



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs to repair or replace flooring in the rental unit and for the filing fee. The landlord also applied to retain the security and pet deposits in satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing, I found that the landlord's evidence package sent to the tenant did not contain all the evidence that was sent to the Residential Tenancy Branch.

Rule 3 of the *Residential Tenancy Branch Rules of Procedure* addresses how to serve the application and the applicant's evidence. Rule 3.1 (d) states that together with a copy of the application for dispute resolution, the applicant must serve each respondent with copies of any evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

The purpose of serving evidence to the respondent is to notify the person being served of matters relating to arbitration. The landlord agreed that he had not served a copy of all of his evidence on the tenants.

Based on the testimony of both parties, I find that the tenants were not served with photographs that the landlord intended to rely on during the hearing. Accordingly these photographs and all the evidence that was not served on the tenant was not used in the making of this decision.

Issues to be decided

Has the landlord established a claim against the security and pet deposits and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on July 15, 2015 and ended on January 31, 2017. The monthly rent was \$3,500.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$1,750.00 and a pet deposit of \$1,750.00. The rental unit was furnished. An inventory of the items provided to the tenant and included in the rent was filed into evidence.

Both parties agreed that a move out inspection was carried out in the presence of both parties. The landlord made notes on the inventory sheet and asked the tenant to sign it. The tenant agreed that she signed the sheet but stated that she was not given a copy nor was a copy sent to her along with the landlord's application for dispute resolution. The landlord filed a copy of this sheet but as stated above, as per the rules of procedure, it was not used in the making of this decision.

The tenant filed photographs of the flooring and testified that she made enquiries about the cost of repairing the damage. The tenant agreed that there was some damage and this damage is apparent on the photographs filed into evidence by the tenant.

The landlord stated that apart from the damaged floor, other items on the inventory list were either damaged or missing. The landlord stated that he was willing to waive his claims for these items but specifically wanted the tenant to cover the cost of restoring the flooring. The landlord filed a copy of a quotation in the amount of his claim of \$7,280.00. The landlord agreed that as of the date of this hearing the damage had not been repaired. The landlord stated that due to his employment situation, he had financial difficulties and was unable to afford the cost of repair.

At this point the parties offered contradictory evidence. The tenant stated that some of the damage to the flooring was already present at the start of the tenancy while the landlord argued that it was not. A move in inspection was done but a report was not created. The tenant acknowledged that the damage existed but stated that some of it existed at the start of tenancy and got worse when the toilet overflowed.

Analysis

The testimony of the tenant and the landlord is conflicting with regard to the damage to the flooring and the cost to repair or replace. The tenant denied the allegation of the landlord regarding her pet having caused the damage by urinating on the flooring.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord is claiming that the tenant caused damage to the flooring and is claiming the cost of replacement. The tenant denies having caused damage other than wear and tear. The landlord failed to provide evidence of the damage that could be used in the making of this decision. Attempts to reach a settlement were unsuccessful. The tenant offered \$1,500.00 towards the repair of the flooring. The landlord refused to accept any amount that was lower than \$3,500.00.

I now have to decide whether the floor was damaged by the tenant's pet or whether the damage was from wear and tear. I also have to decide whether I can accept the quotation filed by the landlord of the cost to repair the flooring.

Based on the testimony of both parties and on the evidence of the damage provided by the tenant, I find that the flooring did sustain some damage which appears to be beyond normal wear and tear. The landlord testified that the flooring was installed shortly after he purchased the rental unit in September 2012. Therefore at the end of the tenancy the flooring was approximately five years old.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the flooring. As per this policy, the useful life of flooring is 20 years and therefore the flooring has 15 years of useful life left.

The landlord did not provide sufficient evidence to allow me to determine the extent of the damage. The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for. The landlord must also create a report documenting any damage that he wants the tenant to be responsible for and provide the tenant with a copy of the report.

Based on the documents filed into evidence and the testimony of both parties, I find that the flooring was damaged beyond normal wear and tear and I must base my decision on the evidence I have in front of me. As per the tenant's photographs of the damage which are not taken up close, it appears that the damage is minimal.

The landlord testified that repairs could not be done due to the discontinuation of the product that the flooring is made of and therefore he has to replace the entire flooring.

The tenant estimated and made an offer of \$1,500.00 towards the repair of the flooring. In the absence of sufficient evidence by the landlord to prove the extent of the damage to the flooring, I award the landlord \$1,500.00 towards the repair or replacement of the flooring.

Since the landlord has not been successful in proving his claim, he must bear the cost of filing this application.

I order that the landlord retain \$1,500.00 from the security and pet deposits and return the balance of \$2,000.00 to the tenant. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$2,000.00**.

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 16, 2017

Residential Tenancy Branch