



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and one of the Tenants were present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenants’ evidence.

The Tenants submitted a written statement to the Residential Tenancy Branch the day before the hearing. As required by the *Residential Tenancy Branch Rules of Procedure*, evidence from the respondent must be received by the Residential Tenancy Branch and the applicant at least 7 days prior to the hearing. As such, this evidence is not accepted and will not be included in this decision. The remainder of the Tenants’ evidence is accepted, as is the evidence of the Landlord.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

The Landlord applied for monetary compensation in the amount of \$800.00. During the hearing the Landlord stated that he was applying to retain the full security deposit amount, however this was not indicated on the Application for Dispute Resolution.

Instead, the Landlord applied for compensation in the amount of \$800.00. I also note that the parties agreed that the security deposit amount paid was \$862.50. The Landlord stated that he made an error when applying for \$800.00 instead of the full security deposit amount.

However, upon further review of the application, I find that the Landlord applied for compensation in the amount of \$800.00 and did not indicate on the application that he was applying against the security deposit. As such, this decision will be made based on the Landlord's application for compensation for damages in the amount of \$800.00.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement that the tenancy started on December 15, 2017 and ended on May 31, 2018. Monthly rent was \$1,725.00 and a security deposit of \$862.50 was paid at the outset of the tenancy. The Landlord confirmed that he was still in possession of the full security deposit amount.

The Landlord provided testimony that right after moving in, the Tenants contacted him regarding an odour in the kitchen of the rental unit. The Landlord viewed the unit and the parties agreed that the kitchen cabinets could be replaced to fix the odour issue. The Landlord agreed that the Tenants could replace the cabinets and he would reimburse them. This was completed, and the parties confirmed that the Landlord paid the Tenants for the cost of the cabinets. The Landlord submitted into evidence email correspondence between the parties in which they discuss the costs of payment for the kitchen cabinet replacement.

The Landlord also noted that the Tenants were unhappy with the colour of the paint in the rental unit, and despite being painted fairly recently, he agreed that the Tenants

could paint. The Landlord noted that he provided the Tenants very specific requirements for painting.

The Landlord stated that the parties had a previous hearing and the Tenants were awarded partial compensation towards the cost of paint, but only for the areas of the rental unit they were authorized to paint. The Landlord provided the file number for the previous dispute resolution proceeding which is included on the front page of this decision.

The Landlord testified that he entered the rental unit after the tenancy had ended and it was then that he noticed there was moulding missing throughout the unit, including moulding removed in the kitchen where the Tenants installed the new cabinets. The Landlord stated that the Tenants did not have permission to remove this moulding and noted that if they had asked they would not have been authorized to do so. The Landlord also referenced the tenancy agreement addendum which was submitted into evidence and included a clause that the Tenants receive written permission before doing any work in the rental unit.

The Landlord noted that the rental unit was in a heritage home and replacement of the wood mouldings would be costly. The Landlord provided estimates for replacement which totals approximately \$1,650.00. The Landlord noted that he is only seeking to retain the security deposit and is not seeking compensation for the full replacement value as stated on his estimates. The Landlord provided further testimony that the work has not yet been completed and instead there are temporary replacements up. The Landlord stated that this is why he provided quotes for the replacement costs instead of invoices.

The Landlord provided a written statement that outlines the work he stated was required in the rental unit following the tenancy. This includes replacement of the moulding around the door for \$407.51, replacement of the kitchen baseboard for \$105.00, installation of mouldings and floorboard for \$225.00, vinyl flooring replacement for \$212.00, installing of vinyl from \$300.00 to \$400.00, threshold materials and installation for \$165.00, and painting for \$150.00.

The Tenant testified that they never painted the kitchen as the Landlord would not pay for the paint. He noted that they painted $\frac{3}{4}$ of the rental unit with permission but stopped when they did not receive any money towards paint and supplies. The Tenant stated

that as they did not paint the kitchen, there was no need for the Landlord to re-paint the kitchen.

The Tenant stated that the only moulding they removed was a small piece by the doorframe in the kitchen that was blocking the new kitchen cabinet from fully opening. He also noted that they removed a piece of the threshold flooring as it was soaked in what was possibly dog urine and causing an odour in the kitchen.

The Tenant stated that the vinyl flooring in the kitchen was removed due to rat excrement beneath that was causing further odour issues. The Tenant stated that there was a floor underneath the vinyl flooring and that the Landlord had provided permission to replace the cabinets and the floor due to the odour that was present.

The Tenant submitted email correspondence between the parties that occurred during the tenancy. In an email dated December 17, 2017, the Tenant notifies the Landlord that the vinyl flooring is stained and due to the odour will need to come out. The Tenants also submitted a significant number of photos of the rental unit, including photos that were taken on the day they moved out of the rental unit and a photo of the threshold flooring piece before and after it was removed.

The Tenants also submitted photos of the kitchen flooring and a photo of the moulding around the door in the kitchen which notes that the original moulding is in place with the exception of the crown on the top that was removed for the new cabinet door to open fully. The Tenant also referenced photos in evidence that he stated show that the moulding is still present throughout the kitchen and therefore did not require replacement.

The Landlord stated that he was not aware that the mouldings and floorboards had been removed and that permission was not provided to do so. He further stated that the kitchen required painting as the paint was scuffed during the installation of the cabinets. The Landlord stated that the odour had been noticed in the cabinets which is why permission was provided to replace them. He stated that he did not notice a smell from the flooring and that the floor in the kitchen had been installed 14 months prior.

The Tenant stated that a move-in or move-out inspection was not completed and stated his position that the Landlord had extinguished his right to claim damages against the security deposit. The Landlord stated that while a walk-through was conducted, this was through discussion only without anything in writing or signed by both parties.

