



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for unpaid rent;
- a monetary order for compensation for loss;
- a monetary order for damage to the unit; and
- recovery of the filing fee paid for this application from the tenants.

Landlord B.P. and Landlord T.P. (the "Landlords") and Tenant J.W. and T.M. (the "Tenants") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords and tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid rent?
- Are the landlords entitled to a monetary order for compensation for loss?
- Are the landlords entitled to a monetary order for damage to the unit?
- Are the landlords entitled to recovery of the filing fee paid for this application from the tenants?

Background and Evidence

The undisputed evidence established that the rental unit was built in 2007. The rental unit is 1,005 square feet with two bedrooms and one bathroom. The tenants entered into a one year fixed term tenancy which started October 15, 2013 and ended October 15, 2014. After the fixed term ended, the tenancy continued on a month to month basis. Rent in the amount of \$1,800.00 was due on the 15th day of each month. The tenants

paid a security deposit in the amount of \$900.00 and a pet damage deposit in the amount of \$900.00.

These deposits were the subject of a previous application made by the tenants. The file number for the previous hearing is indicated on the cover page for ease of reference. The Arbitrator, in their decision dated July 21, 2016, determined that the tenants had authorized the landlords to retain the deposits in the amount of \$1,800.00.

The tenants testified that they moved out of the rental unit on November 15, 2015. The parties agreed that the tenants told the landlords on November 30, 2015 that they had moved out of the rental unit on November 15, 2015.

The rental unit was sold in February 2016 without the landlords renting the unit to new tenants.

The undisputed evidence established that there was no condition inspection carried out when the tenants moved in. However, a condition inspection was completed when the tenants brought a dog into the unit and paid the pet damage deposit. Landlord T.P. and Tenant T.M. attended the condition inspection and signed a condition inspection report. The parties were unable to recall the date of this inspection and there was no date recorded on the report. This inspection is referred to as the "move in" inspection in the condition inspection report.

The undisputed evidence established that a move out condition inspection occurred on December 2, 2015 with Landlord T.P. and Tenant T.M. in attendance. Both parties signed the move out condition inspection report. A copy of the condition inspection report for both inspections was submitted as evidence.

The condition inspection report indicates that Tenant T.M. agreed that the report fairly represents the condition of the rental unit at the end of the tenancy. There are comments written on the condition inspection report noting damage to the rental unit for which the tenant is responsible as follows:

- i) "Carpets to be replaced"
- ii) "Hardwood refinishing";
- iii) "Bedroom doors and bathroom doors are scratched to be refinished or replaced"

The landlords are seeking to be compensated for the cost to repair the damage listed on the condition inspection report set out above. The landlords are also seeking to recover their cost for painting the rental unit. While the tenants acknowledged responsibility for the damage listed on the condition inspection report, the tenants argued that the damage was solely due to normal wear and tear.

Carpet Replacement:

The landlords testified that the carpets were installed in 2007 when the unit was built. The landlords testified that the tenants left stains on the carpet in the main area of the two bedrooms and one bedroom closet. The landlord testified that the carpeting needed replacement due to the staining. The landlords testified that it cost \$1,212.12 to replace the carpeting. The landlords submitted the signed contract for the cost of the carpet replacement. The landlords also submitted a signed payment authorization to pay the amount set out in the contract by credit card. The landlords testified that they could not find the receipt.

The tenants acknowledged that the carpets were stained in the areas described by the landlord. The tenants acknowledged that their children had spilled drinks and that the stains were not there on move in.

Floor Refinishing:

The landlords testified that the flooring was installed in 2007 when the unit was built. The evidence established that the main living room, dining and kitchen area is 500 square feet designed as an open floor concept. The landlords testified that the flooring was consistent throughout this open area. The landlords testified that there were three areas on the hardwood floor that had scratches from the tenants' dog that needed to be repaired. The landlords are claiming \$1,575.00 for the cost of repairing the scratched floors. The landlords submitted a copy of the quote for the repairs. The landlords indicated that they could not find the receipt.

The tenants acknowledged that their dog caused the scratches on the hardwood flooring.

Bedroom and Bathroom Doors:

The landlords testified that the tenants' dog left scratches on the bedroom and bathroom doors. The tenants acknowledged that their dog had caused the damage. The landlords are seeking \$600.00 for the cost to repair damage to the doors. The landlords submitted an estimate for the cost of the repairs. The landlords testified that they did not actually make the repairs.

The tenants argued that they should not be required to pay for the cost of repairs to the doors as the landlord did not repair the doors.

Painting:

The landlord testified that the rental unit was last painted in 2007 when the unit was built. The landlords testified that after the tenants moved out, the landlords needed to paint the apartment. The landlords described dents and stains in the area of the window trim on the wall in one of the bedrooms. The landlords testified that the damage required drywall repairs and paint. The tenants testified that there could be dents around the window trim.

The landlords submitted an invoice in the amount of \$1,701.00 for the cost to paint the rental unit which they are seeking to recover. The landlords testified that they had the two bedrooms, den, living room and kitchen ceiling painted.

