

IN THE MATTER between **HM**, Applicant, and **TS/#NL**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a hearing before **Janice Laycock**, Rental Officer,

BETWEEN:

HM

Applicant/Tenant

-and-

TS/#NL

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: November 20, 2019

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: HM , Applicant
TS, representing the Respondent

Date of Decision: December 11, 2019

REASONS FOR DECISION

An application to a rental officer made by HM as the Applicant/Tenant against TS/#NL as the Respondent/Landlord was filed by the Rental Office October 11, 2019. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondent by email deemed served November 4, 2019.

The Applicant claimed the Respondent had not received their security deposit back. An order was sought for the return of the security deposit.

A hearing was scheduled for November 20, 2019, and both parties were provided notice of the hearing. Janice Laycock (Rental Officer), HM (Applicant) and TS (representing the Respondent) appeared in person at the hearing.

Tenancy agreement

Evidence was presented establishing a tenancy agreement starting on May 1, 2018. This tenancy was terminated on September 30, 2019. I am satisfied that a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Security deposit - claim for damages

Provided as evidence was a copy of the "Security Deposit Reconciliation" from the Respondent to the Applicant dated November 5, 2019. This reconciliation shows the total security deposit paid was \$1,800, interest earned was \$1.42, the amount deducted for damages was \$850, and the amount returned to the Applicant by e-transfer was \$951.42. Damages claimed by the Respondent include the following:

1. Floors - Additional scratches on the floor - estimated cost for refinishing	\$500.00
2. Doors - Repainting entrance and bedroom doors and frames (Wrong paint was used by Tenant and work needed to be redone)	\$300.00
3. Oven - Finish cleaning the oven	\$ 50.00
TOTAL	\$850.00

Also provided as evidence for the hearing was a copy of the entry and exit inspection reports, pictures (on a memory stick) taken by the Applicant in an attempt to document the condition of the unit, as well as statements by the previous Tenant attesting to the condition of the unit when they moved out. At the hearing the Applicant testified:

1. **Floors** - they were not responsible for the scratches to the floor, that the floor was damaged when they moved in,
2. **Doors** - they had not repainted or repaired the doors which were in that condition when they moved in; and
3. **Oven** - they had done their best to clean the oven.

At the hearing the Respondent read out a written statement reiterating their claim for damages. They further testified that the damages claimed were not present when the Tenant moved in and had been caused by the Applicant. The Respondent also provided the Applicant and Rental Officer with memory sticks that they claimed provided further documentation of the damages.

Although entry and exit inspection reports were provided as evidence, it became clear during the hearing that the Applicant had not participated in either of the inspections, nor were they given a chance to provide comments in the entry inspection report and sign it. Under subsections 15(1) and 17.1.(1) of the Act the Landlord is required to conduct entry and exit inspections and offer the Tenant "reasonable opportunities to participate". Furthermore, under paragraph 15(3)(c) and subsection 17.1.(3) of the Act the Landlord should provide the Tenant with an opportunity to include comments in the entry or exit report and to sign it.

The Tenant did provide comments on the entry inspection report by email, however, they were not given a chance to sign and comment directly on the report. Also, they were provided only one opportunity to participate in the exit inspection, rather than "reasonable opportunities". I believe that not involving the Tenant in the entry and exit inspections created gaps in the understanding between the Landlord and the Tenant on the condition of the unit at entry and raises doubts at this point to the claims made by the Landlord about the condition at the termination of the tenancy agreement.

At the hearing it became apparent that the testimony and evidence provided was not sufficient to determine if the damages claimed by the Respondent were caused by the Applicant. The hearing was adjourned to allow the Rental Officer to review the evidence provided on the memory sticks and to allow both the Applicant and the Respondent to provide further information supporting their testimony.

Further evidence was received at the Rental Office on November 26, 2019, from both the Respondent and the Applicant. The memory sticks and further evidence (including pictures of the condition of the floor at move out from both parties and a floor plan identifying areas with damage, as well as manufacture's information on the birch flooring from the Respondent) was examined. The following are my reasons and findings based on all of the evidence provided:

1. Condition of the floors

It is clear from the entry inspection report and the email response from the Tenant dated May 7, 2018, that there were damages to the hardwood floors at the beginning of the tenancy. The entry inspection lists damages to the living room floor and the kitchen. The information provided by the previous Tenant at move in and included as part of the evidence for this application also describes marks and scratches to the kitchen floor in various areas, in the living room in the centre, and in various areas throughout.

Despite all of the pictures received from both the Respondent and the Applicant it is not clear what the extent of these damages were at the beginning of the tenancy in comparison with the damages claimed at the move out inspection. It is also not clear what are damages and what might be considered ordinary wear and tear. Under subsection 42(1) of the Act, "a tenant shall repair damages to the rental premises caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant." Subsection 42(2) of the Act says "ordinary wear and tear of rental premises does not constitute damage to the premises."

Even if clear information detailing the condition of the floor at the beginning of the tenancy was provided and it was clear that additional marks such as scratches or dents were caused by the Applicant, it would still be difficult to determine what is as a result of wilful or negligent conduct and what could be caused by ordinary wear and tear. As the manufacture of the flooring notes, "any wood, particularly a wood floor, is not indestructible and is going to show the effects of wear and tear over time."

The Respondent has claimed \$500 for the repair of the floors. In making this claim it is the responsibility of the Respondent to provide clear and convincing evidence of these damages. I find that they have not been successful in proving their claim, primarily because it is not clear what the actual condition of the floor was at move in. As a result, I am denying the Respondent compensation relating to repairs of the wood floors.

2. Doors

The Respondent has claimed \$300 to repaint the entrance and bedroom doors and frames because they were painted by the Applicant with the wrong paint (flat white over semi-gloss). At the hearing the Applicant testified that the doors were not painted by them during their tenancy and that they were like this when they moved in. Based on the Applicant's testimony and the lack of clear evidence to the contrary, I am denying the Respondent's claim for compensation relating to the repainting of the doors and frames.

3. Oven

The Respondent has claimed \$50 to complete the cleaning of the oven. To support their claim they provided pictures of the oven as cleaned by the Applicant and after further cleaning. These pictures clearly demonstrate that the Applicant could have done a better job. I find that the Respondent is justified in their claim for costs to clean the oven.

Orders

An order will be issued for the Respondent to return \$800 of the security deposit to the Applicant (p. 18.1.(b)).

Janice Laycock
Rental Officer