Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL-S**

Introduction
This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- Authorization to recover the filing fees from the tenants pursuant to section 72; and
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

Both of the landlords and all 3 of the tenants attended the hearing. The tenants confirmed receipt of the landlord's Application for Dispute Resolution Proceedings Package and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. All parties were prepared to deal with the matters of the application.

Preliminary Issue
The landlord's application seeks an order seeking authorization to retain the tenants' security deposit. This issue has already been adjudicated upon by a previous arbitrator and the file number of the previous arbitration is noted on the cover page of this decision. The parties were advised at the commencement of this hearing that that portion of the landlord's claim will not be adjudicated upon.

Issue(s) to be Decided
Did the tenants damage the floors in the rental unit?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to any of the documents they specifically presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is a condominium built in 2004. The floors in the rental unit were professionally replaced with vinyl plank flooring with rubber underlay in 2015.

The fixed term tenancy began on September 1, 2018 with an end date of April 30, 2019. A copy of the tenancy agreement was provided as evidence. The parties initialled the tenancy agreement agreeing that the tenant would move out on or before the last day of the tenancy. When the tenants moved in, the landlord was unable to personally participate in a condition inspection report with the tenants due to unforeseen circumstances. It was done over the phone with the landlord who then emailed the condition inspection report to the tenants to sign on September 4, 2018 which the tenants acknowledge signing. There is no specific note of damages to the living room floors on the condition inspection report signed at the commencement of the tenancy.

Each of the 3 tenants moved out of the rental unit at various times during the month of April, 2019 as their college courses finished and they moved back home. On April 14, 2019, the last tenant AV advised the landlord by text message that she would be moving out on April 30, 2019. The landlord testified there were text messages sent back and forth with the tenants trying to arrange a time to do inspections. The landlord acknowledges he did not send any of the tenants the 2 prescribed written opportunities for inspection as required under the *Act*.

On May 18, 2019, the tenant AV attended the condition inspection report with the landlord after receiving an email from him on May 6th. AV would not accept responsibility for the scratched to the vinyl plank flooring the landlord says happened during the tenancy. The landlord provided photographs of the floors depicting scratches which the landlord says are 'immediately noticeable' when entering the unit. On the condition inspection report, the landlord notes, *"major scratches in the vinyl plank flooring – approximately 8 – 10" to 12" scratches that cannot be repaired."* AV did not sign the condition inspection report on May 18th.

The tenant DK provided the following testimony. The landlord was not present to conduct the condition inspection report at the commencement of the tenancy on September 3rd. They were led to believe that the landlord would be there and they never agreed to do it over the phone.

The tenants dispute the validity of the condition inspection report done at the commencement of the tenancy because the landlord did not participate.

The tenants submit that each of them advised the landlord by text message that they were leaving the rental unit at separate times as they finished exams in April. This was a fixed term tenancy which required they vacate the unit before the end of the fixed term. Each was willing to come back to participate in a condition inspection report with the landlord who is from another province, but the landlord did not make any effort to contact them until May 6th when the landlord happened to be in the province. The tenants referred me to the text messages on May 6th and May 15 h where the landlord seeks to arrange a time for the condition inspection report. The tenants submit that the scratches could have happened after the tenancy, anytime between April 30th and May 18th, the day of the condition inspection report.

The tenants testified that during the tenancy, there were 2 major constructions that happened to the rental unit. In early September 2018, during the first week of the tenancy, construction workers went in and out of the rental unit to do repairs to one of the two outdoor decks. The construction workers placed tools and equipment directly on the floors of the rental unit and didn't use tarps or blankets to protect the floors. During this time, the landlord asked the tenants to move a mini fridge and a patio set into the rental unit for 7 months until they were able to put it back outside.

In mid-March 2019 more major construction took place in the rental unit. An entire wall in the living room was replaced. The tenants referred me to a photograph of a wall stripped down to the studs with baseboard molding sitting on the floor and no protective material placed down on the floors. The tenant RK testified that workers came in and out of the unit to do construction work and only protected the floors occasionally, as they were unorganized and sporadic. They moved furniture around, cut drywall on the floor, stored equipment on the floor, all done without tarps or protection.

The tenant AV testified she only saw the 2 or 3 scratches when they were pointed out to her during the condition inspection report with the landlord on May 18th, however she doesn't remember how long the scratches were. She testified the scratches were 1.5 to 2 metres away from the window.

The landlord provided rebuttal testimony indicating he asked the tenants to only move furniture from one deck to the other. He disputes the deck furniture would have even fit inside the rental unit and that storing them for 7 months in the unit is not credible. He submits the workers only took 2 windows out, fixed 5 pieces of rotted wood and all the work was done within a day or two. The work was done 10 – 15 feet away from the scratches. The contractor who did the work denies his employees caused the damage to the floors. The co-landlord also testified she heard the contractor say this.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient 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.

In the matter before me, the landlord bears the standard of proof to satisfy me that the scratches in the floors were made by the tenants.

Section 23 of the *Act* states 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. Section 21 of the Residential Tenancy Regulations states: In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, **unless either the landlord or the tenant has a preponderance of evidence to the contrary.**

First, the landlord did not attend the condition inspection walkthrough with the tenants at the commencement of the tenancy, contrary to section 23 of the *Act*. As such, the landlord did not use this opportunity to note any existing damage to the floors when the tenants first moved in. While it is possible the damage to the flooring happened during the tenancy, it is also possible the scratches were already there prior to the tenants moving in. I find the condition inspection report was not properly completed in accordance with the *Act* or Regulations because the landlord did not participate in it. Without a condition inspection report conducted with both the landlord and tenant present at the beginning of the tenancy, I must therefore give the lack of damage noted to the floors on the condition inspection report minimal weight in my decision.

Second, although the landlord had the right under the *Act* to inspect the rental unit during the tenancy, there is no evidence that he ever took advantage of this right. The opportunity to present evidence that he saw scratches to the floor made during the tenancy has been lost.

Third, the tenants presented testimony, corroborated by a highly descriptive photograph, that there was construction done to the rental unit not once, but twice, by outside contractors. The testimony of the tenants that the contractors did not lay down tarps or protection to the floors of the rental unit cannot legitimately be disputed by the landlord who was not present during the construction and didn't inspect the unit while either constructions were happening. The landlord even asked one of the tenants to testify that she gave him regular updates on the progress of the construction. I examined the photograph provided by the tenants and I find it clearly shows a lack of protective covering on the floors while the drywall was removed from the walls. Although the landlord testified he spoke to the contractor who assured him that his crew did not damage the floors, I find this evidence to be self-serving for the contractor. I would expect the contractor to deny doing the damage to the landlord's floors, preferring to blame the tenants for it.

I find the landlord has not provided sufficient proof to show that it is more likely than not the facts occurred as claimed. As the landlord bears the burden to prove that the tenants scratched the floors, I am not satisfied the damage was done by the tenants. The landlord's claim for compensation pursuant to section 67 of the *Act* is dismissed.

As the landlord was unsuccessful, the landlord is not entitled to recovery of the filing fee for the cost of this application.

Conclusion

The landlord's claim is dismissed without leave to reapply.

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: December 30, 2019

Residential Tenancy Branch