The tenants argued that they should not be held responsible for the painting costs as there was no damage that exceeded normal wear and tear.

Rent:

The landlords are seeking compensation in the amount of \$3,600.00 for rent that would have been due on November 15th and December 15th, 2015. The landlords argued that the tenants were required to give at least one month's notice that the tenancy was ending. The landlords argued that the tenants did not comply with the *Act* by notifying the landlords on November 30, 2015 about the end of the tenancy. The landlords argued that they are entitled to be compensated for rent up to the earliest time that the tenants could legally have ended the tenancy by giving proper notice.

The tenants testified that they gave verbal notice to the landlords on October 23, 2015 that they would probably be moving out.

Filing Fee:

The landlords are seeking recovery of their \$100.00 filing fee for their application from the tenants.

Based upon the foregoing, the landlords are seeking a monetary award in the total amount of \$8,688.12 as follows:

Carpet replacement	\$1,212.12
Floor Refinishing	\$1,575.00
Bedroom and Bathroom Doors	\$ 600.00
Painting	\$ 1,701.00
Rent	\$ 3,600.00
Filing Fee	\$ 100.00
Subtotal	\$8,788.12
Less Security Deposit Received by Landlords	\$1,800.00
Total	\$6,988.12

Analysis

Based on the evidence and testimony, and on the balance of probabilities, I find the following.

Damage and Loss

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Section 21 of the Residential Tenancy Regulations (the “Regulations”) addresses the evidentiary weight of a condition inspection report. Pursuant to section 21 of the Regulations, a condition inspection report completed in accordance with Part 3 of the Regulations is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Residential Tenancy Policy Guideline #40 (the “Policy Guidelines”) explains that 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 of replacement.

I find that there is sufficient evidence to satisfy me that the condition inspection report was completed in accordance with Part 3 of the Regulations. Therefore, I accept the condition inspection report as evidence of the state of repair and condition of the rental unit on December 2, 2015.

The condition inspection report indicates that at the end of the tenancy there were:

- i) stains on the carpet in the two bedrooms and one bedroom closet;
- ii) scratches to the hardwood flooring; and
- iii) scratches on the bedroom and bathroom doors.

I find that there is sufficient evidence to satisfy me that the tenants are responsible for the damage noted in the condition inspection report set out above. In making this finding I have taken into consideration the fact that the tenants acknowledged responsibility for the damage when Tenant T.M. signed the condition inspection report and agreed with the conditions described in the report. The tenants also acknowledged that their children spilled drinks on the carpet and that their dog left scratches on the hardwood floors as

well as on the bedroom and bathroom doors. Based upon these admissions by the tenants, I find that there is sufficient evidence to satisfy me that the damage caused by the tenants children and dog exceeded normal wear and tear.

I find that there is sufficient evidence to satisfy me that repairs were necessary to fix the damage caused by the tenants. In making this finding I have taken into consideration the fact that Tenant T.M. acknowledged the need for the repairs due to the damage by signing the condition inspection report. The condition inspection report specifically identified the need to replace the carpets; to refinish the hardwood floors; and to refinish or replace the bedroom and bathroom doors.

Carpet Replacement

I accept the landlords' evidence that the cost of replacing the damaged carpets was \$1,212.12 on the basis of the documents submitted by the landlords in addition to their testimony. When calculating the tenants' responsibility for the cost of replacing the carpets, I have taken into consideration the fact that the carpets were installed in 2007 when the unit was built.

Pursuant to Policy Guideline #40, I find that the old carpet was approaching the end of its useful life. According to Policy Guideline #40, the landlords would likely have needed to replace the carpets in approximately two years due to normal wear and tear. Therefore, I find that the landlords are entitled to a nominal amount to cover the cost of replacing the carpet due to the damage caused by the tenants. Accordingly, I find that the tenants' responsibility for the cost is \$300.00.

Based upon the foregoing, I find that the landlords are entitled to a monetary order in the amount of \$300.00 for the cost of replacing the damaged carpet.

Floor Refinishing:

I accept the landlords' testimony that the repairs to the hardwood flooring cost \$1,575.00 which is supported by the documentation submitted by the landlords. When calculating the tenants' responsibility for the cost of repairs, I have taken into consideration the fact that the hardwood flooring was installed in 2007 when the unit was built.

Pursuant to Policy Guideline #40, I find that the old flooring still had a useful life of approximately 12 years before likely needing to be refinished or replaced due to normal wear or tear. As the damage was caused by the tenants' pet and the flooring was

approximately eight years old, I find that the tenants' responsibility for the costs of refinishing the flooring is \$1,000.00

Based upon the foregoing, I find that the landlords are entitled to a monetary award in the amount of \$1,000.00 for repairs to the hardwood flooring.

Bedroom and Bathroom Doors:

I find that there is insufficient evidence that the landlords incurred a loss arising from the scratches on the bedroom and bathroom doors. In making this finding I have taken into consideration the fact that the landlords submitted an estimate for the cost of repairs in the amount of \$600.00 without actually having completed the repairs. I have also taken into consideration the fact that the landlords sold the rental unit in February 2016. Based upon the foregoing, I find that there is insufficient evidence that the landlords suffered a loss as a result of the damage.

