



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 the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on September 13, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The Tenant acknowledged receipt of these documents.

The Landlord stated that on September 13, 2016 the 17 pages of evidence and 23 photographs that were submitted with the Application for Dispute Resolution were personally served to the Tenant. He stated that a copy of this evidence was also emailed to the Tenant on September 08, 2016. The Tenant stated that she received the evidence when it was emailed to her but it was not personally served to her by the Landlord. As the Tenant acknowledged receiving the evidence I find that it was sufficiently served to the Tenant, pursuant to section 71(2)(c) of the *Act*.

On February 27, 2017 the Tenant submitted 31 pages of evidence and 25 photographs to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

With the consent of both parties the Application for Dispute Resolution was amended to reflect the spelling of the Tenant's first name, as she provided it at the hearing.

Preliminary Matter #2

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of

the dispute resolution proceedings. I find that the Landlord's Application for Dispute Resolution does not provide full details of the Landlord's dispute. In reaching this conclusion I was heavily influenced by the fact the Landlord provided insufficient details of his monetary claim in the Application for Dispute Resolution. Although the Landlord declared there was damage to the "floor/paint/carpet/bathroom cabinet + doors", the Application for Dispute Resolution does not declare how much compensation the Landlord is claiming for each damaged item.

The Application for Dispute Resolution directs applicants to provide a Monetary Order Worksheet when they are making a financial claim. A Monetary Order Worksheet lists the various claims being made and declares how much compensation the Landlord is seeking for each claim. In these circumstances the Landlord did not submit a Monetary Order Worksheet or any similar list that declares how much compensation the Landlord is seeking for each alleged item damage.

In these circumstances the Landlord provided an invoice for painting, in the amount of \$1,344.00. On the basis of this invoice I find that the Tenant understood, or should have understood, that the Landlord was claiming compensation in this amount for painting the unit and I will consider that claim at these proceedings.

In these circumstances the Landlord provided invoices for repairing the floor, in the amount of \$4,488.39. On the basis of these invoices I find that the Tenant understood, or should have understood, that the Landlord was claiming compensation in this amount for repairing the floor and I will consider that claim at these proceedings.

The Landlord did not submit any receipts or list that explains how much compensation he is seeking for damage to the carpet, the bathroom cabinet, or doors. In the absence of this information I find it would be unfair to consider those claims at these proceedings, as the absence of this information makes it difficult, if not impossible, to prepare a response to the claims.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the floor and walls of the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenant lived in the rental unit prior to the Landlord purchasing the rental unit;
- after the Landlord purchased the rental unit the parties signed a new tenancy agreement which began on June 01, 2016;
- the Tenant agreed to pay rent of \$1,700.00 by the first day of each month; and
- the tenancy ended on August 31, 2016.

The Tenant stated that she moved into the rental unit on April 01, 2014. The Landlord stated he does not know when the Tenant moved into the rental unit.

The Landlord is seeking compensation for painting the rental unit. The Landlord stated that the walls and baseboards in the rental unit had been scratched in various locations by the Tenant's pet. He stated that the walls had been scraped in several other locations, including in the living room where the Tenant kept a pet cage. The Landlord stated that the walls also had to be re-painted because the walls were stained from cooking.

The Tenant stated that the walls were cleaned at the end of the tenancy and were not stained from cooking. She stated that there were small scratches and marks at various locations but she considered those to be normal wear and tear. She stated that there were small dents on the wall in the living room where she kept a pet cage, which she also considered normal wear and tear. She stated that she touched up some of the minor marks on the wall.

The Landlord submitted several photographs of the walls in the rental unit. The Landlord contends that scratches can be seen at the base of the walls in some of those photographs. I was unable to see scratches on the walls. I was able to see a variety of minor damage to the drywall.

The Tenant stated that the repairs on the living room wall that is evident in the photographs were repairs that were made after the tenancy and that they do not depict the nature of the damage to that wall. The Landlord agrees that photographs of the wall that was damaged by the pet cage were taken after the wall had been repaired, but prior to painting.

The Landlord is seeking compensation for repairing the laminate floor. The Landlord and the Tenant agree that the floor was damaged during the tenancy. Specifically, the floor was damaged after prolonged exposure to moisture and when the Tenant's dog chewed a small hole in the floor.

The Landlord submitted an invoice for \$2,371.59 for replacement laminate and an invoice for \$2,116.80 for installation. He stated that the entire floor needed to be replaced because cabinets were installed over the floor and the damage was in the middle of the floor. He estimates the floor would now be two years old.

The Tenant argued that the Landlord did not need to replace the entire floor and that a contractor told her just the damaged areas could be replaced. She stated that she did not arrange to have the floor repaired because she understood she needed permission from the Landlord before she repaired the floor.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the Landlord has failed to establish that the damage to the walls in the rental unit exceeds normal wear and tear. In reaching this conclusion I was heavily influenced by the photographs of the walls submitted in evidence by the Landlord. In my view those photographs show damage that constitutes normal wear and tear. Given that the damage to the wall where the pet cage was has been repaired in the photographs and I was not provided with a photograph of the condition of the wall prior to the repair, I am unable to determine whether that damage exceeds normal wear and tear.

As the Landlord has submitted insufficient evidence to establish that the Tenant damaged the walls in a manner that exceeded normal wear and tear, I find that the Tenant is not obligated to repair the wall damage or paint the walls. I therefore dismiss his claim for painting the walls.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the floor that was damaged during her tenancy. On the basis of the photographs submitted in evidence I find that the damage exceeded normal wear and tear. I therefore find that the Landlord is entitled to compensation for repairing the floor.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet and flooring is ten years. The guidelines do not specifically assess the life expectancy of laminate flooring however I find it reasonable to conclude that it also has a life expectancy of ten years.

The undisputed evidence is that the Tenant moved into the rental unit on April 01, 2014. I therefore find that the flooring was 29 months old at the end of the tenancy. I find the Tenant's testimony more reliable than the Landlord's estimate that the floors would now be two years old, as he is a relatively new owner of the property. I therefore find that the floor has depreciated by 91/120 and that the Landlord is entitled to 91/120 of the cost of replacing the floor. On the basis of the invoices submitted in evidence I find that

it cost \$4,488.39 to replace the floor and that the Tenant is obligated to pay \$3,403.70 for the replacement.

In reaching this conclusion I find that the Tenant submitted no evidence to corroborate her claim that the floor could have been repaired, rather than fully replaced. In the absence of such evidence I cannot conclude that the floor could have been repaired in a less costly manner.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$3,503.70, which includes \$3,403.70 to replace the floor and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$3,503.70. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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 *Act*.

Dated: March 08, 2017

Residential Tenancy Branch