



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened in response to an application made September 9, 2016 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

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

Preliminary Matter

At the onset of the hearing the Landlord noted that the Tenant’s evidence package was received on March 2, 2017. The Landlord stated that they had sufficient time to review the evidence.

The Landlord’s application sets out a total claimed amount of \$15,000.00 in relation to damage to the unit. The damages are not particularized in the application. The Landlord’s monetary order worksheet sets out a total claimed amount of \$18,932.70, of which \$16,457.70 is claimed due to damage to the unit and \$2,475.00 is claimed as lost rental income. No amended application was filed with the Residential Tenancy Branch (the “RTB”) or served on the Tenant to reflect the increased monetary amount. No particulars were provided for the global damage amount claimed on the monetary order worksheet. This amount was particularized on the supporting invoice for \$16,457.70.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As no amendment was made to the

application I found that the Landlords' total monetary claim is restricted to the \$15,000.00 set out in the application.

In determining which costs should be removed from the invoice to reflect the restricted claim to \$15,000.00 and noting that the application makes no reference to lost rental income, I dismiss this claim set out in the monetary order worksheet leaving \$16,457.70 as a remaining claim. As the invoice identifies two costs that together roughly equate to \$1,500.00 or the amount that the monetary order is over the application amount, I dismiss the global GST costs and costs for door casings. This leaves the remaining individual costs claimed in the monetary order worksheet totalling \$15,142.00 and I note that any aggregate entitlement will still be restricted to \$15,000.00.

Issue(s) to be Decided

Did the Tenant leave the unit with damages beyond reasonable wear and tear?

Is the Landlord entitled to the compensation claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on August 1, 2010 and ended on June 21, 2016. Full rent was paid for June 2016. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. During the tenancy the Landlord collected \$750.00 as a pet deposit. No move-out inspection was conducted. The Tenants never provided their forwarding address in writing.

The Landlord states that no move-in inspection was conducted or report completed but that the unit was brand new at the outset of the tenancy. The Tenant states that a move-in inspection was conducted by the Landlord's agent and that a report was completed with copy to the Tenant.

The Landlord states that no move-out inspection was offered as the Tenants left the unit without notice to anyone and that the Tenants sent the keys to the property manager later. The Landlord states that while the property manager had the Tenant's phone

number the Landlord does not know whether any offer for a move-out inspection was made. The Tenant states that it was a rapid move due to medical problems, and that they sent the property manager an email about the move. The Tenant provides a copy of an email dated June 19, 2016 to the property manager. The Tenant states that they also called the property manager and verbally provided their forwarding address on June 20, 2016. The Tenant states that they had a person lined up to conduct a move-out inspection on their behalf however there was no further contact from the property manager or Landlord to set up a move-out inspection.

The Landlord states that the Tenants left the walls damaged and claims \$2,985.00 as the cost for painting the unit. The Landlord states that the walls were last painted in 2010.

The Landlord states that Tenants left the carpets uncleaned, stained and damaged by dog urine. The Landlord states that the dogs also scratched and urinated on the laminate flooring causing the flooring to peel and lift. The Landlord states that the underlay for both the carpet and laminate was also soaked with urine causing a strong odor. The Landlord provided photos of the carpet and laminate but no photos of the underlay.

The Landlord states that they did not attempt to clean the carpets. The Landlord states that they obtained the services of a family friend who gave them a reduced rate for the labour costs. The Landlord states that the friend charged them \$10.00 per hour instead of his usual rate of \$25.00 per hour. The Landlord states that the friend also had employees work on the repairs and their numbers and hourly costs are unknown. The Landlord claims \$1,332.00 for the cost of removal and disposal of all the flooring. There are no hours indicated for this claim on the invoice that notes the amount to include all dump fees. The Landlord claims \$2,485.00 for the labour costs to install the new vinyl flooring. The Landlord claims \$4,200.00 for the cost of the flooring and underlay. The invoice does not set out the separate amounts of each.

The Tenant agrees that the dogs did scratch the laminate but argues that this was cheap flooring and that given the presence of dogs, the scratches should be considered normal wear and tear. The Tenant states that the laminate area in front of the door came apart simply by mopping that area of the floor. The Tenant states that they never informed the Landlord of the damage as they assumed that the Landlord would know. The Tenant states that a group of unit owners in that building launched a class action law suit in relation to the shoddy work and cheap material used in the units, including the laminate flooring. The Tenant provided printouts of information in relation to the law suit.

