



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation for damage and loss under the Act, regulation or tenancy agreement, for damage to the unit site or property, and recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The Landlord and Tenant agree that they had a written tenancy agreement which commenced on November 28, 2008 and ended on August 25, 2011 when the Tenant moved out. The tenancy agreement states that the rent is \$1,200.00 per month, due on the 28th of the month. The tenancy agreement states that the Landlord holds a security deposit from the Tenant in the amount of \$600.00. The parties agree that the Tenant provided her forwarding address in writing to the Landlord on September 28, 2011. The Landlord filed an Application for dispute resolution on October 03, 2011. The parties did not perform a formal documented move-in or move-out inspection of the rental unit. The parties agree that the rental unit has a washer and dryer mounted on linoleum located in an alcove adjacent to hallway with wood laminate flooring. The parties agree that rental unit's laminate wood flooring continues from the hallway into the main living area. The parties agree that the washing machine was working properly and that the Tenant caused it to overflow due to a load of washing she was doing. Neither party had insurance to cover the damage.

The Tenant testified that she put two new pillows in the washing machine of the rental unit in late January or early February 2011 and it caused the washing machine to overflow. The Tenant stated that she noticed the overflow of water coming into the laminate wood floors of the rental unit as she was in the rental unit at the time this occurred. The Tenant stated that she mopped up the floors and used towels to absorb the water, and she drained the washing machine. The Tenant stated that she noticed that the wood laminate flooring began to separate due to the water damage. The Tenant stated that she contacted a flooring supplier to determine the price of replacement flooring and that she also contacted other residents of her building, however she found that the type of flooring in the rental unit was discontinued. The Tenant stated that in her opinion she feels no more than 25 square feet of flooring was damaged and that putting wood laminate flooring in a hallway adjacent to the washer dryer alcove is a bad idea. The Tenant agrees that some of the wood laminate flooring needs to be replaced after the water damage she has caused, however she stated that the Landlord should not require her to pay for replacement of the entire wood laminate flooring in the living area and the hallway.

The Landlord stated that he did not find out about the damage to the wood laminate flooring until the Tenant gave notice that she would be moving out for the end of August 2011. The Landlord stated that he was unable to find replacement flooring that was identical to the rental unit as it had been discontinued, so he located similar wood laminate flooring to replace the damaged floor. The Landlord stated that when he examined the water damage to the flooring, he discovered that the water had travelled into the living area from the hallway damaged some of the flooring in that area as well, and also the underlay was damaged throughout both areas. The Landlord provided photographic evidence that the water damage extended into the main living area floors from the hallway. The Landlord stated that the rental unit is a very new unit and that the floors were in good condition when the Tenant moved in, and were the same type of floors as other suites in the building. The Landlord stated that he had to replace all of the wood laminate flooring from the hallway into the main living area due to the extent of the water damage and he wants the Tenant to pay for his costs. The Landlord stated that the main living area and hallway have 400 square feet of floor space where he had to replace the underlay and wood laminate flooring. The Landlord stated that he obtained several quotes from contractors to replace and install new wood laminate flooring, however, he found the quotes expensive and did not include all of the costs in one case. The Landlord stated that he had communicated with the Tenant several times by email to try and resolve the dispute, however the Tenant would not agree with the Landlord on the amount owing. The Landlord stated that his original claim was an estimated amount of \$4,230.00 and that he has since reduced the amount he is

claiming to \$2,958.09, as indicated in his evidence submissions in advance of the hearing.

