



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNDC MNSD FF

Introduction:

Both parties attended and gave sworn testimony. The landlord said they served the Application for Dispute Resolution on the tenant by registered mail and the tenant acknowledged receipt. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. They agreed the tenancy commenced March 1, 2012, that monthly rent was \$950 and a security deposit and pet damage deposit, each in the amount of \$475 were paid. The parties confirmed the landlord has refunded the pet deposit but the security deposit is still in trust.

The landlord said the home was built in the 1940s and they bought it in 2009. There were linoleum floors in the home when they bought it so they are unsure of the age of the floors but said they looked fine. They said the floors were badly damaged at the end of the tenancy. They claim \$1387.37 for replacing the floors. They replaced the boot room with linoleum but it had been hardwood in 2009. The condition inspection report shows there were some scratches in it near each door at move-in and it showed as very worn and scratched up at move-out.

The landlord also claims \$1007.98 for replacing the washer and dryer. The tenant said the old ones broke so they spoke to the landlord about 2 years ago but the landlord did not want to do anything. The tenants then put the old appliances out and bought others for themselves which they have taken with them. In response to questions, the landlord said the appliances in the house were bought used and she estimates they were maybe 2 years old when the tenants moved in and she paid \$400 to \$500 total. The tenant said they looked a lot older than that and they totally quit working. The landlord denies ever getting a request from the tenant to fix or replace the washer and dryer. They said they were surprised when they saw them outside.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused damage to the floors. However, as explained to the parties, the Residential Policy Guideline #40 assigns a useful life for items in rented premises which is designed to account for reasonable wear and tear. I find the weight of the evidence is that most of the floors were most probably over 10 years old since they were already in place when the

landlord bought the home in 2009. . The Policy Guideline assigns a useful life of 10 years to such floors so I find the weight of the evidence is that most of the floors were beyond their useful life so the landlord is not entitled to compensation for their replacement.

However, I find the 'boot room or den' had hardwood installed in 2009 and it was significantly damaged at move-out. The condition inspection report at move-in shows that floor as scratched at the doors and the move-out report notes it is 'very worn and scratched up'. Hardwood is assigned a useful life of 20 years in the Guideline so I find this floor under normal circumstances had 12 years of useful life left; however, I note on the condition inspection report, it was already scratched at move-in which indicates it already had damage beyond reasonable wear and tear from past occupants. I find it is reasonable to find the floor had about 6 years of useful life remaining when it had to be replaced. The landlord estimated that the room was about 10 ft. by 12 ft. or 120 sq. ft. and the tenants did not disagree with this. On the invoice provided, I find the landlord paid \$198 for material and \$180 for installation for 120 sq. ft. for a total of \$378. Given that hardwood floors have an assigned life of 20 years, the cost would be estimated at \$18.90 per year. As I find the floor had only about 6 years of useful life left, I find the landlord entitled to recover \$113.40 for the remaining years of useful life when it had to be replaced.

In respect to the washer and dryer, I note the onus is on the landlord to prove the age of the machines and the liability of the tenants. Although the landlord said they were about 2 years old when she bought them, the tenant said they looked a great deal older. I find the fact that they broke down three years into the tenancy supports the tenant's contention that they were older than 5 years old when they broke. The Policy Guideline assigns a useful life of 10 years to washers and dryers. I find they were at a minimum age of 7 at the end of the tenancy and the landlord paid only \$400-\$500 for them (she could not quite remember). Based on a \$400 estimate, I find the landlords entitled to recover 30% of the amount she paid or \$120.

Conclusion:

I find the landlord is entitled to compensation as calculated below and to retain part of the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application. The balance is in a monetary order to the tenant. At the tenants' request, I verified on the RTB interest calculator online that no interest is payable on the deposit.

Calculation of Monetary Award:

Replace boot room floor allowance	113.40
Replace older washer and dryer	120.00
Filing fee	100.00
Total award to landlord	333.40
Less security deposit of tenant	-475.00
Balance is monetary order to tenant	191.80

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 21, 2017

Residential Tenancy Branch