



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

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; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were 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 following are agreed facts: The tenancy started on October 19, 2013 and ended on March 31, 2016. Rent of \$850.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit and \$225.00 as a pet deposit. The Tenant provided its forwarding address in writing on February 27, 2016 along with the notice to end tenancy. The Parties conducted a move-in inspection with completed report copied to the Tenant. No opportunity for a move-out inspection was offered by the Landlord and no inspection or report was completed by the Landlord.

The Tenant does not dispute the Landlord's claims of:

- **\$327.00** for the cost of replacing the subfloor in the bedroom;
- **\$60.00** for the costs of cleaning the storage room;
- **\$20.00** for the costs of dump fees; and
- **\$10.00** for the costs of replacement sewer caps.

The Landlord withdraws its claims of:

- \$150.00 for the estimated costs of replacing window screens;
- \$75.00 for the estimated costs to remove and dispose carpets; and
- \$1,600.00 for the estimated costs of replacing three carpets.

The Landlord provides a note dated February 27, 2016 signed by the Tenant indicating that the "damage/pet deposit . . . is not expected back due to damages and repairs . . .".

The Landlord provides photos of the unit.

The Landlord states that the house was new in 1980 and that new birch flooring was installed in 2012. The Landlord states that the Tenants left the hardwood floors in the living room, dining room, kitchen and hall damaged by pet urine. The Landlord states that the removal of the flooring started July 15, 2016. The Landlord states that feces and urine had permeated the subfloors. The Landlord claims \$975.00 for the replacement of the subfloors in the living room and dining room and \$7,791.10 as the estimated costs to replace the flooring with hardwood. The Landlord states that the floors have yet to be replaced with the hardwood and that flooring was replaced with linoleum as an interim measure. The Landlord states that the claim for the subfloors does not include labour and that a variety of the receipts were provided for the various costs of the subfloor materials.

The Tenant states that the Landlord was in the unit in December 2014 to install a woodstove and there were no damages raised with the Tenant at that time. The Tenant states that the floors were not damaged to the extent claimed by the Landlord and that

there were only damages at the front door area, master bedroom and in front of the door in the hallway. The Tenant states that the Landlord's photos #6, 7, 13 and 14 show linoleum under the hardwood floors and covering the subfloors in the living room and dining room. The Tenant questions how the subfloors could be damages with the linoleum covering. The Landlord states that where the linoleum was situated no subfloors were removed. The Landlord states that the worst area was the hallway. The Landlord states that only the entrance to the living room has linoleum under the flooring and that no linoleum was in the living room and dining room. The Tenant indicates which photos show linoleum in the kitchen, dining room and living room.

The Landlord states that he spent 3 hours tearing out the carpets in all three bedrooms that were damaged by the pets. The Landlord claims \$90.00. The Tenant states that the monetary order worksheet identifies this claimed cost as the costs of cleaning and that the Tenant left the unit reasonably clean.

The Landlord states that in addition to the damage to the flooring the unit was left with significant smell of animal urine and feces caused by the pets. The Landlord states that he was in the unit in early March 2017 and knew by the smell and state of the unit that work would have to be done before the unit could be shown or rented again so the Landlord did not advertise the unit for rent. The Landlord states that had the unit been undamaged in early March 2016 the Landlord would have advertised the unit. The Landlord states that they had a prospective tenant otherwise lined up to rent the unit as soon as it was ready. The Landlord states that this next tenancy started on June 1, 2016 at the same rental rate as the Tenant. The Landlord claims lost rental income of \$850.00 and \$57.00 as the cost of electricity for one month. The Tenant states that after giving notice the Landlord did not enter the unit until March 24, 2016 and that there was no smell in the unit. The Tenant states that there were only damages left to the carpet in one bedroom and that the repairs would not have taken a month so the Tenant is not responsible for the costs claimed.

The Landlord states that the Tenant left an area of the furnace rusted and a couple of vents damaged by feces and urine. The Landlord provides a witness letter by the next tenant in relation to the cleaning out of a vent. The Landlord claims \$603.75 for the costs of cleaning and sterilizing the furnace and ducts. The Landlord states that prior to this cleaning the furnace had not been serviced. The Tenant states that the maintenance and servicing of the furnace is a landlord's obligation. The Tenant states that there were no feces down any vents as they were all covered. The Tenant states that there are no photos showing any vent damage.

The Landlord claims \$892.50 for the estimated cost of painting an outdoor shed. The Landlord states that he did not hire the company that provided the estimate and that the Landlord painted the floor of the shed himself. The Landlord states that it took him 2 hours of labour and that he used 2 cans of paint. The Landlord states that the Tenant kept its cats in the shed that had a trap door for their entry and exit. The Landlord states that there were feces, urine and rust on the walls and floors. The Tenant states that there were pre-existing holes in the shed floor and that feral cats and other animals would enter the shed. The Tenant states that her cats were never kept in the shed. The Landlord states that during the tenancy he saw the Tenants cats in the shed and that the Tenant kept it heated for the cats by an electric heater. The Tenant states that cats were in and out of the shed that was cleaned at move-out. The Tenant states that no rust was present and that the shed was used for storage.

