



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

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; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided undisputed sworn testimony supported by written evidence that they sent the tenant a copy of the landlord's dispute resolution hearing package by Canada Post's XPressPost service, requiring a signature from the tenant, on July 9, 2018. I find that the tenant was deemed served with this package in accordance with section 89 of the *Act* on July 14, 2018, the fifth day after their mailing. The landlord also provided undisputed sworn testimony that they provided the tenant with copies of the landlord's written evidence, but not the Monetary Order Worksheet, well in advance of this hearing. I find that the written and photographic evidence, with the exception of the Monetary Order Worksheet, was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy for the upstairs portion of the landlord's home commenced on September 1, 2017 as a one-year fixed term tenancy. The landlord lives in a separate suite in the lower level of this dwelling. Monthly rent for the tenant's portion of the upstairs suite was set at \$500.00, payable in advance on the first of each month. The landlord continues to retain the tenant's \$250.00 security deposit paid when the tenant moved into this residence. The landlord testified that the tenant has not yet provided their forwarding address in writing to the landlord.

The landlord's application for a monetary award of \$2,070.09 was for damage to the linoleum floor in the kitchen which occurred when the tenant dropped a pot of hot oil on that flooring. The landlord maintained that the flooring in the kitchen and the dining room have to be replaced in their entirety because it was one piece. The landlord entered into written evidence copies of two estimates the landlord received for the replacement of this flooring. One of these estimates was for the \$2,070.09 claimed by the landlord in this application; the higher estimate was \$2,112.20.

There is written evidence that at one point the tenant agreed to pay \$1,000.00 of the cost of replacing the damaged flooring. The landlord testified that the tenant has paid \$500.00 towards the replacement of this flooring and advised the landlord that the landlord could keep the tenant's \$250.00 security deposit in addition to the payment already made. The landlord has not yet replaced the damaged flooring.

The landlord testified that no joint move-in or joint move-out condition inspection occurred with respect to this tenancy. The landlord gave undisputed sworn testimony that the landlord's written and photographic evidence included clear proof that the tenant admitted that they were responsible for the damage to the flooring.

The landlord said that the flooring had not been replaced since the landlord purchased the property in 2003, and had likely been in place since the residence was built.

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.

It is always helpful to have joint move-in and joint move-out condition inspection reports in order to compare the condition of a rental unit at the beginning and end of a tenancy; however, in this case, I find that there is ample evidence that the significant burn spot on the kitchen linoleum was caused by the tenant's actions in dropping a pot of hot oil. The tenant's written admission that they were responsible for this damage, and subsequent payment of \$500.00, and the undisputed sworn testimony that they agreed to let the landlord keep their security deposit, also confirms that the tenant bears responsibility for the damage to this flooring.

As outlined below, Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Arbitrators in determining claims for damage.

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances....

Damage(s)

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...

Although the Policy Guideline 40 does not specifically mention linoleum flooring, it does establish that the useful life for carpeting and tile in a residential tenancy is 10 years. Hardwood and parquet flooring has a useful life of 20 years. As linoleum more closely approximates carpet or tile than hardwood or parquet flooring, I find that it is more likely than not that the useful life of linoleum would be 10 years.

In this case, the landlord testified that the linoleum is at least 15 years old and quite likely considerably older. Under these circumstances, I find that the flooring that the landlord wishes to replace has already exhausted its useful life and was ready for replacement even if the damage caused by the tenant had not occurred. However, as the flooring was still being used and may have been in better condition than would normally have been the case for linoleum of that age, I accept that there would still have been some value or useful life for the linoleum in this rental suite.

Based on a balance of probabilities, I find that the \$750.00 that the tenant apparently agreed to pay the landlord represents a reasonable estimate of the remaining value of the linoleum. I find that the landlord has already received a \$500.00 payment from the tenant for the replacement of the linoleum flooring. I find that the landlord is entitled to obtain a monetary award of \$250.00 for the difference between what the tenant has paid and the \$750.00 damage that has occurred.

Although the landlord has not applied for authorization to retain the tenant's security deposit, paragraph 72(2)(b) of the *Act* allows me to issue an order allowing the landlord to retain the tenant's \$250.00 security deposit to be applied to monies owed to the landlord. In accordance with paragraph 72(2)(b), I order the landlord to retain the tenant's \$250.00 security deposit, which I consider to be adequate additional compensation beyond the tenant's \$500.00 payment for damaged flooring that is at least 15 years old.

Since the landlord has only been partially successful in this application, I allow the landlord to recover \$50.00 from the filing fee from the tenant.

Conclusion

I find that the total compensation for the damage to the flooring in this rental unit is \$750.00, of which \$500.00 has already been received from the tenant by the landlord.

I order the landlord to retain the tenant's \$250.00 security deposit as a means of compensating the landlord for the remainder of the damage that occurred to the kitchen flooring of this rental unit during this tenancy.

I issue a monetary Order in the landlord's favour in the amount of \$50.00, to allow for the landlord's partial recovery of their filing fee.

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 05, 2018

Residential Tenancy Branch