Based upon the foregoing, I find that the landlords are not entitled to \$600.00 for repairs to the bedroom and bathroom doors.

Painting:

I find that there is sufficient evidence that the tenants caused damage around the window trim in the master bedroom which required drywall repairs and paint. In making this finding I have taken into consideration the fact that this damage is noted on the move out condition inspection report. I also accept the evidence of the landlords that the wall area around the window trim was found to be dented, particularly, as the tenants indicated that there "could" be dents.

Although I find that the tenants are responsible for the damage to the area around the window trim in the master bedroom, I do not find that the tenants are responsible for the landlords' cost to paint the second bedroom, den, living room and kitchen ceiling. I find that there is insufficient evidence of damage in these areas that exceeded normal wear and tear. In making this finding I have taken into consideration the fact that there is no damage recorded for any of these rooms in the condition inspection report that would require painting. I have also taken into consideration the fact that the unit had not been painted in approximately 8 years since the unit was built in 2007. Therefore, I find that there is insufficient evidence to hold the tenants responsible for the cost of painting these additional areas in the rental unit.

When calculating the tenant's responsibility for the cost of painting the master bedroom, I have taken into consideration the fact that the rental unit was last painted in 2007. Pursuant to Policy Guideline #40, I find that the old paint had surpassed its useful life by approximately four years. Therefore, I find that there is sufficient evidence to conclude that the rental unit likely needed painting due to normal wear and tear. Therefore, I find that the landlord is entitled to a nominal amount for the painting to cover the cost of repairing the drywall which was included in the painting invoice without a breakdown of that item.

I accept the landlords' evidence that the painting costs totaled \$1,701.00. Accordingly, I find that the tenants' responsibility for this cost is \$200.00.

Based upon the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$200.00 for the painting.

Rent:

Residential Tenancy Branch Policy Guideline #3 explains that damages awarded for loss of rent should be an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Section 45(1) of the *Act* permits a tenant to end a month to month tenancy by providing the landlord with not less than notice of one month on a day before the day in the month that rent is due.

Pursuant to Section 52 of the *Act*, in order to be effective notice, the notice must be in writing; signed and dated by the tenant; give the address of the rental unit; and state the effective date of the notice.

In this case, I find that there is insufficient evidence that the tenants gave proper notice to end the tenancy in accordance with section 45(1) of the *Act* and section 52 of the *Act*. In making this finding I have taken into consideration the fact that the tenants confirm that they informed the landlord on November 30, 2015 that they had moved out on November 15, 2015. I also find that the statements by the tenants on October 23, 2015 that they would 'probably' move out was not sufficient notice in accordance with sections 45(1) and 52 of the *Act*. Therefore, I find that the tenants did not comply with the *Act* by ending the tenancy without giving the landlord the requisite amount of notice in the proper form.

Although the notification by the tenants on November 30, 2015 that the tenancy was ending did not comply with section 52 of the *Act*, I find that the landlords accepted the end of the tenancy on the basis of their communications with the tenants on this date. Therefore, I find that the tenants gave their notice to end the tenancy on November 30, 2015.

In accordance with Policy Guideline #3, I find that the landlords are entitled to the loss of rent up to the earliest time that the tenants could legally have ended the tenancy.

Pursuant to section 45(1) of the *Act*, I find that the earliest date the tenants could have ended the tenancy in accordance with the *Act* would have been January 14, 2016. In making this finding I have taken into consideration the fact that notice to end the tenancy was given by the tenants on November 30, 2015 and the next month's rent was due on December 15, 2015. Therefore, I find that the tenants are responsible for rent that would have been due on November 15, 2015 and December 15, 2015.

Based upon the foregoing, I find that the landlords are entitled to a monetary award in the amount of \$3,600.00 for the loss of rent up to the earliest time that the tenants could legally have ended the tenancy.

As the landlords' application is substantially successful, I find that the landlords are entitled to recover the filing fee for their application from the tenants.

In accordance with the earlier decision from the previous hearing, the amount of \$1,800.00 will be deducted from the monetary award to account for the tenants' security deposit and pet damage deposit that the landlord was authorized to retain. The deposits were retained by the landlords as compensation for the damages being awarded in this matter.

Based upon the foregoing, I find that the landlords are entitled to a monetary order in the amount of \$3,400.00 as follows:

Carpet Replacement	\$ 300.00
Floor Refinishing	\$1,000.00
Painting	\$ 200.00
Rent	\$3,600.00
Filing Fee	\$ 100.00
Subtotal	\$5,200.00
Less Security Deposit	\$1,800.00
Total Monetary Order	\$3,400.00

Conclusion

The landlords are granted a monetary Order in the amount of \$3,400.00 which must be served on the tenants as soon as possible. Should the tenants fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 13, 2017

Residential Tenancy Branch