The Landlord states that the Tenant failed to leave the unit sufficiently cleaned. The Landlord states that they credited the next tenant for the cleaning and the Landlord claims this amount of \$300.00. The Tenant states that they left the unit reasonably clean with the exception of the oven which was forgotten

The Landlord states that the entry breezeway had tiles that were new in 2012 and that the tiles were damaged by the pets. The Landlord claims \$175.00 to remove the tile and replace them with pressure treated plywood. The Landlord estimated that the

materials cost \$110.00 and his labour was \$65.00. The Tenant states that the tiles were ceramic and were exposed to the elements and to freezing and thawing. The Tenant states that the damage to the tiles was caused from structural wear and tear and that there was no damage from the pets.

The Landlord claims \$256.80 as the estimate to replace the tiles at the entrance. These tiles have not been replaced.

Analysis

Section 36(2)(a) of the Act provides that where the landlord fails to offer at least two opportunities for a move-out inspection, the right of the landlord to claim against a security or pet deposit for damage to the unit is extinguished. Based on the Landlord's evidence that no offers for a move-out inspection were provided to the Tenant I find that the Landlord's right to claim against the security deposit or pet deposit is extinguished. This extinguishment provision does not apply to claiming against the security deposit for damages that are not related to damages to the unit.

Section 38(5) of the Act provides that the right of a landlord to retain all or part of a security deposit or pet damage deposit where the tenant agrees in writing for such retention does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished by the landlord's failure to meet end of tenancy condition report requirements. As the Landlord's right to claim against the security deposit is extinguished, I find that the Tenant's letter does not allow the Landlord to retain the security and pet deposit for that purpose. Given the outcome below, this determination does not ultimately make a difference and I set this analysis out primarily for its educational benefit to the Parties.

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, the loss and that costs for

that loss have been incurred. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. There is no move-out report as evidence of the state of the unit at move-out.

The Landlord did not incur the costs claimed for wood flooring and did not amend the application to claim the cost of the laminate. The Landlord did not give any oral evidence of the cost of the laminate. As a result I find that the Landlord has not substantiated the flooring costs claimed and I dismiss the Landlord's claim for cost to replace the flooring.

Policy Guideline #40 "Useful Life of Building Elements" provides that the useful life of heating systems is 15 years. Although subfloors are not listed, there is no building element in the policy guideline with a useful life of more than 25 years. There is only one photo of a small area of a furnace that appears to be aged. Four out of five of the furnace vents also appear aged. The photos of the subfloors show coverage by what appears to be aged linoleum. The home is 36 years old. As there is no other evidence of the age of these building elements I find that the Landlord's evidence only establishes they were well beyond their useful life. Therefore even if there was damage caused by the pets, the Landlord suffered no loss as there is no intrinsic value left to the furnace system and subflooring. I therefore dismiss these claims for the repairs.

Given the Landlord's witness letters and the Tenant's evidence of damage to the bedroom I accept that the unit contained odors caused by the Tenant's pets I accept that the Tenant left the unit with a strong odor. Had this odor not been left the Landlord would not likely have had to remove flooring and I accept that this reasonably restricted the occupation of the unit for the month of April 2016. I therefore find that the Landlord has substantiated lost rental income of **\$850.00**. I also find that the Landlord has substantiated its claim for the cost of the utility that otherwise would have been covered by a successive tenancy in the amount of **\$57.00**.

Given the undisputed evidence of the shed being heated I find that the Tenant's pets either caused damage or that by heating the shed the Tenant attracted feral animals that caused damage. However as the Landlord did not incur the costs claimed and as there are no receipts for any supplied I find that the Landlord has only substantiated a reasonable amount of **\$50.00** for his labour.

As the claimed cleaning credit was made to the next tenant after the Landlord made repairs to the unit, given the lack of a move-out condition report of the state of the unit at move-out, considering the Tenants evidence of reasonable cleanliness except for the oven at the end of the tenancy, I find that the Landlord has not substantiated that the cleaning required was caused due to the failure of the Tenant. I dismiss the claim for \$300.00 in cleaning costs.

No damaged tiles in the breezeway are depicted by the Landlord's photos. One photo depicting tiles under the covered area does not appear to show any damage. The other area in the photo only depicts a removed area situated outside the unit and exposed. Given the Tenant's evidence of damage from the elements I find that the Landlord has not substantiated that the Tenant caused the damage claimed to the tiles removed and I dismiss this claim.

I note that Given the Landlord's conflicting evidence of the basis for the claim for \$90.00 for either removing carpets or cleaning the unit, I am unable to determine this claim and I dismiss it.

Given the Landlord's evidence that laminate was used to replace the flooring as an interim measure and considering that the Landlord did not replace the tiles at the entrance I find that the Landlord has not substantiated that the costs claimed were incurred. I therefore dismiss this claim.

Including the costs that the Tenant did not dispute as set out in the facts, the Landlord's successful claims amount to **\$1,374.00**. 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 **\$1,474.00**. Deducting the combined security and pet deposit plus zero interest of **\$650.00** from the entitlement leaves **\$824.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of \$650.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$824.00**. 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 *Residential Tenancy Act*.

Dated: July 14, 2017

Residential Tenancy Branch