Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
MNDC MNSD FF

Preliminary Issues

At the outset of the hearing the parties were given the choice: (a) to continue with the arbitration; or (b) work towards a mediated settlement. The Landlord asked for further clarification on what mediation would entail, as did the male Tenant. After a brief discussion the parties were still unsure of a mediation process. At that point I informed the parties that we would be moving forward with the arbitrated dispute resolution process.

Introduction

This hearing dealt with cross Applications filed for Dispute Resolution by both the Landlord and the Tenants.

The Landlord filed seeking a Monetary Order for damage to the unit, site, or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for the return of double their security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?
2. Should the Tenants be granted a Monetary Order?

Background and Evidence

The following facts were not in dispute:

1) The parties entered into a month to month tenancy that began on February 1, 2012;
2) The monthly rent was payable on the first of each month in the amount of $1,125.00;
3) The Tenants paid a security deposit of $562.50 on January 15, 2012;
4) The parties attended the move in condition inspection on January 28, 2012 and signed agreeing to the condition of the rental unit;
5) The parties attended the move out condition inspection on June 1, 2012 and signed agreeing to the condition of the rental unit;
6) During the tenancy the Tenants accidently spilled a hot substance causing damage to the hardwood floor which they accepted responsibility for and had agreed that the Landlord could keep their security deposit to put towards the repair of the floor;
7) The Tenants provided their forwarding address to the Landlord on June 14, 2012.

The Landlord is seeking $547.93 to replace one side of the butcher block counter top which he claims suffered water damage during the tenancy. The Landlord pointed to his evidence which included a letter from the previous tenant who indicated the condition of the unit at the end of her tenancy as well as the condition report from this tenancy. He also submitted a quote for repair and argued the counter was new in 2006. The Landlord has not had the counter replaced or repaired.

The Tenants deny there was damage caused to the counter during their tenancy. They are of the opinion that the counter had the same look at the start of their tenancy and that the Landlord simply did not record that on the condition report because he did not record other small scratches and marks. The Tenants confirmed signing off on the condition report at the end of the tenancy and argued that maybe some of the items were added after they signed the document.

The Landlord has claimed $2,218.44 for costs to have all of the hardwood sanded and repaired and to repair the scratches in the rest of the flooring. He referenced e-mails

that were provided in his evidence which the Tenants sent on June 14, 2012 acknowledging their responsibility for the damaged floor. He stated the house was built in 1946 and he had all the hardwood sanded and refinished in 2006. He confirmed that there was no evidence provided to prove the work was done in 2006 however he referenced the letter from the previous tenant who indicates the condition of the floor at the end of her tenancy. He argued that the entire floor must be redone, as noted on the contractors quote, in order to match the staining. The Landlord confirmed the work has not been completed and he has based his claim on the quote provided in his evidence.

The Tenants acknowledged that they had damaged the floor and they accept responsibility for the one area where they had spilled hot liquid. They noted that the floor was old and had several scratches when they moved in. The Tenants flat out denied causing any other damage to the floor, other than the hot liquid spill, and do not believe they should have to pay for the entire floor to be redone.

The Landlord has sought $464.99 ($328.99 + $51.00 + $85.00) for anticipated costs that he may incur when he has the hardwood floor resurfaced. He argued that the unit cannot be occupied during the process and therefore the occupant will incur costs of temporarily moving out of the unit.

The Landlord had amended his application to add a claim of $562.50 for loss of revenue due to the Tenants providing him with late notice to end their tenancy. The Landlord was not able to provide testimony of when the notice was provided but stated it was given to him in a vague manner during a conversation. The Landlord asserted that he advertised the unit for rent on the internet for $1,200.00 per month. Upon further questioning the Landlord admitted that he had moved into the rental unit and is still occupying the unit. He was not able to provide the exact date of when he moved into the unit but said it was sometime mid June 2012.

The Tenants have applied seeking the return of double their security deposit. I asked the Tenants why they filed for the return of double their deposit when they had previously asked the Landlord to keep the security deposit as payment towards the damage they caused to the hardwood floor. The Tenants argued that after they moved out of the unit they began to distrust the Landlord because he was attempting to get them to pay for more damage than what they had caused. They heard about this process and decided to seek arbitration.

The Tenants explained that they were also seeking to recover $591.15 for hydro costs because their hydro bill was a lot higher than what the Landlord told them it was going to be. I confirmed with the Tenants that as per their tenancy agreement they were

required to pay for their hydro usage and that they had paid the bills during their tenancy. The Tenants confirmed they sought no action to recover the costs of the hydro bills prior to this application because at the time of their tenancy they still trusted the Landlord.

