



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for monetary compensation under the *Residential Tenancy Act* and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the hearing the Tenant, K.R. confirmed the correct spelling of her name. I therefore amend the Landlord's application pursuant to section 64(3)(c) of the *Residential Tenancy Act* to accurately note the Tenant's name.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The subject rental unit is a basement suite in the Landlord's home. The Landlord testified that this tenancy began April 1, 2012.

A move in condition inspection report was prepared at the start of the tenancy and was provided in evidence.

The tenancy ended on September 15, 2016. The Landlord testified that a move out condition inspection report was also prepared. A copy of this report was also provided.

On page three of this report, the Tenant D.S. indicated that he did not agree that the report fairly represented the condition of the rental unit. He confirmed that he "agreed to the carpets". The Tenant further wrote that he did not "agree to floors chipping" and wrote that it was not damage, but regular wear and tear.

The Landlord stated that Tenants agreed to the replacement of the carpet as they had two different dogs and three children which in turn caused significant damage to the flooring. The Landlord testified that she attempted to have the stains removed by professional carpet cleaners, but the stains would not come out. She also stated that the Tenant's dog had also ripped up the carpet and the Tenants attempted to repair it by patching.

The Landlord provided evidence from flooring companies confirming the damage to the laminate flooring was caused by excessive water. She also stated that the baseboards were also damaged which suggests that water had pooled. She said she was able to sand down, bleach and paint the baseboards thereby avoiding the cost of replacement. She claimed that for financial reasons she was not able to replace the laminate flooring although that is her intention.

The Landlord stated that the home was built in November of 2009 such that at the time the tenancy ended the home was seven years old.

The Tenants provided their forwarding address in writing on September 9, 2016.

The Landlord testified that the rental unit was last painted in 2012 and further confirmed that the rental unit was not painted during the tenancy and as such at the time the tenancy ended the paint was four years old.

The Landlord alleged that the Tenants had made an excessive number of nail holes such that they should be responsible for the cost of repairs and painting. She also stated that the Tenants replaced the doors but did not paint the doors or the trim. She

submitted photos of the rental unit which showed that the Tenants filled the holes in the walls. She stated that she originally agreed to the Tenants patching the holes as she had intended to paint herself, but that the patching job was so poor that she was not able to do the work. In support she provided in evidence a document from the painters who were hired to do the work and who wrote "I do a lot of rental units and the level of prep was excessive".

In an email from the Tenants to the Landlord dated July 15, 2016 the Tenant, K.R., wrote that they expected the Landlord to retain their security and pet damage deposit towards the cost to replace the carpets and for painting. She did not agree to this offer to resolve matters and applied for dispute resolution on September 16, 2016.

The Landlord stated that she also personally cleaned the rental unit as she was not able to afford to pay the professional cleaners more than three hours. In support she provided a letter from the professional cleaners noting the condition of the rental. The Landlord also stated that the cabinets interior and exterior were very dirty. In reply to the letter provided by the Tenants from their friend alleging the rental unit was clean, the Landlord pointed out that this person was only looking at photos provided by the Tenants not at the rental unit itself.

In support the Landlord provided numerous photos of the rental unit.

The Landlord also sought compensation for the cost to remove the satellite dish, which at the time of filing was unknown to her. In the Tenant's evidence they provided a copy of an estimate for the cost for removal as \$75.00 in addition to tax, and the Landlord submitted this amount should be awarded to her based on the Tenant's estimate.

The Landlord also sought the sum of \$44.80 for the cost to replace the vacuum handle and brush. She stated that the vacuum was working when the tenancy began and was not working at the end of the tenancy.

In total, the Landlord claimed as follows:

Painting of rental unit	\$1,890.00
Three hours of cleaning	\$204.75
Cost to replace the carpets	\$1,029.53
Cost to replace laminate flooring (estimate)	\$2,642.10
Replacement lock	\$67.18
Additional cleaning by Landlord at \$20.00 per hour	\$140.00

Removal of Tenant's satellite	Unknown
Replacement of vacuum handle and brush	\$44.80
Filing fee	\$100.00
Total claimed	\$6,118.36

The Tenants provided written submissions in response to the Landlord's claims in addition to testimony and oral submissions at the hearing.

The Tenants submit that as the tenancy was for four years and five months, painting was required at the end of the tenancy due to normal wear and tear and the useful life of the paint. They also submit that the Landlord asked that they fill the holes so that they could attend to painting.

In response to the Landlord's claims regarding cleaning of the rental unit, the Tenants submit that the Landlord failed to note on the move out condition inspection report that cleaning was required or that the rental unit was not up to the Landlord's standards. In addition, the Tenant, K.R. stated that they had rented the suite until September 15, 2016 and surrendered the keys on September 2, 2016. She stated that they did the walkthrough and the Landlord did not say that she was unhappy with the level of cleaning. K.R. stated that had the Landlord told them that the cleaning was unsatisfactory she should have said something and the Tenants would have then had the opportunity to come back and clean the unit more in the 13 days they still would have had possession of the rental unit.

K.R. also submitted that the Landlord paid for cleaning 12 days *after* the painting was done and the carpets were replaced such that the condition of the rental was likely dirty from those activities, and not due to lack of cleaning on the Tenants' part.

The Tenants also submitted that when they agreed to the Landlord retaining their deposits towards the cost of replacing the carpet, they were unaware that they should only be responsible for the life expectancy left on the carpets, not the cost for new carpets.

In addition, the Tenants submit that the Landlord, by installing vinyl flooring, improved the flooring from laminate. They submit that the damage depicted in the Landlord's photos is located on the edges of the boards near the "back of the house"

In terms of the Landlord's claim for the cost to rekey the doors, the Tenants state that they returned the keys, although initially they had thought about retaining one for

sentimental reasons. They also note that this is noted on the move out condition inspection report.