The Landlord stated that he was able to install the replacement wood flooring using the services of a friend who is a general contractor who took a day off work to work with the Landlord and help him at a rate of \$35.00 per hour do the flooring installation. The Landlord stated that the work is now completed and he feels the amounts he is claiming are complete. The Landlord is claiming costs that he incurred for his time doing the labour and the general contractor's time for the labour, and costs of the new flooring and underlay and materials. The Landlord stated that the general contractor's rate is \$35.00 per hour and that his own rate is \$25.00 as he has construction experience but he is less skilled than the general contractor. The Landlord stated that they worked from 8:00 AM to 7:30 PM with a 45 minute lunch break on December 9th, 2011. The Landlord stated that he worked alone to finish the job on subsequent days. The Landlord stated that he worked 10:30 AM to 4:00 PM on December 10 reattaching and painting the baseboards and on December 11, 2011 he spent one hour hauling and taking the old flooring and underlay to the dump which he stated cost him \$28.00. The Landlord stated that he has calculated the labour costs for the job as \$1,500.00. The Landlord stated that the damage repairs caused inconvenience to his current tenants who had to be out of the rental unit during the times the repairs were occurring, however he states he is not claiming for any compensation for the inconvenience.

The Landlord provided a copy of the hardware store receipt for the purchase of new flooring and underlay materials for the rental unit in the amount of \$1,398.97.

The Landlord is seeking \$9.12 for sending the Tenant documents by registered mail and is requesting to recover the \$50.00 filing fee for his Application.

The Tenant does not disagree that the rental unit is a newer unit and the floors were in good condition at move in. The Tenant agrees that she damaged the floor and possibly the underlay, however, she feels that the Landlord could have cut up some of the flooring from one of the entry area of the rental unit to patch the damaged floor areas and then replace the entry area with tile or a different product. The Tenant stated that the Landlord has not returned her security deposit. The Tenant has not filed an application for recovery of this but she would like the Landlord to pay her any balance owed from the security deposit. The Tenant stated that she had communicated to the Landlord through email that he could deduct a reasonable amount from her security deposit for the portion of the flooring she had damaged which she estimated to be valued at \$350.00.

The Landlord stated that there is not enough wood flooring in the front entrance area and the wood is cut a different way, so he was not able to use it. The Landlord stated that the underlay had to be replaced in all areas the water flowed to due to mould concerns, and it was only when the flooring was lifted that the extent of the damaged underlay could be seen. The Landlord stated that he had to replace flooring throughout the areas where the underlay was affected and that the damaged pieces of wood laminate flooring could not be matched with an available product.

The Landlord claims as follows:

a.	Hardware and Supplies-receipt	\$1,398.97
d.	Registered mail costs	\$9.12
e.	Filing fee	\$50.00
	Total claimed by the Landlord	\$2,958.09

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find there is no dispute that the Tenant damaged the flooring and underlay in the rental unit. The parties do not dispute that the condition of the floors upon move in was good and that the rental unit was only a few years old. The parties do not agree on the amount owed to the Landlord. I find that the Landlord filed his Application for dispute resolution within 15 days of receiving the Tenant's forwarding address in writing.

I find that the Landlord suffered a loss pursuant to section 67 of the Act for the following reasons:

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenant) pay for the loss the Applicant (the Landlord) must satisfy four different 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 Respondent (Tenant) in violation of the Act or 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 (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As part of the evidence submissions which I considered, the Landlord provided photographs of the damage to the flooring in the rental unit, quotes from flooring contractors, a receipt for the actual costs of buying replacement flooring and underlay, and verbal testimony about actual labour hours, work performed, and labour rates. The Tenant provided verbal testimony and a written submission, however, she provided no documented evidence to contradict the costs incurred by the Landlord. The Tenant has not proved that the Landlord's replacement costs were unreasonable.

I find that the Landlord attempted to mitigate or minimize his losses by obtaining new tenants for the rental unit immediately and repairing the flooring while they were living in the rental unit, rather than leaving the rental unit vacant until the dispute was resolved. I find that the Landlord obtained several quotes before determining the most affordable way to get the flooring and labour costs done.

