

## **DECISION**

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, to keep all of the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 10, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant was deemed to be served the hearing documents on July 15, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord, the Landlord's Agent, and the Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The tenancy began on March 1, 2007 and the last fixed term expired on June 28, 2009. Rent was payable on the first of each month in the amount of \$1,900.00 and the Tenant paid a security deposit of \$725.00 on February 28, 2007.

The Landlord testified that a move-out inspection report was completed on June 28, 2008 however there was no move-in inspection report completed at the beginning of the tenancy.

The Landlord's Agent advised that the rental unit was re-rent immediately and that the new tenants occupied the rental unit on June 29, 2009.

The Landlord's Agent advised that the rental unit was a 1917 house with original fir floors that were refinished in August of 2003. The Landlord and her Agent referred to their documentary evidence of a letter signed by the Landlord's previous spouse whereby he wrote that he personally refinished the hardwood floors in 2003. The Landlord testified that her ex-spouse was not a professional floor refinisher but that he has experience with renovations. The Landlord confirmed that she did not submit receipts of materials and rental equipment in support of her claim that the floors were refinished in 2003.

The Landlord and her Agent testified that the floors have not yet been refinished and that the documents submitted in their evidence were estimates and quotes.

The Tenant testified that at the time he took possession of the rental unit the Landlord had supplied some throw carpets in the hallway and in two bedrooms and that the Tenant returned these throw carpets to the Landlord immediately and replaced them with a higher quality carpet and underlay in the hallway and two bedrooms. The Tenant argued that there were no carpets supplied by the Landlord for the living room and dining room. The Tenant argued that he had verbal permission from the Landlord to install the new carpets and that in fact the Landlord purchased these carpets from him at the end of his tenancy.

The Tenant testified that the damage caused in the hallway was caused by the Landlord's Agent after his tenancy had ended and the new tenants had occupied the rental unit. The Tenant claimed that he attended the rental unit on July 7, 2009 to meet with the Landlord's Agent who was showing the Tenant that the hallway carpet was taped down and damaging the floor when the Landlord's Agent tried to remove the tape.

The Tenant argued that the Landlord's Agent did not provide heat to the carpet and tape prior to removal and had the Landlord's Agent researched or consulted a carpet installer he would have known that one would need to apply heat to remove the tape properly.

The Tenant argued that the scratches to the hardwood floor were normal wear and tear over a six year period and that there were two families with children who occupied the rental unit prior to his family. The Tenant referred to his picture evidence, the pictures were taken in 2007 for his insurance company, as proof that he had soft pads on the feet of his dining room chairs.

The Landlord's Agent refuted the Tenant's testimony by stating their picture evidence showed the damage clearly. The Landlord confirmed that the picture of the dining room table was taken after the new tenants had occupied the rental unit. The Landlord's Agent confirmed that there were three families with children living in the rental unit over the last six year period.

### Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The testimony and evidence before me supports that the Landlord failed to conduct a move-in inspection report and there is no evidence before me to prove the condition of the wood floors, other than the letter written by the Landlord's ex-spouse claiming that he refinished the floors. I note that there is no evidence to support the ex-spouse's letter and that there is testimony confirming that the ex-spouse is not a professional floor refinisher. I also note that there is no evidence before me to support that the damage to the floors was caused entirely by the actions or neglect of the Tenant during his tenancy.

Section 24 of the *Act* states that if a Landlord fails to conduct a move-in inspection report then the rights of a Landlord to make a claim against the security deposit is extinguished.

Based on the aforementioned I find that the Landlord has failed to prove the test for damage and loss as listed above and I hereby dismiss the Landlord's claim. I hereby Order the Landlord to refund the Tenant's security deposit of \$725.00 plus interest of \$20.16 for a total of \$745.16.

As the Landlord was not successful with their application I hereby dismiss their request to recover the cost of the filing fee from the Tenant.

### Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$745.16. The order must be served on the Landlord and is enforceable through the Provincial Court 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: September 10, 2009.

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Dispute Resolution Officer