



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL / FFL

Introduction

On April 16, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting a Monetary Order for Damages – regarding water damage to the living room floor of the rental unit, and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord’s representatives and the Tenants attended the hearing and provided affirmed testimony and were provided the opportunity to present their written and documentary evidence. The parties testified that they exchanged the Notice of Hearing and the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Landlord receive a Monetary Order for damages in relation to the water damage to the living room floor of the rental unit?

Should the Landlord receive reimbursement for the Filing Fee?

Background and Evidence

Landlord RR and the Tenants agreed that the tenancy originally began between the Landlord and Tenant KO and the first roommate on March 1, 2011. The first roommate moved out and in September 2012, a second roommate (“DM”) moved in with Tenant

KO. Tenant KO and DM signed a new Tenancy Agreement on October 3, 2012. DM moved out of the rental unit at the end of July 2017 and Tenant MH moved in with Tenant KO on October 12, 2017. The Landlord amended the Tenancy Agreement by crossing out DM's name and adding Tenant MH's name and obtaining her signature. The month-to-month tenancy required the \$1,846.00 rent to be paid on the first of each month. The Landlord currently holds a \$750.00 security deposit originally collected from Tenant KO and DM. The current tenancy between the Landlord and the Tenants is ongoing.

Landlord Evidence

Landlord RR referred to documents that he had submitted as evidence and testified that in June 2017, DM provided written notice that he would be vacating the rental unit at the end of July 2017. Landlord RR discussed the notes made by Landlord NW that indicated on July 3, 2017, she did a check on the rental unit in the company of Tenant KO and noted a water mark on the living room floor. Landlord NW also made notes on a separate document that indicated that DM left the rental unit without checking out; however, DM handed over the keys on July 31, 2017.

Landlord RR stated that in October 2017, the Tenants approached the Landlords and asked about obtaining a quote to repair the damaged area of flooring. Landlord RR referred to this letter, signed by both Tenants and submitted as evidence, where Tenant MH noted several issues for repair, including the living room floor, in the rental unit.

Landlord RR testified that he sent a letter to the Tenants on November 8, 2017, in response to the Tenants' letter regarding repairs to the rental unit. In the Landlord's letter, submitted as evidence, he advised that he would provide the Tenants a copy of the estimate for the floor repair, make arrangements to have the floor repaired, "after which time you will be responsible for paying for the repair."

Landlord RR said that he obtained a quote from a contractor who provided two scenarios for repair. One addressed the cost for sanding and refinishing the damaged floor for \$793.11 and the second addressed the scenario where the stain was too deep and the flooring would have to be replaced for \$1,268.42. Landlord RR stated that he had asked the contractor to make that determination once the work was underway. Landlord RR stated that a cover letter, dated November 22, 2017, was provided, along with the two quotes, to the Tenants. The Landlord acknowledged that he did not obtain quotes from other contractors as he trusts his contractor and they do quality work.

Landlord RR referred to a Notice to Tenant that he submitted as evidence, dated January 16, 2018, where the Landlord NW provided the Tenants notice that the contractor would be conducting repairs on the living room floor in the rental unit on January 15-17, 2018. The notice instructed the Tenants that they would have to move their furniture and cover it with plastic as there will be a lot of dust.

Landlord RR testified that he did not receive a response from the Tenants and the repair of the floor went ahead as planned on January 15-17, 2018. Landlord RR submitted evidence and stated he paid the contractor for the completed work on February 14, 2018 and in a letter to Tenant KO, provided a copy of the contractor's invoice for \$1,268.42 and requested reimbursement from Tenant KO.

Landlord RR stated that he did not receive payment or response from the Tenants and on April 4, 2018, sent a second letter advising that the payment for the repair is over 30 days past due.

Landlord RR believes that Tenant KO is responsible for the damage and should compensate the Landlord the full amount of \$1,268.42 for the repair of the damaged living room floor.

Tenant Evidence

Tenant KO testified that the damage to the living room floor occurred when he and DM were living together in the rental unit. Tenant KO referred to a letter that DM sent to the Landlord, and the Landlord submitted as evidence, dated May 1, 2018. Although the letter blames Tenant KO for the damage, Tenant KO pointed out that DM confirms that the damage occurred before Tenant MH moved into the rental unit.

