



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF (Landlords' Application)
 OLC, MNSD, FF (Tenants' Application)

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution the Landlords requested a monetary order for damage to the rental unit, loss of rent and to recover the filing fee. In the Tenants' Application for Dispute Resolution they sought return of the security deposit paid and recovery of the filing fee.

The hearing was conducted by teleconference on March 29, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should either party recover the filing fee?

Background and Evidence

Y.H. testified on behalf of the Landlords. He testified that the tenancy began June 16, 2016. Monthly rent was payable in the amount of \$1,850.00. The Tenants paid a security deposit in the amount of \$925.00.

Introduced in evidence was a copy of the move in condition inspection report dated September 16, 2016.

The Landlords issued a 1 Month Notice to End Tenancy for Cause on August 14, 2016. Y.H. testified that the Tenants moved from the rental unit on the effective date of the notice September 15, 2016.

Y.H. confirmed that he did not do a move out condition inspection report; he stated that he was not aware at the time, although he is now, that by failing to do a move out condition inspection report he has extinguished his right to claim against the security deposit for damage to the rental unit.

Y.H. also stated that he received the Tenants' forwarding address in writing on September 21, 2016 by email. He further confirmed that he did not return the security deposit to the Tenants.

Introduced in evidence was a Monetary Orders Worksheet wherein the Landlords confirmed they sought the following in compensation:

| | |
|---|------------|
| Refinishing of hardwood floor | \$1,067.00 |
| Cleaning | \$100.00 |
| Loss of rent for September 16, 2016 to September 30, 2016 | \$925.00 |
| TOTAL | \$2,092.00 |

Y.H. testified that he was not aware of the age of the floors although he stated that the building was approximately 10 years old at the time he bought it. He also provided an estimate to refinish the floors in the amount of \$1,043.18. He confirmed that the floors were scratched at the beginning of the tenancy and he was only seeking compensation for the "new scratches".

The Landlords also submitted in evidence a DVD confirming the condition of the floors at the time the tenancy ended. This DVD also included photos of the location of the rental unit, various photos relating to an AirBnB which was operated by the Tenants out

of the rental unit and photos which the Landlords identified as indicative of the rental unit requiring cleaning.

The Landlords also sought \$100.00 for cleaning as per clause 7 of the "Additional Terms to the Residential Tenancy Agreement for the Property" which provides as follows:

7. At the end of the tenancy, the tenant(s) will return the apartment in clean swept condition. If the apartment is not returned in the condition it was leased, the landlord may keep part or all of the damage deposit. There will be minimum charge of \$100 to have the apartment professionally cleaned by the landlord when the tenancy moves out. The tenant is responsible for keeping the apartment clean during the term of the lease. If the tenant does not keep it clean during the lease, the tenant will be responsible for paying \$100 per cleaning for professional cleaning."

Y.H. stated that the Tenants paid rent for September 1 to September 15, 2016 and confirmed that the Landlords sought the balance of the September rent in the amount of \$925.00.

Y.H. confirmed that the Tenants confirmed that they would move from the rental unit on the effective date of the Notice: September 15, 2016. Y.H. further stated that his agent attempted to rent the unit for September 16, 2016 but was not able to do so until October 1, 2016.

The Landlords also sought recovery of the \$100.00 filing fee.

The Tenant, D.S., testified as follows. He stated that the floors were scratched when they moved in and that they did not cause any further damage. In support he provided a DVD which provided close up photos as well as video of the flooring on the date of move in. D.S. further stated that the Landlord claimed that the floors were damaged by high heels however the Tenant stated that he had a huge carpet covering the flooring such that he does not believe that he caused the damage.

In response to the Landlords' claim for the \$100.00 cleaning charge, D.S. also recorded videos of the condition of the rental when they moved out and claimed that the rental unit would have been cleaned with one sweep of a broom.

D.S. stated that they moved from the rental unit on September 1, 2016 two weeks before the date requested by the Landlords on the Notice and as such the Landlords should have been able to rent it by September 15, 2016, the effective date of the Notice.