K.R. stated that they believed the carpets would be replaced for an amount less than the security deposit or pet damage deposit and offered that the Landlord retain these funds as a full settlement of any claims she may have. K.R. stated that they did not believe they should be responsible for the cost of painting as the tenancy was four years long and the Landlord would have had to paint in any case.

The Tenants also provided photos of the rental unit which are time stamped confirming they were taken at the time the condition inspection report was completed.

The Tenants also submitted a letter from their friend who works as a professional cleaner, and viewed the photos taken by the Tenants at the end of the tenancy; in this letter she writes that the rental unit was clean at the time the tenancy ended.

K.R. also stated that the Landlord agreed the satellite dish could remain and be used by future renters. K.R. submitted that had the Landlord wanted it removed she could have said something and they would have removed it. K.R. also pointed out that the condition inspection report makes no mention of this item.

In response to the Landlord's claim for replacement of the central vacuum system wand and brush the Tenant stated that it never worked properly during the tenancy and that there were times when the Landlord and the Tenants could not use it. She confirmed that there was one central vacuum system for upstairs and down such that both the Landlord and the Tenants used the same system.

K.R. stated that the quote provided by the Landlord for replacement of the laminate flooring is actually vinyl flooring. The Tenants provided a document from the flooring company confirming that the vinyl flooring more expensive than the cost of laminate flooring.

In reply, the Landlord stated that the final condition inspection report was done at 8:00 p.m. and was rushed and she therefore did not notice the condition of the rental until after it was completed. She also stated that she did not inspect every single cupboard and that later she found a number of items that were left behind by the Tenants.

The Landlord noted that the condition inspection report did indicate "dirty" and "damage" She also stated that the majority of the Tenants' photos were taken from a distance or were blurry. The Landlord noted that her photos were taken close up. She also stated

that her photos were not taken after the flooring replaced and the walls were painted, and noted that the photos indicate the date the photos were taken.

The Landlord confirmed that the rental unit was re-rented as of September 15, 2016.

The Landlord also stated that the key was not replaced as the Tenants stated they were keeping one to turn it into a Christmas ornament.

The Landlord also stated that laminate flooring requires \$0.50 for underlay which results in the vinyl and laminate flooring being similar in price.

In reply to the Tenants' claim that the Landlord never asked them to remove the satellite dish the Landlord stated that she did not have an answer as she did not even notice it until after the inspection was done.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

Residential Tenancy Policy Guideline 40 provides that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

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

I do not find, based on the photos submitted that the Tenants made an excessive number of nail holes. I accept the Tenants’ evidence that the Landlord agreed they could patch the nail holes in the rental unit to assist in preparing for painting.

Policy Guideline 40 provides that interior paint has a useful building life of four years. As such, I find the rental unit was due for painting at the end of the tenancy and I therefore decline the Landlord’s request for compensation for painting.

As indicated on the move out condition inspection report, the Tenants agreed to compensate the Landlord for the cost of the carpets. *Policy Guideline 40* provides that carpets have a useful building life of 10 years. As the carpets were seven years old at the end of the tenancy, I find the amount claimed by the Landlord must be discounted by 70% such that I award her **\$308.86**.

The photos submitted by the Landlord indicate the laminate flooring was damaged at the end of the tenancy. The Tenants did not agree to the amounts claimed by the Landlord with respect to the laminate flooring which is confirmed on the move out condition inspection report, where the Tenants question whether the condition is “reasonable wear and tear” or damage. The Landlord submitted that the flooring was damaged by the Tenants allowing water to pool.

The Tenants further submit that the flooring was seven years old and that in addition to a discount for their age, the Landlord should not be entitled to claim the cost to replace the laminate flooring with more expensive vinyl flooring.

I find, based on a balance of probabilities, that the laminate flooring was damaged by the Tenants during the tenancy. I accept the Landlord’s evidence that it is likely water was allowed to pool, as evidenced by the damage to the baseboards.

However, I agree with the Tenants that the amount claimed must be discounted based on the age of the flooring. *Policy Guideline 40* provides that carpets have a useful building life of 10 years and hardwood floors have a useful life of 20 years; I find laminate flooring to be more similar to carpet in terms of durability and I therefore discount the amount claimed by 70% to \$792.63. I further discount the amount claimed as Landlord intends to replace the laminate with more expensive vinyl and I therefore award her **\$500.00** towards the cost of replacing the laminate flooring.

The condition inspection report confirms the Tenants returned all keys. I therefore decline the Landlord’s request for compensation to rekey the lock.

The Landlord failed to submit any evidence with respect to the cost to replace the Tenants’ satellite dish. I therefore decline her request for related compensation.

As the Landlord and Tenants shared the use of the central vacuum system, I am unable to determine who is responsible for the replacement of the vacuum attachments. I therefore decline the Landlord’s request for related compensation.

I find, based on the photos submitted by the Landlord that some cleaning of the rental unit was required. However, as the rental unit was prepared for painting and the

flooring was removed, I find it likely that some of the amount claimed related to cleaning which occurred after these tasks were accomplished. I therefore award her **\$200.00** as a nominal amount for the cleaning.

The Landlord has been partially successful in her claim and I therefore award her one half of the filing fee paid in the amount of **\$50.00**.

Conclusion

I find that the Landlords have established a total monetary claim of **\$1,058.86** for the following:

Cost to replace the carpets (discounted)	\$308.86
Cost to replace laminate flooring (discounted)	\$500.00
Nominal amount for cleaning	\$200.00
Filing fee (1/2)	\$50.00
Total awarded	\$1,058.86

I order that the Landlord retain the deposit of **\$650.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$408.86**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 20, 2017

Residential Tenancy Branch