



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL
 MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for damage to the rental unit or property; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

One of the landlords and the tenant attended the hearing and both parties were represented by agents who gave affirmed testimony. The parties, or their agents were also given the opportunity to question each other. The landlord also gave affirmed testimony, called out of order.

During the course of the hearing the tenant's agent advised that the Invoices provided by the landlord as evidence for this hearing were not provided to the tenant. The landlord testified that all evidence was provided to the tenants along with the landlord's application, but didn't know that the actual Invoices had to be given to the tenant once they were received. They were uploaded to the Residential Tenancy Branch system on October 7, 2018 and the landlord emailed and texted the tenant but received no reply. All other evidence of the landlords has been provided to the tenant.

The Rules of Procedure require that any evidence a party wishes to rely on must also be served on the other party. Since the landlords have not done so, I cannot consider the Invoices and other evidentiary material which was uploaded by the landlords to the Residential Tenancy Branch system on October 7, 2018.

All other evidence has been exchanged, and is considered in this Decision.

Also, during the course of the hearing the tenant did not disagree to the landlord's claim for hydro bills, and agrees that the landlord should be compensated \$120.03.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property, including damaged laminate, carpet, floor boards and for cleaning?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of a paid plumbing bill?

Background and Evidence

The landlords' agent testified that this fixed term tenancy began on May 1, 2017 which was to expire on April 30, 2018. However, the tenancy reverted to a month-to-month tenancy which ultimately ended on July 1, 2018. Rent in the amount of \$1,800.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and the landlords do not reside in the building. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlords' agent further testified that move-in and move-out condition inspection reports were completed and copies have been provided for this hearing. The landlords' agent was present for both inspections along with the landlords and the tenant.

The tenant failed to clean the rental unit at the end of the tenancy and left water damage to the laminate floor and throughout the rental unit. It appears that the water damage had been there for a long time. It was brought to the tenant's attention during the move-out condition inspection but the landlord's agent does not recall the tenant's response. The laminate was curved and detached from the flooring and baseboards are marked and swelled with water which had soaked into them. No water was present on the floor during the move-out condition inspection, but the damage was there. The landlords have provided 2 Monetary Order Worksheets setting out the following claims:

- \$49.18 for a BC Hydro bill for June;
- \$68.62 for a BC Hydro bill for July;
- \$160.00 for a cleaning fee; for a total of \$277.80.

The other Monetary Order Worksheet sets out the following claims:

- \$250.00 for a removal fee for the living room and kitchen laminate;
- \$544.00 for installation of laminate in the living room and kitchen;
- \$778.00 for laminate and underlay;
- \$378.00 for installation of new baseboards;
- \$1.50 per foot for baseboards; and
- \$70.00 for floor leveling, if needed; for a total of \$2,100.00.

The laminate floors were from the original building of the apartment, about 8 years old. The landlords have provided photographs, which the landlords' agent testified were taken on July 1, 2018. The landlords received the actual Invoices which amounted to \$2,572.50 for the cost of completing the repairs by a contractor and \$1,647.00 for the cost of materials.

The landlords' agent also testified that during the tenancy the landlords were made aware of an issue with the garburator, and a plumber was called. The plumber said there wasn't an issue with the garburator itself, but was due to something that got stuck in it. The landlords purchased a new one and had it installed at a cost of \$230.00 plus \$150.00 for installation, and the tenant paid for the call-out. Therefore, the landlords deny the tenant's claim for recovery of the call-out charge.

The rental unit was re-rented for July 1, 2018 and repairs are on-going while the new tenant is residing in the rental unit.

The landlords received the tenant's forwarding address in writing on July 1, 2018.

The tenant's agent testified that the landlords' photographs do not show any curling of laminate. Also, there's carpet in some of the photographs which wasn't damaged at all. The tenant's agent was present for the move-in and move-out inspections, and does not believe the laminate was damaged.

The tenant's agent further testified that cleaning wasn't mentioned during the move-out condition inspection, and is not noted on the report. Further, the landlords' photographs are zoomed in, but that wasn't done at move-in. The laminate doesn't look damaged in the landlords' photographs and if the water damage on the baseboards was caused during the tenancy, and due to excessive exposure to water, the flooring would have been saturated

and damaged. The landlord brought in a specialist while the tenant's agent was present, and the specialist said it was not caused by water exposure.