Tenant KO took responsibility for the damage and said that he asked for the repair quote to obtain information, not necessarily to have the work done. Tenant KO asserted that the rental unit is his and that he doesn't need to have the repairs completed until he moves out of the rental unit.

Later in the hearing, the Tenant KO testified that he agreed to have the work done, but didn't expect to have to pay right away. Although welcoming the repair to the floor, he stated he would only pay for half of the cost, upon moving out, as the previous tenant, DM, should be responsible for the other half.

Analysis

Portions of Section 32 of the Act apply to this dispute; specifically, where the Act states that a tenant of a rental unit must repair damage to the rental unit that is caused by the actions or neglect of the tenant and, where the tenant is not required to make repairs for reasonable wear and tear.

When answering the question of whether the Landlord should receive a Monetary Order for damages in relation to the water damage to the living room floor of the rental unit, I must consider the following:

Who is responsible for the damage?

Did the Tenants consent to the repair of the living room floor offered by the Landlord?

Did the Landlord mitigate the cost of the repair?

The *Residential Tenancy Policy Guideline #13. Rights and Responsibilities of Co-tenants* (PG #13) will provide guidance to help determine who is responsible for the damage. PG #13, as it applies to this dispute, is summarized as follows:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

I accept Tenant KO's testimony that he and his roommate at the time, DM, were present and are responsible for the water damage to the living room floor of the rental unit. I find that Tenant KO and DM are jointly and severally liable for the cost of repair; however, I acknowledge, that DM is not a Respondent in this Application. Based on the above testimony, the evidence presented and guided by PG #13, I find that, in response to this Application, the Tenant KO is solely responsible for the damage to the living room floor.

I accept the Landlord RR's explanation of the process where he provided estimates to the Tenants in response to their request, served written notice to gain entry into the rental unit and provided guidance for the Tenants to prepare for the repair to the living room floor. Although the Tenant KO provided conflicting evidence, I accept that he welcomed the repairs to the floor and by cooperating with the Landlord to obtain access and following the instructions for the living room preparation, that both Tenants

consented to the proposed work. I find that the Tenants consented to the repair of the living room floor offered by the Landlord.

The Landlord obtained a quote for repairs from one contractor. Although, there were two repair scenarios quoted, the Landlord testified that he left the decision up to the contractor as to which repair would be required. According to the testimony of Landlord RR, the contractor felt that the damage was too severe and chose to replace the damaged floor boards. When reviewing the pictures of the damage, I note that the damage is approximately 8" x 8" and is part of a much larger wood floor that was generally, in good condition; however, obviously not new. The pictures of the repaired floor indicate that the repair brought the damaged floor back to new condition.

Residential Tenancy Policy Guideline No. 40 is a general guide for determining the useful life of building elements when determining damages under the Act. I refer to this guide to acknowledge that there is a useful life for the finishes on hardwood floors and that when Landlords consider compensation for repairs, that they should not expect to be fully compensated for bringing back a wood floor, for example, to new condition when there is evidence of normal wear and tear on the floor.

The Landlord RR did not provide sufficient evidence that he considered the above guideline or that he was suitably involved in the decision making with the contractor regarding which repair option would be the most appropriate. Nor did Landlord RR provide evidence from the contractor as to the reasons why he chose the most expensive option. I find that the Landlord did not fully mitigate the costs for the Tenants.

In accordance with Section 67 of the Act and as a result of my finding that the Tenant KO is solely liable for the damages to the living room floor; consented to the repair of the living room floor; and, that the Landlord did not fully mitigate the costs for the Tenants; I find that the Landlord should receive some, but not all, of the monetary compensation as a result of the water damage to the living room floor. I find the Landlord should be reimbursed for the cost of the first repair option, for a total of \$793.11.

The Landlord's Application has merit and the Landlord should be reimbursed \$100.00 for the Filing Fee.

Conclusion

The Landlord has established a monetary claim, in the amount of \$893.11, which includes \$793.11 towards the repair for the living room 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 the balance of \$893.11. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: June 14, 2018

Residential Tenancy Branch