



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDLS, FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlords applied for a monetary order for damage to the unit, site or property, for authorization to keep all or part of the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlords, the tenants and a support person for the tenants appeared at the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

On April 24, 2018 the hearing commenced and after 66 minutes, the hearing was adjourned and an Interim Decision was issued dated April 26, 2018, which should be read in conjunction with this decision. On June 27, 2018, this matter continued for another 87 minutes before the hearing concluded.

The parties did not raise any documentary evidence issues and as a result I find the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2014 and ended on September 15, 2017 when the tenants vacated the rental unit. The tenants paid a security deposit of \$887.50 and a pet damage deposit \$1,012.00, which the landlord continues to hold and has accrued \$0.00 in interest to date. The parties agreed that the pet damage deposit was paid once the rent had increased to \$2,024.00 per month so was still only have of the monthly rent when paid. As a result, the landlords continue to hold a total of \$1,899.50 in combined deposits ("combined deposits"). Monthly rent was originally \$1,775.00 and increased to \$2,024.00 by the end of the tenancy.

The landlords' monetary claim of \$6,236.03 which actually totals \$6,237.03 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Refinish hardwood flooring	\$4,992.75
2. Housecleaning and repairs	\$746.40
3. Repair broken window	\$218.40
4. Replace missing hot tub steps	\$130.00
5. Lawn soil, seed and peat moss	\$67.72
6. 2 towel bars and extension cord	\$53.35
7. Replace broken weed trimmer	\$20.00
8. Replace kitchen composter	\$8.41
TOTAL	\$6,237.03

Regarding item 1, the landlords have claimed \$4,992.75 for the cost to refinish what the landlords stated were damaged hardwood flooring which exceeded reasonable wear and tear under the *Act*, according to the landlords. The tenants stated that while there was wear and tear, they deny damaging the hardwood flooring beyond what they consider wear and tear over the course of the tenancy which was almost three years in length.

The landlords referred to the incoming condition inspection report which supports that the hardwood flooring had "scuffing" at the start of the tenancy. The landlords stated that the hardwood flooring were beyond reasonable wear and tear and were damaged by the tenants and referred to many colour photos submitted in evidence showing various rooms at the start of the tenancy compared to the same room at the end of the tenancy. The tenants responded to the photos by stated they were not dated and that differences between lighting and the angles of the various photos made it difficult to see damage versus wear and tear.

The landlords testified that the hardwood floors were last refinished three years before the start of the tenancy so had approximately six years of use after the last refinishing given that the tenancy was approximately three years long. The landlords referred to several photos where the landlords pointed out deep gouges in the hardwood flooring and referred to a quote dated September 13, 2017 in the amount of \$4,992.75 to sand and refinish hardwood floor.

The parties clearly did not agree on whether the hardwood flooring was damaged beyond reasonable wear and tear having account for some scuffing noted on the incoming condition inspection report. The landlords stated that they are not claiming for anything related to carpets as the landlords considered reasonable wear and tear for the carpets but did not agree with the tenants that the hardwood floors had reasonable wear and tear on them. Regarding the outgoing condition inspection, the landlords stated that the inspection was scheduled for approximately 11:00 a.m. on September 17, 2017 and that the tenants were still cleaning and asked for more time before doing the inspection. The tenants were present for the inspection but did not sign the outgoing condition inspection report. The landlords acknowledged that the hardwood flooring had some wear and tear at the start of the tenancy but that significant repair was necessary to the hardwood flooring before re-renting was possible and that the tenants damaged the hardwood flooring beyond any reasonable wear and tear.

The tenants claim that the flooring was old and that the move out inspection should have been at 1:00 p.m. and not 11:00 a.m. so the tenants felt rushed. The tenants deny that they were yelling and screaming as alleged by the landlords during the hearing. The tenants stated that the carpets were not part of the claim so should not be an issue. The tenants provided their version for each of the photos submitted by the landlords. The spent a lot of time claiming that lighting and camera angles made the photo inaccurate. The tenants did admit that they learned their lesson regarding not using the proper hardwood floor cleaner/wood polisher. The tenants stated that they are not saying that some of the wear and tear was from them and that there was quite a bit of wear and tear but asked what the difference between scuffing and wear and tear? I advised the parties that I would address that in this decision.