A discussion took place whereby the parties confirmed that at the end of the tenancy they had come to an agreement that the Landlord would keep the security deposit and put it towards the costs of repairing the floor. The Landlord began to research the cost to have the floor repaired and forwarded the quotes to the Tenants who did not agree it would cost that much and they were not willing to pay the difference. The Landlord stated this is when the Tenants sent him their forwarding address and almost immediately upon the 15 day time limit the Tenants filed an application against him which caused him to file his application in response.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the application to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) 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.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit with some damage at the end of the tenancy.

In determining the extent of the damage caused to the rental unit I favor the condition inspection report and the photographs provided by the Landlord. I favored this evidence, in part, because #21 of the *Regulations* stipulates that in a dispute resolution proceeding, a condition inspection report completed in accordance with the *Act* and *Regulations* is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection. The photographs provide a clear visual of the existing damage.

As per the foregoing I find the Landlord has met the burden of proof and I award him damages as follows:

1) Kitchen Counter water stain – Although I accept there is a water stain on the counter I find the Landlord provided insufficient evidence that this stain was the result of neglect on the part of the Tenants. After considering that a kitchen counter would be exposed to water and food particles continuously I find there to be insufficient evidence to prove that the butcher block product had been sealed or treated properly for normal use or that this type of staining would be considered damage. Furthermore, there was no evidence before me to indicate the Tenants were provided instructions on how to care for this type of counter. The stain does not inhibit the use of the counter and after viewing the photos some may consider that the stain adds character to the wood. Accordingly, I find the stain to be considered normal wear and tear and I dismiss the Landlord's claim of $547.93 without leave to reapply.

2) Damaged Hardwood floor - Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. When looking at damage that is confined to one area of a floor it would be unreasonable to consider awarding payment to refinish the entire floor.

   The Tenants accept responsibility for costs to repair the burnt section of the floor. Upon review of the testimony and evidence I find, in addition to the burnt section, the Tenants are also responsible for some scratches and water damage which exceeds normal wear and tear in the living room, dining room, and master bedroom in areas which appear to be approximately 225 sq feet. Therefore I award the Landlord **$827.40** for damages to the hardwood (225 sq ft @ $2.75/sq ft + $120.00 for burnt section + GST). The damage to the kitchen floor I find to be normal wear and tear therefore that portion of the claim is dismissed, without leave to reapply.

3) The Landlord has made claim for “anticipated” loss of having to relocate during the repair of the hardwood floor. The Landlord has not suffered such a loss nor do I find it necessary for him to relocate during the repair of approximately 225 square feet, therefore I dismiss the claim, without leave to reapply.
4) The Landlord has sought recovery of lost income due to the Tenants providing late notice. Upon review of the evidence I find the Landlord provided insufficient evidence that he mitigated his loss as he alleged that he attempted to rent the unit for a higher rent than what he was collecting from these Tenants. Furthermore there was little effort made to re-rent the unit as the Landlord moved into the unit shortly after the Tenants moved out. Accordingly I dismiss the Landlord’s claim for loss of rent, without leave to reapply.

The Landlord has primarily been successful with their application; therefore I award recovery of the **$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants’ security deposit plus interest as follows:

Damages to hardwood floor	$827.40
Filing Fee	50.00
SUBTOTAL	$877.40
LESS: Security Deposit $562.50 + Interest 0.00	-562.50
Offset amount due to the Landlord	**$ 314.90**

Tenant’s Application

The Tenants have sought to recover double their security deposit even though they requested the Landlord keep their deposit as payment towards the burnt hardwood floor. Based on the aforementioned I find the Tenant’s application to be an abuse of process and I dismiss their claim without leave to reapply.

The Tenants applied seeking recovery of hydro costs, costs which they paid in accordance with their tenancy agreement. The Tenants made no effort to seek a remedy for higher hydro costs during their tenancy and admitted that they only attempted to recover this money after finding out how much the floor repair was going to be. Accordingly, I find the Tenants provided insufficient evidence that they mitigated any loss and their claim is dismissed without leave to reapply.

The Tenants have not been successful with their application, therefore they must bear the burden of the cost to file their application.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$314.90**. This Order is legally binding and must be served upon the Tenants.

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 12, 2012.

Residential Tenancy Branch