Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dunowen Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL, MNSDS-DR, FFT

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on October 30, 2020 for:

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

The Tenant applied on November 2, 2020 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: the tenancy started on May 1, 2018 and ended on September 30, 2020. Rent of $6,295.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $2,000.00 as a security deposit. The Landlord received the Tenant's forwarding address by email on October 2, 2020. No move-in or move-out inspection with a completed report was conducted.

The Landlord states that the Tenant left a piece of the interior of the fridge damaged and claims $67.28 for the cost of the parts and $90.00 for the cost of labour to make the repairs. The Landlord provides an invoice for this amount that also includes unidentified costs for damages to the dishwasher. The Landlord states that the Tenant is not responsible for the dishwasher damage or costs. The Landlord states that the fridge was 9 years old at the onset of the tenancy and that the fridge has a useful life of 15 years. The Tenant states that it did not damage the fridge through carelessness or otherwise and that it does not know what happened to the fridge. The Tenant states that the Landlord did not offer a move-out inspection of the unit, that the photos were taken after the tenancy ended and that the Tenant does not know what happened to the unit after it moved out. The Landlord states that the photos were taken on October 2, 2020 after receiving the cleaner's report.

The Landlord states that the Tenant left approximately 200 square feet of a 500 square foot area of hardwood floor with damages. The Landlord claims $600.00 as the cost to re-stain the flooring. The Landlord states that the flooring was 5 years old at the start of the tenancy. The Tenant states that the floors looked used at move-in and that it does not know if the damage was pre-existing. The Tenant states that the damage is not real hardwood, that it is laminate and that the damage is merely wear and tear from walking on it. The Landlord states that laminate could not be stained and that the evidence of the invoice setting out staining on the flooring supports that the flooring is hardwood. The Tenant states that floors were chipping, and wood floors do not chip.

The Landlord states that the Tenant left a desk, dresser, dining table, key table and 3 kitchen cabinets damaged. The Landlord claims $300.00 as the cost to repair and re-stain these items. The Landlord states that the cabinets were original in 1997 while the remaining items were about 5 years old. The Tenant states that the furnishings were used and that the unit had been used previously as a short-term rental with many previous occupants. The Tenant states that the damage is only wear and tear.

The Landlord states that the Tenant left the caulking in the shower black and with mold and damaged to the extent that the caulking could not be cleaning and needed to be replaced. The Landlord claims $150.00 and provides an invoice dated October 16, 2020. The Landlord states that the shower was last caulked on December 18, 2019. The Landlord states that it has provided a photo of the shower.

The Tenant states that it does not recall any caulking done in 2019 and that it would be impossible for mold to grow in that time. The Tenant states that no mold was seen at the onset. The Tenant states that the Landlord did not provide any photo of the shower.

Analysis

Section 23 of the Act provides as follows:

(1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2)The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a)the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b)a previous inspection was not completed under subsection (1).

(3)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4)The landlord must complete a condition inspection report in accordance with the regulations.
(5)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
(6)The landlord must make the inspection and complete and sign the report without the tenant if

(a)the landlord has complied with subsection (3), and

(b)the tenant does not participate on either occasion.

Section 24(2) of the Act provides that right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a)does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b)having complied with section 23 (3), does not participate on either occasion, or

(c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the agreed facts that no move-in inspection was offered or conducted I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Residential Tenancy Branch (the "RTB") Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. As the Landlord's right to claim against the security deposit was extinguished and given the undisputed evidence that the Landlord did not return the security deposit to the Tenant, I find that the Landlord must now pay the Tenant **$4,000.00** as double the

security deposit plus zero interest. As the Tenant has been successful with its claim, I find that the Tenant is also entitled to recovery of the **$100.00** filing fee for a total entitlement of **$4,100.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. 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. The RTB Policy Guideline #40 sets the useful life of a fridge at 15 years, the useful life of hardwood or parquet flooring at 20 years, the useful life of kitchen cabinets at 25 years and the useful life of furniture at 10 years.

As the kitchen cabinets were at their useful life end, I find that the Landlord has not substantiated that the Tenant caused any damage beyond wear and tear and I dismiss this claim. As there are no separate costs for the staining of the remaining items in the global costs claimed of $300.00, I cannot find that the Landlord has substantiated any costs for the staining of the remaining furniture and I therefore dismiss this claim.

Based on the Landlord's evidence that the shower had new caulking 9 months before the end of the tenancy and as there is no move-out report or photo showing any damage to the caulking, I find that the Landlord has not substantiated that the Tenant left the shower damaged. I dismiss this claim.

Based on the Landlord's undisputed evidence of the age of the fridge at the onset of the tenancy I find that the fridge had a useful life of approximately 4 years left after the end of the tenancy. Although it may be found that the Tenant caused the damage to the remaining life of the fridge part as the invoice includes an unidentified sum for repairs to a dishwasher for the total costs being claimed by the Landlord, I find there is no basis for the amount being claimed. As the costs for the damage to the fridge cannot be determined from the invoice, I dismiss this claim.

Although there is no move-in report setting out the state of the fridge at the onset the Tenant did not give any evidence that the damage was pre-existing. Given the Landlord's evidence that the Tenant left the fridge damaged I find therefore on a balance of probabilities that the Landlord has substantiated that the Tenant damaged the fridge. Given the remaining life left at the end of the tenancy I find that the Landlord has substantiated an entitlement to 4/15 of the costs incurred to replace the fridge part in the amount of **$41.94** ($157.28/15 x 4)

Given the photos of the flooring, the undisputed age of the flooring and without any evidence from the Tenant of pre-existing damage to the flooring I find on a balance of probabilities that the Tenant left the floors damaged beyond wear and tear. I also consider, given the photos and the invoice for staining, that the floors were likely hardwood floors. As there were 13 years useful life to the floors at the end of the tenancy and given the Landlord's evidence that the Tenant only damaged 2/5 of the total flooring area I find that the Landlord is entitled to a portion of the costs based on remaining useful life to re-stain the proportionate areas left damaged by the Tenant. Based on the Landlord's total costs of $600.00 I calculate the costs for the remaining life of all the floor to be $390.00 (13/20 x $600.00) and I calculate the Tenant's proportionate responsibility of costs for the area damaged to be **$156.00** (2/5 x 390.00).

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 **$297.94**. Deducting this amount from the Tenant's entitlement of **$4,100.00** leaves **$3,802.06** to be paid to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$3,802.06**. 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: February 17, 2021

Residential Tenancy Branch