The Landlord submitted photos which he stated show the previous mouldings around the door frames. He noted that the photos demonstrate the type of moulding that is missing throughout the rental unit. He also submitted copies of the estimates/quotes for the work, as well as an invoice for painting and new trim for the kitchen baseboards in the amount of \$2,476.15.

The Tenant testified that they were granted permission from the Landlord to complete a kitchen renovation and as part of this they had permission to remove the moulding that impeded the opening of the cabinets and the threshold floor piece due to the odour. He noted that there were no limitations placed on the work they were doing for the renovations in the kitchen.

The Landlord stated that the Tenants were provided permission to replace the kitchen cabinets and that this was not a kitchen renovation. He noted that no permission was provided regarding the floor, mouldings or other pieces that were removed.

Analysis

Based on the testimony and evidence of both parties, I find as follows:

The Tenant testified as to his belief that the Landlord did not have a right to claim against the security deposit due to not completing a move-in or move-out inspection. As noted, I find that the Landlord did not apply against the security deposit.

The Landlord has claimed compensation in the amount of \$800.00. In order to determine if compensation is due, *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord claimed that the kitchen baseboard, mouldings and floorboards were missing at the end of the tenancy. The parties were not in agreement as to whether these items were removed during the tenancy, other than a piece of moulding that was removed during the kitchen cabinet replacement.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. As the parties were not in agreement, the Landlord had the burden of proof to submit sufficient evidence over and above his testimony to establish his claim. However, I find that I do not have sufficient evidence before me to establish the condition of the rental unit at the start and end of the tenancy. In the absence of before and after photos or a Condition Inspection Report, I find that it is difficult to establish what is missing.

Although the Tenant agreed regarding the piece of trim removed for the cabinet installation, I find that I do not have sufficient evidence before me to establish the value of the replacement of this piece or to determine whether or not the parties agreed that this was a part of the kitchen cabinet replacement. I do find evidence before me that the Tenants were provided permission to replace the kitchen cabinets and the Landlord reimbursed them for such. I also note that I find evidence that the Landlord viewed the kitchen following completion of the repairs and did not address any concerns regarding the removal of the trim piece at that time. Accordingly, I do not find that the Landlord has met the four-part test regarding the moulding trim piece. I decline to award compensation for this claim.

Regarding the Landlord's claim for replacement of the threshold floor piece and installation, based on the testimony of both parties it does seem that the Tenants removed this piece during the tenancy. As stated in Section 37 of the *Act*, a tenant must leave a rental unit reasonably clean and un-damaged. While the Tenant testified that the threshold piece required removal due to the urine odour and staining, I still find that the Tenant was required to notify the Landlord of this issue and for the Landlord to respond to the issue. As I do not have sufficient evidence before me that the Tenants had permission to remove this piece or that they notified the Landlord that it was being removed, I find that the Tenants are responsible for compensating the Landlord.

However, I note that the Landlord only submitted a quote for replacement in the amount of \$165.00. The quote is a business card with measurements and costs noted underneath but does not confirm that the quote is for the threshold flooring piece.

Without further evidence to establish the value of the threshold piece, I decline to award the full amount as claimed. Instead, I award the Landlord a nominal amount of \$100.00.

The Landlord claimed for the cost of re-painting the kitchen. While the Tenant stated that the kitchen was not re-painted during the tenancy, the Landlord stated that it required painting due to scuffs caused from the installation of the cabinets. However, I do not find that the Landlord has established his loss regarding the cost of painting the kitchen. In the absence of a Condition Inspection Report and/or photos that would establish that damage to the kitchen paint occurred during the tenancy, I do not find that the burden of proof has been met. There were no photos of the scuff marks on the paint or any other documentary evidence submitted that would establish that the Tenants breached the *Act* and therefore should be responsible for the cost of re-painting the kitchen. Therefore, I decline to award compensation for painting.

Regarding the Landlord's claims regarding the removal of the vinyl flooring in the kitchen, the Tenant stated that this was removed due to an odour present in the floor. Although I do not find evidence that the Tenant was explicitly provided permission, I do find that the email communication between the parties indicates that the Tenant informed the Landlord that the floor was being removed.

However, regarding the cost of the vinyl flooring replacement and installation, I also do not find that the Landlord has met the four-part test. I am not satisfied that the Landlord has proven the value of the loss based on the estimates submitted for replacement. I am also not satisfied that the Landlord took reasonable steps to mitigate his losses, given that he was notified of the Tenants' intent to remove the floor through an email dated December 17, 2017 when the Tenants were working on the kitchen cabinet replacement.

I do not have sufficient evidence before me to determine that the Landlord took steps at this time to stop the Tenants from removing the floor which leads to questions about whether the Tenants may have had permission to remove the floor as part of their work in the kitchen and therefore the Tenants may not have breached the *Act* or tenancy agreement. As I am not satisfied that the Landlord has met the burden of proof to establish that the four-part test has been met regarding the floor, I decline to award any compensation for this claim.

As the Landlord was only partially successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of half of the filing fee in the amount of \$50.00.

Despite the Landlord not filing the application against the security deposit, since he is still in possession of the deposit, he may retain the \$150.00 owing from the security deposit. This means that the security deposit the Landlord has is now valued at \$712.50. I decline to make any orders regarding the security deposit as this application was not filed regarding the security deposit.

However, I remind the Landlord of his responsibilities under Section 38 of the *Act*. Should the Landlord not return the security deposit in accordance with Section 38, the Tenants are at liberty to file their own Application for Dispute Resolution for the return of the deposit.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, the Landlord is awarded \$100.00 for the replacement of a threshold flooring piece and \$50.00 for the recovery of half of the filing fee. The Landlord may retain \$150.00 from the security deposit. The remainder of 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: June 7, 2019

Residential Tenancy Branch