



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MANSION REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

This matter was set for a conference call hearing at 9:00 a.m. on this date. The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenants did not attend. The landlord confirmed that the tenants were served with the landlord's application for dispute via Canada Post Registered Mail on March 10, 2017 for each tenant. I waited until 10 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants and in the absence of the tenants' participation in this hearing, I order the tenants' evidence be excluded from consideration in this hearing.

The landlord provided affirmed testimony that the tenants were served with the submitted documentary evidence via Canada Post Registered Mail on July 13, 2017 to each tenant.

I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset it was clarified with the landlord that his monetary claim was filed for \$975.00, but that a monetary worksheet was submitted for \$1,320.00. The landlord confirmed that no amendment was filed to change the monetary claim. As such, the landlord's claim is limited to the amount filed for \$975.00, plus recovery of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security and pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a monetary claim of \$975.00 for an estimated replacement of laminate flooring damaged by the tenants. The landlord claims that the tenants vacated

the rental unit leaving it damaged and that the landlord currently still holds the combined \$487.50 security and the \$487.50 pet damage deposits.

The landlord provided undisputed affirmed testimony that an inspection by a contractor revealed that the damaged flooring could not be repaired, nor the damaged portions replaced. The landlord's contractor provided an estimate for the complete replacement of the laminate flooring. The landlord stated that the floors were new for this tenancy and was 5 years old as of the date of the end of tenancy. The landlord stated that new tenants now occupy the rental premises, but that the flooring will not be replaced until the tenants vacate the tenancy at the end of their tenancy agreement in September of 2017 and the landlord has a decision from this hearing.

In support of this claim the landlord has submitted a copy of a completed condition inspection report for the move-in (August 26, 2013) and the move-out (February 23, 2017) which shows the notation of "a few scratches along the floor" and "deep noticeable scratches on floor in the living space on 5 wood lines" at the end of tenancy. The landlord referred to the section completed by the tenant that agrees with these statements and that an agreement was made regarding "TBA" deductions. I note, no known amounts were stated.

The landlord has also submitted a copy of an estimate for \$1,320.00 for the complete removal and installation of new laminate flooring by P.H.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed evidence of the landlord and find that the landlord has established a claim that the tenants vacated the rental premises leaving it with damaged laminate flooring as claimed. The landlord has provided a copy of the estimate for the

complete replacement of the flooring. The landlord also provided affirmed testimony that his contractor provided an opinion that the flooring could not be repaired or the damaged portions replaced as the flooring is no longer in stock. As such, the landlord has established a monetary claim of \$975.00 for damaged flooring.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$875.00 combined security and pet damage deposits in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$100.00.

The tenants must be served with this order. Should the tenants fail to comply with the order, the order 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: August 08, 2017

Residential Tenancy Branch