The tenants suggested that the photos could have been taken when the home was purchased versus before the start of the tenancy. The tenants claimed for one of the photos "are we sure it is under the window, maybe it is." The tenants also asked why the after photos were not taken at the same angle and time of day as the before photos and noted that the home was built in the 1970's. The tenants did admit during the hearing that they did have a wax spill and tried to scrape the wax off unsuccessfully causing gouging on the floor.

The landlords stated that scuffing and damage are not the same and the landlords affirmed the photos were taken at the start of the tenancy and not when they purchased the home. The landlords also denied applying any hardwood flooring stripping to the flooring before taking the after photos as the tenants made that allegation during the hearing.

Regarding item 2, the landlords have claimed \$746.40 for housecleaning and repairs. The landlords submitted in evidence an invoice in the amount of \$746.40 which indicated that 20 hours at \$25.00 per hour were required for cleaning the rental unit. The landlords also referred to many colour photos submitted in evidence which the landlords stated showed a broken dishwasher, personal items left in the dishwasher by the tenants, a dirty fridge with items left inside and chips out of the fridge trays, a broken oven handle, a broken front screen door, two towel bars that were remove from the walls and some parts of those towel bars on the counters, burned out bulbs at the end of tenancy with other bulbs showing as working, dirty window sills, a damaged electric baseboard heater, drape stains, and drape burn marks.

The landlords stated that they hired a company that specializes in cleaning at the end of tenancies before units are re-rented and that it took a total of 20 hours to clean the rental unit to a reasonably clean condition. The landlords went through all the supporting photos in detail during the hearing.

The tenants' response was that they feel they lost 12 hours of cleaning time by having the inspection at 11:00 a.m. versus 1:00 p.m. which the tenants calculate at four people multiplied by three hours. I note that the calculation is incorrect though as it is only a two hour time difference between 11:00 a.m. and 1:00 p.m. so the tenants' calculation does not make sense as claimed. The tenants stated that they would be okay with 8 hours of cleaning but not 20. The male tenant stated that the tenant claims to have installed the oven with a broken handle and that a broken handle is cheaper than fixing a broken oven. Regarding the towel bars, the tenants claim they "just fell off and we left them off". The tenants confirmed that they did not notify the landlords in writing at any time that the towel bars had fell off during the tenancy.

The tenants claim the counter where the dishwasher was attached to was rotten; however, the tenants also confirmed they did not submit any supporting documentary evidence such as photos. The tenants admitted that the freezer was not cleaned and that some of their things were still in the rental unit and that regarding the screen door, his dog was partially to blame as he pushed through it when his dog had an "anxiety attack".

In addition to the above, the dryer lint trap was not cleaned and regarding the yard, the tenants admitted that they did not water the lawn in the summer so it would go brown and that their dogs dug a "couple of holes" that they claimed they repaired and reseeded.

Regarding item 3, the parties reached a mutually settled agreement that the tenants would compensate the landlords \$218.40 for the cost of the broken window.

Regarding item 4, the landlords claimed \$130.00 for the cost to replace missing hot tub stairs. The landlords referred to a photo submitted in evidence which showed the resin hot tub stairs next to the hot tub and yet confirmed that the hot tub was removed during the tenancy and sold. The landlords did not submit an invoice or other documentary evidence to support the value of this item. The tenants stated that they could not remember if the hot tub steps were there after the hot tub was sold and that they do not recall the hot tub steps going missing. The tenants

stated that perhaps the hot tub steps were removed when the hot tub was sold. The landlords stated that they accepted less for the hot tub as it was sold without the resin steps.

Regarding item 5, the landlords have claimed \$67.72 for the cost of soil, grass seed and peat moss to repair what the landlords stated were holes in the lawn from the tenants' dog. The tenants affirmed that they reseeded and repaired the lawn before vacating; however, confirmed that they did not submit any photographic evidence to counter the landlords' photographic evidence which showed holes in the lawn as claimed by the landlords. The landlords submitted an invoice in evidence in the amount claimed of \$67.72.

