the Tenant's application.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given that the Landlord was engaged in renovations to the unit after the end of the tenancy, considering that there are no move-in or move-out reports indicating the state of the unit at either point in time and given the lack of bills or invoices for the costs being claimed beyond the flooring, I find that the Landlord has not substantiated that these are costs were incurred or caused as a result of a breach of the Tenant. I therefore dismiss those costs.

As there is no supporting evidence that the flooring that was removed by the Tenant belonged to the Landlord or was put in place in lieu of rents owed by the Tenant and given the Tenant's plausible and undisputed evidence that it was temporarily put in place by the Tenant without glue or nails I find that the Landlord has not substantiated that the Tenant caused any loss to the Landlord and I dismiss the claim for costs to replace the flooring. As the Landlord's claims have not met with any success, I decline to award recovery of the filing fee and in effect the application is dismissed.

Conclusion

The Parties' applications are dismissed.

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 31, 2016

Residential Tenancy Branch