D.S. stated that he sent a text message to the Landlords' agent a few days before September 1, 2016 to inform her that he had moved out. He confirmed that he was aware that the Landlords' agent went to the property between September 1-7, 2016 to confirm that the unit was vacant and to close the windows.

In their application filed September 30, 2016, the Tenants sought return of the security deposit paid in the amount of \$925.00 in addition to the \$100.00 filing fee.

Analysis

I will first deal with the Landlords' claim for compensation.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

The move in condition inspection report indicates there were scuffs on the dining room floor. In addition, the photos and video submitted by the Tenants confirm the hardwood floors were scratched when the tenancy began. Y.H. conceded there were scratches on the hardwood flooring at the start of the tenancy but clarified that he was only seeking compensation for the “new scratches”. He did not particularize how many scratches he believes the Tenants added to the already scratched hardwood floors.

Y.H. was unable to provide conclusive evidence as to the age of the flooring only to say the building was built approximately 10 years prior the date he purchased the rental unit. *Residential Tenancy Policy Guideline 40—Useful Life of Building Elements* provides that hardwood flooring has a useful life of 20 years such that it is possible the flooring was nearing the end of its useful life, or at least any cost of refinishing or replacement would necessarily be discounted due to age.

Based on the testimony of the parties and the evidence before me, I am unable to find that the Tenants damaged the hardwood flooring and I therefore, dismiss the Landlords’ claim for related compensation.

The Landlords also sought to recover the \$100.00 cleaning fee pursuant to clause 7 of the addendum to the tenancy agreement. Based on the photos submitted in evidence by the Landlords, I find this to be excessive. I agree with the Tenants that the small amounts of dust depicted in the photos could have been easily swept away. Further the two luggage tags in the garbage would have similarly taken only moments to dispose of. Based on the evidence before me, I find the Tenants left the rental unit reasonably clean as required by the *Act*.

I further note that section 5 of the *Act* provides that the parties cannot contract out of the

Residential Tenancy Act and section 6 allows me to find a clause unenforceable if it conflicts with the *Act*. For greater clarity I reproduce those sections as follows:

This Act cannot be avoided

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Enforcing rights and obligations of landlords and tenants

- 6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58
- (1) *[determining disputes]*.
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Clause 7 of the addendum to the tenancy agreement, as it is written, gives the Landlords authority to clean the rental unit during the tenancy, if, at the Landlords' sole discretion, the rental unit is not "clean". The clause also permits the Landlords to retain all or part of the security deposit without the Tenants' written agreement or an Order from an Arbitrator, which is contrary to section 38 of the *Act*. I find this clause to be unenforceable and I therefore deny the Landlord recovery of the \$100.00 cleaning fee.

I accept the Tenants' evidence that they vacated the rental unit on September 1, 2016. I further accept their evidence that the Landlords' agent inspected the rental unit at that time to confirm they had moved out. The Tenants paid rent until September 15, 2016 which was the effective date of the 1 Month Notice to End Tenancy. As they accepted the 1 Month Notice to End Tenancy and moved out of the rental unit by the effective date the tenancy ended on that date. The photos of the rental unit confirm that it was ready to be re-rented. I therefore find the Landlords are not entitled to further rent after the end of the tenancy and I dismiss their claim for compensation for rent from September 16, 2016 to September 30, 2016.

As I have dismissed the Landlords' claims, I also dismiss their claim for recovery of the filing fee pursuant to section 72.

I find the Tenants are entitled to return of their security deposit. As they have been substantially successful, I also award them recovery of the filing fee. I therefore Order, pursuant to sections 38, 67 and 72 of the *Act*, that the Landlords pay the Tenants the sum of **\$1,025.00**, comprised their \$925.00 security deposit and the \$1000.00 fee for filing this Application.

Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$1,025.00** and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: April 7, 2017

Residential Tenancy Branch