Regarding item 6, the landlords have claimed \$52.35 for the cost of 2 towel bars and an extension cord. While the tenants agree to the cost of the 2 towel bars by mutual agreement, the tenants would not agree to the cost of the extension cord as the tenants deny taking the extension cord from the shed as the tenants claim that they had their own gas powered weed trimmer and did not require the use of the extension cord. In addition, the tenants affirmed that as other tenants from the rental unit next to them used the lawnmower, weed trimmer and the extension cord. The landlords submitted a receipt in the amount of \$52.35 in support of this portion of their claim.

Regarding item 7, the landlords have claimed \$20.00 for the cost to replace a damaged weed trimmer. The landlords confirmed that the weed trimmer was not mentioned on the condition inspection report and that there were no before photos to compare to the after photos of the weed trimmer submitted for consideration. The tenants stated that they did not use the weed trimmer and that the tenant had his own gas powered weed trimmer so that it must have been the other tenants who damaged the weed trimmer.

Regarding item 8, the parties reached a mutually settled agreement where the tenants would compensate the landlords in the amount of \$8.41 for the cost of a missing compost bucket.

Analysis

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

Test for damages or loss

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 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 what was reasonable to minimize the damage or loss.

In the matter before me, the landlords bear the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 – Section 37 of the *Act* applies and states in part:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,**

[My emphasis added]

I have carefully considered the testimony of both parties and the many photographs submitted in evidence and find that I am satisfied that the tenants exceeded reasonable wear and tear on the hardwood flooring. In other words, I find the tenants breached section 37 of the *Act*. In reaching this finding I have considered that the tenants admitted to damaging the hardwood flooring with wax and then gouging the flooring in a failed attempt to clean the wax from the hardwood flooring. I have also considered the tenants' testimony that they had "learned their lesson" in terms of hardwood flooring cleaners and note that I find that several photos what I consider to be damage to the hardwood flooring including excessive wear compared to before photos, gouging from the flooring and scraping on the flooring.

I also note that Residential Tenancy Branch ("RTB") Policy Guideline 40 – Useful Life of Building Elements ("policy guideline 40") indicates that hardwood flooring has a useful life of twenty years. As a result and based on the testimony of both parties, I find that by the end of the tenancy, the hardwood flooring was six years old which I find results in a depreciated value of 30% of the amount claimed by the landlords. Therefore, while I am satisfied that the landlord suffered a loss of \$4,992.75 I deduct 30% from that amount to account for the hardwood flooring having some "scuffing" at the start of the tenancy and being six years old by the end of the tenancy. Therefore, I grant the landlords **\$3,494.92** which is 30% less than \$4,992.75 for this portion of the landlords' claim after depreciation is applied. I afford little weight to the tenants' attempt to explain that different angles and lighting accounted for the difference in the appearance of the flooring and find that the before photos clearly show hardwood flooring in much better condition than at the end of the tenancy and that between scraping the flooring, gouging it and spilling wax on the flooring that the tenants are liable for the amount as claimed.

Item 2 - The landlords have claimed \$746.40 for housecleaning and repairs. I have considered the testimony, photographic evidence, condition inspection report and invoice and find the tenants have breached section 37 of the *Act* by failing to leave the rental unit in a reasonably clean condition less wear and tear. I afford no weight to the tenants' claim that they lost 12 hours of cleaning time by having to vacate by 11:00 a.m. versus 1:00 p.m. as that calculation is not correct. The difference between 11:00 a.m. and 1:00 p.m. is only two hours, and I find that there was insufficient supporting evidence that the tenants had four people cleaning the rental unit. I find the condition that the rental unit was left in as supported by the landlords' photographic evidence supports that full amount of cleaning and repairs as claimed in the amount of **\$746.40**.

I note that I have considered the dishwasher being separated from the counter and do not accept that the counter was rotten at the start of the tenancy, as I find that it would be reasonable to expect that the tenants wrote to the landlords for a repair of the counter of which there was no evidence submitted for my consideration.

