



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the pet and security deposits, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords 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 and respond to each other's testimony. 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 Landlords be granted a Monetary Order?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on August 1, 2011 and ended July 31, 2012 at which time the Tenants vacated the property. Rent was payable on the first of each month in the amount of \$1,550.00 and on July 8, 2011 the Tenants paid \$775.00 as the security deposit and \$775.00 as the pet deposit. A move in condition inspection form was completed on August 1, 2011 and the parties signed a blank move out condition inspection form on August 1, 2012 agreeing to estimated

amounts. The Tenants provided their forwarding address to the Landlord on July 31, 2012.

The Tenant affirmed that she agreed to \$667.20 being claimed by the Landlords for the following items:

- \$250.00 for repairs to the unit
- \$300.00 for cleaning the rental unit
- \$67.20 for carpet cleaning
- \$50.00 for key fob replacement

The Tenant disputed the Landlords' claim of \$1,666.00 for replacement of the laminate flooring and argued that the floor damage was caused by sunlight heating up a ceramic pot she had on the floor and therefore should be considered normal wear and tear. She acknowledged that the floor was damaged during her tenancy but that there was only one spot and not several as displayed in the Landlords' photos. She does not recall any scratches on the floor but stated that if there were scratches they would have been the result of moving out which she believes is also wear and tear.

The Landlord submitted a CD of photos which he stated were taken at the beginning and the end of the tenancy. He noted how the photos at the beginning of the tenancy showed an undamaged floor and the photos at the end show several circle stains and scratches.

The Landlord confirmed that he submitted an estimate for the cost of floor replacement into evidence and not a receipt. He stated that the floor was original from 2007. The Landlord advised that the floor was replaced but he did not know the date the work was completed. When asked the actual cost of the floor replacement he stated it would have been the same as the quoted price because the contractor met the price they wanted. He also noted that there was paint on the floor and that none of the damage was normal wear and tear.

Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord 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.

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 unclean and with some damage at the end of the tenancy.

In this case the Tenants accept responsibility for \$667.20 of damages being claimed by the Landlords. Therefore I award the Landlords **\$667.20**.

The Tenants disputed the Landlords claim for floor replacement; however, they did acknowledge the floor suffered some damage during their tenancy. The Landlord could not provide testimony as to the exact date the floor was replaced and did not provide evidence to support the entire floor required replacement as opposed to repair or replacement of only the damaged laminate boards.

Upon review of the evidence I note that the Landlords relied on a quote from a general contracting company that provided receipts for all of the other work claimed by the Landlord. The quote indicates this company charges HST however HST was not charged on any of the other hand written invoices nor was there a HST number listed anywhere. Furthermore, there is no evidence that laminate floor was actually purchased or the actual cost of the flooring. Therefore I find the Landlord has provided insufficient evidence to prove the exact cost of the repair to the damaged floor or proof that the floor was actually replaced.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded as an affirmation that there has been an infraction of a legal right, such as

damage to the rental property, when there is insufficient evidence of the actual cost to repair the damages. In this case I find that the Landlords are entitled to nominal damages for damage suffered to the floor and I award them **\$250.00**.

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

Monetary Order – I find that the Landlords are 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 and pet deposit plus interest as follows:

Damages agreed to	\$ 667.20
Nominal damages	250.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 967.20
LESS: Security Deposit \$775.00 + Interest 0.00	- 775.00
LESS: Pet Deposit \$775.00 + Interest 0.00	<u>- 775.00</u>
Offset amount due to the TENANTS	<u>\$ (582.80)</u>

The Landlords are hereby ordered to return the balance of the deposits to the Tenants forthwith.

Conclusion

The Tenants have been issued a Monetary Order in the amount of **\$582.80** for the return of the balance owing of their deposits. This Order is legally binding and must be served upon the Landlords.

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: November 05, 2012.

Residential Tenancy Branch