Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security and pet deposits - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement started on August 10, 2018 and ended on August 30, 2020. Rent of $6,250.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $3,125.00 as a security deposit and $3,125.00 as a pet deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenants. The Landlord received the Tenants' forwarding address on September 5, 2020.

The Landlord states that it cannot recall how many offers for a move-out inspection were given to the Tenants but that the Parties were unable to reach a mutual time for the inspection, so the Landlord conducted the inspection itself and sent the Tenants copies of the report. The Landlord states that the Tenants did not attend the inspection. The Tenant states that the Landlord did make two offers and that the Tenant did attend the move-out inspection. The Tenant states that during the inspection the Landlord's son who was present at the inspection became aggressive towards the Tenant, so the Tenant felt it was best to leave before the inspection was completed.

The Landlord states that the Tenants left the hardwood floors damaged and claims $13,125.00 as the costs to refinish the floors. The Landlord states that it did not incur these costs due to a shortage of funds but intends to make the repairs if successful with its claim. The Landlord confirms that it moved into the unit after the end of the tenancy. The Landlord does not know the age of the flooring as the home was purchased by the Landlord in 2013 without this knowledge. The Landlord states that the floors were in good condition at the outset of the tenancy and that it was left with deep scratches and splinters. The Landlord states that it does not know about the expected life of the hardwood floors. The Landlord states that the house was originally built in 1979 and that the floors can be repaired.

The Tenant states that the floors are very old and that a repair person informed the Tenant that due to its age refinishing would not repair the damage. The Tenant states that the move-in report notes pre-existing damage to the floors and that given its age even walking on the floors caused what the Tenant describes as wear and tear in the circumstances. The Tenant states that the damage to the flooring on the stairs was not caused by their pets but by their own use of the stairs.

The Landlord states that the Tenants left the walls of the unit with damages that required paint to repair. The Landlord states that the Tenants left the baseboards requiring repair due to its separation from the walls. The Landlord states that the lower

bedroom has the most damage with dings and marks. The Landlord states that the unit was last painted in approximately the spring of 2014. The Landlord claims the estimated cost of $3,000.00. The Landlord obtained only an oral estimate for this claim. The Landlord states that a relative did some painting and was paid about $700.00. The Landlord did not provide an invoice for this cost.

The Tenant states that the baseboards separated due to two floods in the unit during the tenancy. The Tenant states that the first flood occurred on the move-in date and was caused by an issue with the fridge that the Tenants were not aware of when they connected the fridge. The Tenant states that the second flood occurred from water leaking into the unit from the flat roof. The Tenant states that the Landlord was informed of the leak but did nothing, so the Tenant made temporary repairs to the roof to stop the leak. The Tenant states that some damage to the walls were left in the lower bedroom but that all other walls with scrapes and nicks were repaired by the Tenants before move-out. The Tenant states that wall damages are noted as pre-existing on the move-in report. The Landlord agrees that the Tenant did patch nail holes in other parts of the house and only left the damage to the lower bedroom.

The Landlord states that the Tenants left the glass stove top with a crack that left 2 stove top burners beside the crack unusable. The Landlord states that it does not know the age of the stove but that it was likely 5 to 7 years old at the start of the tenancy. The Landlord states that there was pre-exiting damage to the stove top by way of a small chip. The Tenant states that the stove top crack was caused by a glass vase that fell on the stove top. The Tenant argues that the vase should not have cracked the glass and that the glass was weak from the original damage causing the crack to occur. The Tenant states that at the end of the tenancy three of the four burners worked and that one burner never worked from the onset of the tenancy.

Analysis

Section 35(1) of the Act provides that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a)on or after the day the tenant ceases to occupy the rental unit, or

(b)on another mutually agreed day.

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a)the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b)the tenant has not participated on either occasion.

I found the Tenant's evidence of having attended the move-out inspection to hold a ring of truth and to contain sufficient detail to find on a balance of probabilities that the Tenant did participate at the inspection as stated. I also accept that, given the Tenant's description of the move-out inspection, the Tenant reasonably left the inspection before it was completed. I find therefore that the Tenant's right to return of the security deposit has not been extinguished.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Policy Guideline #40 sets out that the useful life of hardwood floors is 20 years. Given the Landlord's evidence of the age of the unit, considering that there was pre-existing damage to the floors at the outset of the tenancy, given that there is no evidence that the hardwood flooring is newer than the age of the unit and considering the Tenant's evidence that the flooring is aged, I find on a balance of probabilities that the flooring was past its useful life and that any repairs to the floors remains with the Landlord. I dismiss the claim for flooring costs.

Policy Guideline #40 sets out that the useful life of indoor paint is 4 years. Given the Landlord's evidence that the unit was last painted in 2014 and as the tenancy ended 6 years later, I find that the paint was past its useful life and that any costs to paint the walls of the unit remains with the Landlord. Given the Tenant's undisputed evidence of two floods in the unit and considering that the photos show what appears to be baseboard separation that could reasonably have been caused by the floods, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused this damage. The Landlord provided no supporting evidence of having incurred the costs claims or even the lesser costs said to have been incurred to make the repairs to the walls of the unit. For these reasons I dismiss the Landlord's claim for these repairs to the unit.

Based on the Tenant's evidence that the damage was caused by their actions I find on a balance of probabilities that the Landlord has substantiated that the Tenants caused damage to the stove top. However, given the pre-existing damage to the glass top stove, I find on a balance of probabilities that the Tenant are not responsible for the entire costs to replace the stove top. I find therefore that the Landlord has only substantiated half the costs claimed. Given the invoice supporting the costs claimed I find that the Landlord is entitled to **$516.96** representing half the replacement costs incurred.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$616.96**. Deducting this amount from the combined security and pet deposits plus zero interest of **$6,250.00** leaves **$5,633.04** to be returned to the Tenants forthwith.

Conclusion

I Order the Landlord to retain **$616.96** from the security deposit plus interest of $6,250.00 in full satisfaction of the claim.

I grant the Tenants an order under Section 67 of the Act for **$5,633.04**. If necessary, this order may be filed in the 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 Act.

Dated: January 06, 2021

Residential Tenancy Branch