



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 22, 2017. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?

Background and Evidence

This tenancy started on November 27, 2004 as an 18 month fixed term tenancy and then the tenancy renewed on a month to month basis. Rent was \$1,220.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$450.00 at the start of the tenancy. A move in condition inspection was not done at the start of the tenancy, but as this was a new construction rental unit the Landlord and Tenant signed a move in condition inspection report at the end of the tenancy when the move out condition inspection report was completed on May 2, 2017. This tenancy ended on April 30, 2017.

The Landlord said his total damage claim is for \$1,696.37 less the Tenant's security deposit of \$450.00 which the Tenant agreed the Landlord could retain on the move out condition inspection report dated May 2, 2017. The Landlord said his remaining claim of \$1,246.37 is as follow:

The landlord said he had to replace the lino flooring in the hallway, bathroom and kitchen as the Tenant damaged the hallway lino when moving a piano out of the unit. The Landlord said he is claiming \$1,253.60 in costs to replace the flooring. The Landlord submitted photographic evidence to show the rip/scratch in the lino and a paid receipt to support his claim. Further the Landlord said the Tenant cut down a number of cedar trees without authorization which he replace at a cost of \$134.33. Again the Landlord submitted photographs and a paid receipt in support of his claim. The Landlord continued to say the balance of his claim were a number of smaller items. These items are a bifold door for \$79.79, a window blind for \$76.16, a patio door lock for \$17.37, window screen repair for \$20.65, window repair for \$86.81, a toilet seal and light bulbs for \$27.66. The Landlord submitted paid receipts and photographs of all the items to support his claims. Further the Landlord submitted the condition inspection reports to show the damage and that the Tenant had agreed with the Landlord retaining the Tenant's security deposit of \$450.00. The Landlord said his total monetary claim is \$1,246.37, to retain the Tenant's security deposit of \$450.00 and to recover the filing fee of \$100.00.

The Tenant said she agreed to let the Landlord retain her security deposit of \$450.00 to cover all the damage and wear and tear that happened over the tenancy which was 13 years. Further the Tenant said there were no repairs or replacement done to the rental unit during the tenancy. The Tenant said when she first moved in she had a young family with two children so there was some wear and tear, but the Tenant said she thought they did a good job of taking care of the rental unit. The Tenant continued to say that the piano movers did scratch the lino, but the lino was 13 years old and was showing wear and needed to be replaced. The Tenant said as the lino need to be replace she does not think she is responsible for the cost to replace the flooring.

The Tenant continued to say that her son did remove the cedar trees without authorization from the Landlord, but it was to get at the fence behind the trees to repair the fence and they thought it would look better as the cedars were dying. The Tenant said her security deposit was partially to cover the cost to replace the cedar trees.

Further the Tenant said that the bifold door, the window blind, the patio lock, the window screen repair, the window repair and the toilet seal and light bulbs are all normal wear and tear and she is not responsible for them as the tenancy was over 13 years and things wear and need to be repaired or replaced. The Tenant said she believed allowing the Landlord to retain her security deposit was sufficient to cover all the wear and tear costs that resulted over the last 13 years. The Tenant said she does not believe she owes the Landlord any addition compensation for damage to the rental unit.

The Tenant said in closing the security deposit of \$450.00 is all she believes the Landlord should be entitled to for any damage to the unit as most of the damage was normal wear and tear. The Tenant said that the flooring was in need of replacement at

the end of the tenancy and it may have ripped because it was old. The Tenant said she does not think she owes the Landlord any additional money.

The Landlord said the Tenant damaged the rental unit and whether the lino was old or not the Tenant should be responsible to pay for it. The Landlord said that he does not think the Tenant did any willful damage but there was damage as of the tenancy. The damage was not normal wear and tear and the Tenant should be responsible to pay for the damage.

Analysis

Section 32 of the Act says: (1) a landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and
(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Policy Guideline #40 says: This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases¹ and **determining damages**² which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Further for a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

I have carefully reviewed the evidence submitted and the testimony given by the parties at the hearing. The Landlord has complied with the application process by providing the condition inspection reports, paid receipts and photographic evidence to support his claims. The issues I have to deal with are whether the damages to the rental unit were actual damages caused by neglect of the Tenant, normal wear and tear or if the economic life of the items damaged were deemed to be past or not. It should be noted that section 32 puts responsibility on both the Landlord and the Tenant to maintain a rental unit. The Tenant must keep the unit clean and repair damage caused by neglect. The Landlord stated that he did not think the Tenant did any willful damage but there was damage as a result of the Tenants actions. The Tenant said they took good care of the rental unit and the damage that resulted was from normal wear and tear or the age of the items damaged because the tenancy was over 13 years and nothing was replaced during the tenancy.

First, Policy guideline 40 says that tile flooring has a life expectancy of 10 years. Therefore as the tenancy was for 13 years and the lino flooring was 13 years old the flooring had past its normal life expectancy and the Landlord would be expected to replace the flooring prior to the next tenancy. A portion of all rent payments are considered to go to building up keep and upgrading rental units as they age. This is why Policy Guideline #40 estimates the economic life of components in a rental unit. As the economic life of a component in a rental unit reaches it's deemed life expectance the cost of replace is the Landlord's responsibility not the Tenant's responsibility. Consequently due to the age of the lino flooring, I find the Tenant is not responsible for the replacement of the flooring. I dismiss the Landlord claim of \$1,253.60 for replacement flooring.

Secondly the Tenant said they removed cedar trees without authorization from the Landlord. The Landlord said he replaced the cedar trees at a cost of \$134.33. I accept the Tenants testimony that her security deposit was retained partially to cover the \$134.33 for tree replacement. I find the Landlord's claim for cedar trees has been satisfied by the Tenant's security deposit.

With regard to the claim for the bifold door replacement in the amount of \$79.79. Policy guideline # 40 says doors have an estimated life expectancy of 20 years therefore; I accept the value of the remaining life of 7 years of 20 years should be paid to the Landlord by the Tenant. Calculated as $7/20 \times \$79.79 = \27.93 . I accept \$27.93 of the

Tenant's security deposit is applied to the cost of the remaining economic life of the bifold door.

Further Policy guideline #40 says that window blinds have a life expectancy of 10 years therefore the economic life of the blinds has past. Consequently I dismiss the Landlord's claim of \$76.16 for the replacement of the window blinds.

Finally I find the Landlord's claims for the patio door lock, the window screen, the window repair, the toilet seal and the light bulbs totally \$152.49 could be considered the result of normal wear and tear, but as the Tenant agreed to let the Landlord retain the security deposit these items are covered by the remaining \$287.74 of the Tenant's security deposit.

I find the Tenant's security deposit has more than covered the legitimate claims made by the Landlord. The Landlord's application for additional compensation is dismissed without leave to reapply.

As well, as the Landlord was not successful in this matter therefore; I dismiss his application to recover the filing fee of \$100.00 from the Tenant.

Conclusion

I find the Landlord's application is dismissed without leave to reapply.

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: November 27, 2017

Residential Tenancy Branch