Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The landlords (hereinafter the "landlord") filed an Application for Dispute Resolution (the "Application") on March 3, 2021 seeking compensation for damage caused by the tenant. They also seek compensation for the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on July 20, 2021. Both parties attended the conference call hearing. In the call I explained the process and provided each attending party the opportunity to ask questions.

Both parties confirmed they received the prepared documentary evidence of the other, in advance of the hearing. On this basis, the hearing commenced at the scheduled date and time.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for compensation for damage pursuant to s. 67 of the *Act*?

- Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, in this section I describe only the evidence and submissions relevant to the issues and findings in this matter.

The landlord provided a copy of the tenancy agreement and both parties confirmed the pertinent details in the hearing. Both parties signed the agreement on May 7, 2018 for the tenancy starting on May 15, 2018. The monthly rental amount was $1,190 which increased to $1,219.75 by the end of the tenancy. The tenant paid an initial security deposit of $595.

With the copy of the agreement appears an Addendum. This contains the following two terms:

- The tenant hereby authorizes the landlord. . . to deduct from the security deposit the cost of any damages or cleaning fees involved with putting the suite back to the same condition as when the tenancy started minus normal wear and tear.
- The tenant agrees to have all appliances, window coverings (blinds), bathroom and kitchen areas left in a clean and tidy condition.
- By signing this document, the tenant gives permission to the landlord to deduct any amount the landlord requires to clean or repair any damage that is not caused by normal wear and tear.

The tenant initiated the end of the tenancy. They provided one month advance notice to the landlord to move out on February 15, 2021.

On this final day of the tenancy, the tenant had parents, family and friends assisting with the clean up of the rental unit. They contacted the landlord who lived upstairs to come and inspect the condition of the unit. The landlord then ensured the completion of the Condition Inspection Report that they provided in the evidence.

In the hearing, the landlord recollected the finer details of their discussion with the tenant in that final meeting:

- the tenant noted marks on the living room hardwood floor – the landlord informed the tenant they would try to clean it and if unable to do so, they would contact the original floor outfitters

- the stove was not cleaned – there was a chip on top and the drip trays and bowls were so bad they had to be replaced – this expense was $20 for the effort of cleaning, and then the cost to replace the burners
- the tenant did not know it was a self-cleaning oven – the landlord had to run it through three cycles, so this is $20 for this extra amount of cleaning
- one of the area carpets was damaged and dirty and had not been shampooed, priced at $50 – this is shown as “carpets” on a handwritten note
- the floor behind the fridge needed cleaning and the kitchen, living room and hallway floors were not clean – this is priced by the landlord at $100
- there were scratches and scuff marks on the walls, particularly where the tenant had their desk – the landlord washed these walls, and “almost painted” – this is priced by the landlord at $100.

The landlord provided images of the hardwood floor in the living room from May 2018 prior to the start of the tenancy. They included in their evidence a receipt showing the refinishing of the floors that was done in August 2017. The indication on the Condition Inspection Report is that there is a “dent in floor” and 5 pictures provided by the landlord show this damage. On February 29, the landlord messaged to the tenant to state they received a quote for repair for the living room floor, for $378 to repair. They provided a copy of the estimate from the hardwood floor company; this shows “buff surface” and “Apply. . . Top Coat” for 4 hours of time at $90 per hour.

In a statement to the tenant dated March 1, 2021, the landlord provided that the total for cleaning was $290. Added to this was $378 for the cost of floor repair. Additionally, the landlord forwarded a piece of the tenant’s mail to them for $1.94. This totals $669.94. Offsetting the security deposit amount of $595, the landlord informed the tenant they should pay an extra $74.94.

The landlord forwarded the remainder of the security deposit to the tenant after making the $290 deduction. They advised the tenant of this on March 3, 2021 via email. In the evidence the landlord provided a bank confirmation dated March 4, 2021 that the transfer to the tenant was completed.

The tenant prepared a written submission to set out their dispute of the landlord’s claim. This outlines the following:

- they never agreed to the items listed on the last page of the Condition Inspection Report -- they “signed the report and agreed to the $290 hoping the large amount would make it so I did not have to worry about anything else.” From this, they

derived the understanding that they "[were] not being treated fairly and our views did not line up on what we believed to be an acceptable condition for a rental suite."

- they dispute that the landlord advised at their meeting that there may be extra flooring repair costs – The tenant "would have disagreed and not signed the to the [*sic*] initial amount if that was true."
- specific to individual cleaning charges:
    - they forgot to clean the stove; however, "$40 seems like a lot to put the stove through the self-cleaning cycle."
    - putting the stovetop burners through a dishwasher "would have been sufficient."
    - they used rubber floor mats as specified in the addendum – there was wear to this "caused by general use and vacuuming and cleaning"
    - the floor was clean when they left – they did not slide out the fridge due to its running against baseboards and "[they] did not want to mess anything up."
    - they left the rental unit "in [a] clean condition".