The parties agreed that the wood laminate floors were in good condition as the rental unit was relatively new when the tenancy started. The Landlord's statements indicated that the floors in the rental unit during the tenancy were the same as the other units in the building. I have seen no evidence to indicate that the floors were replaced since the building's construction, except for after the Tenant's damage was done. The MLS listings indicate that the building was constructed in 2006. I find that, in the absence of evidence to the contrary, that the floors were five years old at the time the tenancy concluded and the damage was revealed to the Landlord. I find that the Landlord is not entitled to his entire costs for the purchases or labour related to replacing the damaged flooring and underlay, but rather he is entitled to a percentage of his costs incurred. The Landlord is entitled to the loss of the value of five year old floors. I have considered the Residential Tenancy Policy Guideline 37, Table 1 "Useful life of work done or thing purchased", which states that useful the life of wood flooring is deemed to be "20 years". I find that the policy is reasonable in this case and I have determined the flooring in the

rental unit to be five years old, as a result, I find that it had depreciated by 25% and that the Landlord is only entitled to claim 75% of his costs incurred.

I find that it was necessary to replace the flooring in the hallway and the main living area as well as the underlay, and I accept the Landlord's photographic evidence as depicting the water damage extending to the flooring that is in the main living area of the rental unit and that this area represents 400 square feet of flooring. The receipt for the flooring purchased by the Landlord represents no more than 410 square feet and I find that it was reasonable to purchase the quantities indicated on the receipt. I accept the Landlord's hardware and supply receipt of \$1,398.97 as reasonable costs associated with hardware and supplies for replacing the flooring and underlay in the rental unit. I find that the Landlord is entitled to **\$1,049.23**, which is 75% of the hardware and supply costs (\$1,398.97 - \$349.74, a 25% deduction for depreciation, five year old floors).

I have reviewed the Landlord's labour cost request and compared it with his testimony regarding the rates and the hours worked. I find that the Landlord's claim for \$1,500.00 is excessive and inaccurate compared with his testimony about the hours of work performed. I accept the Landlord's testimony about the hours, work performed, and rates of pay and find that the evidence in this testimony is reasonable. The Landlord did not submit a dump receipt so I can only find that the Landlord is entitled to his time on that date and not the costs he paid to the dump to accept the ruined underlay and flooring he dropped off. I find that the Landlord is entitled to \$605.62, which is 75% of the labour costs calculated as \$807.50 as follows:

General Contractor's labour December 09, 2011 8:30 AM to 7:30 PM = 11.5 hours minus 0.75 hours (45 minute lunch break) = 10.75 hours x \$35.00/hour	\$376.25
Landlord's personal labour December 10, 2011 10:30 AM to 4:00 PM = 5.5 hours x \$25.00/hour	\$137.50
Landlord's personal labour December 11, 2011 hauling and disposal of damaged flooring and underlay to dump = 1 hour x \$25.00/hour	\$25.00
Subtotal	\$807.50
Less 25% (deduction for depreciation, five year old floors)	-\$201.88
Total labour costs owing (75%) =	\$605.62

I find that the Landlord is not able to claim the registered mail costs associated with the claim as the Act does not allow parties to recover the costs of serving documents or preparing the Application. As a result I dismiss the Landlord's claim for \$9.12.

As the Landlord has in part succeeded in his Application, I find that the Landlord is entitled to recover the **\$50.00** fee for this proceeding. The balance of the amount owing to the Landlord is **\$1,704.85** (\$1,049.23 + \$605.62 + \$50.00).

The Landlord filed his claim within 15 days of the Tenant providing a written forwarding address requesting return of the security deposit. The Tenant did not file an application for return of her security deposit. The tenancy agreement indicates that the Landlord holds a \$600.00 security deposit. As I have found that the Tenant owes the Landlord compensation, I order that the Landlord retain the security deposit of \$600.00, in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$1,104.85** (\$1,704.85 - \$600.00).

Conclusion

I grant the Landlord's claim in part for compensation for damage and loss under the Act, regulation or tenancy agreement, for damage to the unit site or property and the filing fee, however, the Landlord's claim for registered mail costs is dismissed.

I find that the Landlord is entitled to \$1,704.85 comprised of a portion of the flooring and underlay hardware and supply costs, labour costs, and the entire filing fee. As I have ordered that the Landlord retain the security deposit of \$600.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$1,104.85**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: January 11, 2012.

Residential Tenancy Branch