In addition, I find the fridge was dirty and that trays were chipped/damaged. I also accept the tenants' testimony that their dog damaged the front screen due to anxiety attack and that the tenants' are responsible for the damage caused by their dog.

Item 3 – The parties reached a mutually settled agreement that the tenants would compensate the landlords **\$218.40** for the cost of the broken window.

Item 4 – Although the landlords claimed \$130.00 for the cost to replace missing hot tub stairs, I dismiss this portion of the landlords' claim as I find the landlords have failed to meet the burden of proof. I note that there was no invoice to support that third part of the test for damages or loss regarding the value of the steps.

Item 5 - The landlords have claimed \$67.72 for the cost of soil, grass seed and peat moss to repair what the landlords stated were holes in the lawn from the tenants' dog. I find the tenants provided insufficient evidence to rebut this portion of the landlords' claim and based on the photographic evidence of the landlords I find the tenants' dog damaged the grass in such a way that the \$67.72 was required to repair the lawn to a satisfactory condition after the tenants vacated. Therefore, I grant the landlords **\$67.72** as claimed for this portion of the landlords' claim as the landlords have met the burden of proof.

Item 6 - Regarding item 6, the landlords have claimed \$52.35 for the cost of 2 towel bars and an extension cord. While the tenants agree to the cost of the 2 towel bars by mutual agreement, the tenants would not agree to the cost of the extension cord as the tenants deny taking the extension cord from the shed as the tenants claim that they had their own gas powered weed trimmer and did not require the use of the extension cord. The towel bars on the receipt are listed as \$10.88 each before 12% in tax. I find the landlords have failed to meet the burden of

proof for the extension cord as other tenants had use of the extension cord so I find the landlords have only met the burden of proof for two towel bars which I find total **\$24.37** which includes taxes. I dismiss the extension cord portion due to insufficient evidence without leave to reapply.

Item 7 - The landlords have claimed \$20.00 for the cost to replace a damaged weed trimmer. Consistent with my finding on item 6 regarding the shared extension cord, I find the landlords have failed to meet the burden of proof as other tenants also had use of the weed trimmer. Therefore, I dismiss this portion of the landlords' claim due to insufficient evidence, without leave to reapply.

Item 8 - The parties reached a mutually settled agreement where the tenants would compensate the landlords in the amount of **\$8.41** for the cost of a missing compost bucket.

As the landlords' claim had merit, I grant the landlords **\$100.00** for the recovery of the cost of the filing fee under section 72 of the *Act*.

The landlords continue to hold the tenants' combined deposits of \$1,899.50 which have accrued \$0.00 since the start of the tenancy.

Monetary Order – I find that the landlords has established a total monetary claim in the amount of **\$4,660.22** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' combined deposits as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Refinish hardwood flooring	\$3,494.92
2. Housecleaning and repairs	\$746.40
3. Repair broken window	\$218.40 (mutual)
4. Replace missing hot tub steps	Dismissed
5. Lawn soil, seed and peat moss	\$67.72
6. 2 towel bars and extension cord	\$24.37 (partial mutual with other portion dismissed)
7. Replace broken weed trimmer	Dismissed
8. Replace kitchen composter	\$8.41
9. Filing fee	\$100.00
Subtotal	\$4,660.22
<i>Less tenants' combined deposits of \$1,899.50)</i>	<i>-(\$1,899.50)</i>
TOTAL	\$2,760.72

I authorize the landlords to retain the tenants' full combined deposits of \$1,899.50 in partial satisfaction of the landlords' monetary claim. The landlords are granted a monetary order

pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of **\$2,760.72**.

Conclusion

The landlords' claim is mostly successful. The landlords have established a total monetary claim of \$4,660.22. The landlords are granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of \$2,760.72. The landlords must serve the tenants with the monetary order before the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As a portion of the this claim was resolved by way of a mutually settled agreement, I order the parties to comply with their mutually settled agreement as indicated above pursuant to section 63 of the *Act*.

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: July 16, 2018

Residential Tenancy Branch