The Tenant states that the dogs were brought into the unit as puppies and that a dog trainer was hired. The Tenant states that while they were out of the unit the dogs were left in crates and that the dogs were taken outside for waste elimination. The Tenant states that there were a few accidents in the unit but that these were cleaned immediately. The Tenant denies that the few instances would have created soaked the underlay and the Tenant notes that there are no photos showing any damage to the underlay. The Tenant states that it is more likely given the cheap low quality nature of the carpets that the Landlord likely replaced them instead of just having them cleaned. The Tenant states that they did not clean the carpets at move-out but that they cleaned them regularly during the tenancy as they had their own steam cleaner. The Tenant states that the Landlord's costs claimed for the replacement flooring is higher than the costs the Tenant obtained at a chain store. The Tenant states that the Landlord did not provide any evidence of obtaining the best prices. The Tenant states that quotes obtained for the cost of labour out and materials for laminate flooring, including underlay, varied between \$2,200.00 and \$3,200.00.

The Landlord states that the class action was ultimately dismissed as trivial and that the judge felt that the monetary claims were made to obtain the decrease in value that occurred during the period between the pre-sale date and the purchaser's possession date. The Landlord states that the Tenant's quotes do not include removal costs and

that the quotes were for a lower quality laminate than was in the unit. The Landlord believes that the vinyl flooring was a comparable cost.

The Landlord states that the Tenants left the baseboards and one door frame chewed up by the dogs and claims \$1,155.00 for the materials and labour to replace the baseboards. The Landlord claims \$2,985.00 for the costs of caulking, filling and painting the baseboard and casing of 5 doors. It is noted that costs in relation to 4 of the doors has already been dismissed above. The Tenant does not dispute that the dogs caused some damage but not to the extent claimed by the Landlord. The Tenant states that only 10 feet of the total baseboards were damaged and that the baseboards could have been patched instead of a total removal and replacement. The Tenant states that the door casing could also have been patched. The Tenant states that their quick departure did not allow them time to make these repairs but that the Tenant believed that the repairs could have been coordinated with the Landlord's agent. The Tenant states that the caulking costs are excessive. The Tenant states that laminate flooring costs 1.89 per square foot and that vinyl flooring costs 5.90 per square foot.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear. Policy Guideline #40 sets out the useful life of building elements with interior paint at four years and carpet at 10 years. 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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed.

As the age of the interior paint was older than 4 years I find that there was no longer any value left in the walls paint and therefore no loss to the Landlord. I dismiss the claim for painting the unit.

Given the undisputed evidence that puppies were in the unit and required training, considering the photos of the damage, and given that the Tenants never informed the Landlord of any damage being caused by outside factors, I find that it is likely that these puppies caused the flooring to be damaged. Although there are no photos showing damage to the underlay I accept the Landlord's persuasive oral evidence on this point to find that the damage extended to the underlay and caused significant odor.

While it may be true that the carpet was cheap, there is no evidence that would distinguish the life of the carpet any differently from the policy guidelines that is based on averages. As the useful life of carpet is 10 years and as the carpets were 6 years old at the end of the tenancy, I find that the Landlord has substantiated a loss of 4 years in value. Although the policy guideline does not set out the life of laminate, it sets hardwood at 20 years. There was no evidence other than the Tenant's in relation to the quality of the laminate and given the Tenant's supporting evidence I accept that the laminate was of a cheaper variety and with a significantly shorter life than hardwood. For this reason and as neither Party gave evidence of the expected useful life of the laminate I find that the flooring would therefore have no more than 10 years of useful life. As a result I find that the Landlord has substantiated a loss of 4 years value with the laminate. The total costs claimed for the removal and installation of the flooring is \$3,817.00 and I find that the Landlord is entitled to 4/10 of the amount: **\$1,526.80**.

While I accept the Landlord's evidence that the cost of labour was reduced the Landlord provided no evidence of competitive pricing for the costs of the replacement flooring and I find the Tenant's evidence of flooring costs to be persuasive. As a result I find that the Landlord failed to provide evidence of any mitigation in relation to the costs claimed for the replacement flooring materials and I dismiss these claims.

Based on the undisputed evidence of damage to the baseboards and given the photos of the extent of damage I find that the Landlord has substantiated on a balance of probabilities all the baseboards and the one door casing required replacement.

Accepting the amount claimed for the labour and materials on the invoice as within a reasonable range I find that the Landlord is entitled to the claimed amount of **\$1,155.00**. Given that the costs for the painting of the baseboards and one door casing cannot be determined with any certainty since the costs claimed include some amount that would be associated with dismissed items, I find that the Landlord has only substantiated a nominal amount of **\$500.00** for this cost.

It is noted that since the Landlord never received a forwarding address in writing from the Tenant the matter of extinguishment in relation to the move-out inspection is not relevant to the Landlord's retention of the security deposit pending the outcome of its claim against the security deposit.

As the Landlord's claim has had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,281.80**. Deducting the combined security and pet deposit of **\$1,500.00** plus zero interest from this entitlement leaves **\$1,781.80** owed by the Tenants to the Landlords.

Conclusion

I Order the Landlord to retain the security and pet deposits plus interest of \$1,500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$1,781.80**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 10, 2017

Residential Tenancy Branch