The tenant reiterated these concerns in the hearing. They outlined their efforts at cleaning the unit and incidental repairs to the walls prior to the move-out date. They acknowledged that they forgot the stove cleaning and did not pull out appliances for fear of other damage to the kitchen counter or walls. Specific to the hardwood floor, they did not remember the landlord saying there would be an extra charge. Together with the landlord at the final meeting they "came to a price based on what we all saw" – this was $290. They summed up their position clearly on the issue of the floor by stating that a scuff or black mark on the floor can be considered normal wear and tear.

Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord keys and other means of access.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As set out above, the landlord's worksheet identifies items that were listed initially on the Condition Inspection Report, and the additional cost of what they deem to be repairs to the hardwood floor.

I dismiss the portion of the landlord's claim for the costs associated with the hardwood floor. I am not satisfied this is damage based on my assessment of the evidence provided by the landlord. The firm that evaluated the work involved and provided the estimate dated February 27 identified "scuffs and dull marks", and prescribed the application of a "water-based . . . top coat." I find this does not refer to what constitutes "damage" requiring repair; rather, I find it is reasonable wear and tear.

Further, I find the landlord did not take steps to mitigate the damage or loss. The evidence they provided is that they messaged the tenant on February 20, 2021, advising they had "used the recommended Bona floor cleaner"; however, this did not remove the stains and scuff marks. After this, they sought out a hardwood floor specialist that made the estimate for four hours of work applying "water-based Bona Traffic Top Coat". I find the area in question, as shown in the photos provided by the landlord, simply does not require four hours of work to apply top coat. If the specialist is prescribing application of water-based finish to the entire hardwood floor – which appears to be more in line with four hours of work – then that extends beyond the scuff and stain showing in the photo, and the tenant shall not pay for work on the floors beyond the isolated area. In sum, four hours of work plainly exceeds what is presented in the photos as evidence of what the landlord presents is damage.

Further, there is no evidence the landlord made the effort to apply top coat to the floor on their own. It is not evident that they require the work from a specialist to rectify the issue.

The evidence shows the tenant agreed to the amount of $290 when they vacated the rental unit. In their subsequent communication to the tenant on March 1, the landlord identified this as a "cleaning charge".

The *Act* s. 7(2) sets out that "A landlord . . . who claims compensation for damage or loss . . . must do whatever is reasonable to minimize the damage or loss." I find specific

pieces of the landlord's claimed amount here do not meet the requirement to minimize damage or loss. Specifically:

- I weigh the tenant's photos against the Condition Inspection Report provided by the landlord to find that there was not a significant amount of cleaning involved for scuffs or other black marks for which the landlord kept $100. I find the tenant credible that they undertook a significant amount of cleaning when moving out and their photos are good evidence of this. The landlord shall return this portion to the tenant because they did not provide sufficient evidence to show it is a charge that is warranted.
- At the same time, the tenant acknowledged there was no cleaning under the refrigerator or oven appliances. The landlord did not provide ample evidence of actual damage or loss through the greater part of the unit; however, given the tenant acknowledged they did not move appliances to clean underneath, I order the landlord to return one-half of this portion of the landlord's $100 claim to the tenant. This amount is $50.
- The landlord disclosed that the oven is self-cleaning. There is no evidence in the form of photos that anything beyond self-cleaning was necessary. I find the cost of $40 for cleaning of the oven is not verified with evidence. There is no evidence to show the landlord replaced the burners for $20. Further, even starting an oven self-cleaning cycle – which is an automatic feature of the oven – does not warrant a $20 charge where there is no evidence showing the extent to which the oven needed cleaning. I order the return of this $40 portion to the tenant.
- There is no evidence to show the landlord actually replaced the area carpet for which they arbitrarily indicated the amount of $50. This portion shall be returned to the tenant.

This is based on my evaluation of the evidence post-tenancy. I assign greater weight to the evidence and testimony that each party provided, over that showing the tenant's agreement to the $290 amount. In sum, the landlord shall receive $50 as compensation for what they presented were damages or loss caused by the tenant. I order that the remainder of the $290 amount shall be returned to the tenant.

The landlord added to their claim the amount for forwarding mail to the tenant. This is a cost of $1.94 that I subtract from the returned amount.

As the landlord was not successful in their application for compensation, I find that the landlord is not entitled to recover the $100.00 filing fee.

Conclusion

I grant the tenant a Monetary Order in the amount of $238.06 for repayment of the security deposit amount the landlord retained after the end of the tenancy. I provide this Monetary Order to the tenant, and they must serve the landlord with this Monetary Order as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it may be 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: August 18, 2021

Residential Tenancy Branch