The tenant does not deny the hydro bills and the tenant's agent testified that the tenant didn't receive copies of the bills prior. The tenant agrees to pay the landlords the sum of \$120.03.

The tenant's agent wrote the tenant's forwarding address on a piece of paper and gave it to the landlord.

With respect to the tenant's claim, the tenant's agent emailed the landlords several times about the garburator. The landlord looked at it and said there was something wrong, and asked the tenant's agent to call a plumber. When the plumber arrived, the tenant's agent called the landlord who approved the work, and the tenant paid the bill. The plumber said the garburator was beyond repair, and the tenant claims recovery of the \$209.38 bill, a copy of which has been provided for this hearing dated April 24, 2018.

The landlord testified that the living room and kitchen have laminate floors, and the photographs showing carpet are photographs of bedrooms.

The landlord disputes that her husband had a specialist brought in who said the water damage wasn't due to water exposure.

Analysis

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to establish that the damage or loss exists; that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement; the amount of such damage or loss; and what efforts the claiming party made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I have reviewed the reports, and I agree with the tenant's agent that there are no makings that indicate the rental unit wasn't left clean at the end of the tenancy and therefore, I dismiss the landlords' claim of \$160.00 for cleaning.

With respect to laminate, the move-out condition inspection report shows damage to the bedroom floor, however the landlord testified that the bedrooms had carpet, and that the laminate was in the living room and kitchen. Other than the living room laminate floor

and damaged bedroom floor and broken frame on the kitchen floor, the only other markings of “damaged” or “broken” do not form part of the landlords’ claim. The landlords have provided Invoices for laminate replacement, but I cannot consider them because they are not available to the tenant, however I have reviewed the photographs provided by the landlords. There is clearly swelling in the baseboards from water damage that did not exist at the beginning of the tenancy.

I cannot accept that the cost to repair damage to the living room laminate and the bedroom carpet would amount to \$2,572.50 for the contractor’s costs and \$1,647.00 for supplies. I can consider the landlords’ estimates which amount to \$2,100.00. Since the landlords have only established damaged laminate for the living room, I offset the claims by half as follows:

- \$125.00 for removal of laminate;
- \$272.00 for installation of laminate; and
- \$389.00 for the cost of laminate and underlay, for a total of \$786.00.

However, the landlords’ agent testified that the floors were original and about 8 years old. Given that the useful life of such flooring is 20 years, I find that the amount awarded to the landlords should be pro-rated, and that 12 years remains on their useful life, or \$471.60 ($\$786.00 / 20 \text{ years} = \$39.30 \text{ per year} \times 12 \text{ years remaining} = \471.60).

The landlords have not provided any estimate for the carpet replacement, however I accept the landlords’ estimate of \$378.00 for installation of new baseboards. The useful life of wooden baseboards is 15 years, and I pro-rate the amount on the landlords’ Monetary Order Worksheet to \$176.40 ($\$378.00 / 15 \text{ years} = \$25.20 \text{ per year} \times 7 \text{ years remaining} = \176.40).

During the course of the hearing the tenant did not disagree to the landlords’ claim for hydro bills, and agrees that the landlords should be compensated \$120.03.

With respect to the tenant’s claim, the move-out condition inspection report mentions a broken garburator, however the plumbing invoice provided by the tenant is dated April 24, 2018 and the tenancy ended on July 1, 2018. The landlords have not included the portion of the plumbing bill that the landlords paid as part of the landlords’ claim, and I fail to see how the landlord could pay only part of the bill. The tenant’s agent testified that the when the plumber arrived, the tenant’s agent called the landlord who approved the repair. The landlords’ agent testified that the tenant caused the malfunction, but the plumbing bill says nothing about the cause. In the circumstances, I find that the tenant has established the claim of \$209.38.

The landlords currently hold a security deposit of \$800.00. Having found that the tenant owes the landlords \$120.03 for utilities and \$648.00 for damages, and the landlords owe the tenant \$209.38 for the plumbing bill and \$800.00 for the security deposit, I set off those amounts and I grant a monetary order in favour of the tenant for the difference in the amount of \$241.35.

Since both parties have been partially successful, I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$241.35.

This order is final and binding and may be enforced.

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 23, 2018

Residential Tenancy Branch