



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, MND-S, 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, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence filed by the other party via Canada Post Registered Mail. The landlord stated that each of the two tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 25, 2018 to the address provided by the tenants. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Extensive discussions over a 66 minutes period resulted in the hearing being adjourned due to a lack of time. Both parties were cautioned that no new evidence was to be submitted nor would it be accepted. Both parties confirmed their contact information for delivery of the notice of adjournment.

On April 4, 2019, the hearing was reconvened where both parties attended participated and made submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

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.

This tenancy began on May 1, 2018 on a fixed term tenancy ending on April 30, 2019 and then thereafter on a month-to-month basis as per the signed tenancy agreement dated April 20, 2018. The monthly rent was \$1,550.00 payable on the 1st day of each month. A security deposit of \$1,550.00 was paid on April 23, 2018.

Both parties confirmed that this tenancy ended on September 30, 2018. The tenant provided testimony that the tenants' forwarding address in writing was provided to the landlord on October 11, 2018. The landlord noted that the application for dispute was filed within the 15 day limitation period on October 19, 2018 as shown by the landlord's application for dispute.

The landlord seeks a clarified monetary claim of \$9,511.00 which consists of:

\$3,100.00	Loss of Rent, October 2018
\$3,100.00	Loss of Rent, November 2018
\$1,300.00	Loss of Rent, December 2018
\$687.00	Loss of Difference in Rent with New Tenant, Dec 14, 2018- April 2019
\$930.00	Liquidated Damages
\$7,922.25	Damaged Floor
\$25.00	NSF, September 2018 Stop Rent Payment

The landlord's monetary claim was filed for \$9,511.00, yet the clarified monetary claim totals, \$17,064.00. A review of the landlord's application does not provide for an amendment to the monetary claim. As such, the landlord's monetary claim is limited to the amount filed for \$9,511.00.

The landlord stated that the tenants vacated the rental unit leaving the wood floor damaged with scratches requiring replacement, loss of rental income for October 2018, November 2018 and December 2018 due to repairs and an NSF Charge for September 2018 rent as detailed above. The landlord also seeks liquidated damages of \$930.00 as stipulated in the signed tenancy agreement in section #5 as the tenant pre-maturely ended the fixed term tenancy. Liquidated Damages for costs associated with re-renting the unit were incurred.

The landlord stated that the tenant changed the scheduled move-out inspection time several times and on each occasion the tenants were accommodated. Prior to the last scheduled move-out inspection the tenants stated that he would not be able to attend. The tenants were served with a "Notice of Final Opportunity" to conduct a condition inspection report for the move-out on October 2, 2018. The tenants did not attend. The move-out inspection was completed without the tenants' presence on October 2, 2018. The tenants have disputed the inspection report. The landlord reported that the rental unit was not properly cleaned and the floor found damaged. The landlord stated that as a result a loss of rent was incurred while the floors were repaired. The landlord stated that the unit was not successfully re-rented until December 14, 2018. The landlord seeks the total \$687.00 difference in rental rates for the rent from December 2018 to April 2019. The landlord also seek liquidated damage(s) of \$930.00 as the tenant's breached the signed tenancy agreement pre-maturely on September 30, 2018 instead of the end of term of April 30, 2019. The landlord referred to section 5 of the signed tenancy agreement which both parties acknowledged provides for the \$930.00 liquidated damages amount. The landlord stated this amount is for the owner's fee for management of the rental property to find a new tenant. The landlord also submitted a copy of a new tenant tenancy agreement which began on December 14, 2018 until December 31, 2019 which provides for a monthly rent of \$2,950.00. The landlord states that this shows that a monthly rental difference between the two agreements for \$150.00 per month. The landlord relies upon the submitted emails and quotes which show that repair of the floor was not feasible and that replacement of the entire floor was the only choice. The landlord seeks recovery of a \$25.00 NSF charge for September 2018 rent. The tenants confirmed in their direct testimony that a "stop payment" was requested by the tenants.

The tenants have argued that the tenancy ended as a result of a mutual agreement to end tenancy. The tenants have referred to submitted evidence #12, an email chain which begins dated August 29, 2018 to the landlord's agent in which a mutual agreement to end tenancy was proposed for September 30, 2018. The tenants referenced a response by the landlord dated September 5, 2018 "We agree to Mutual

Agreement to End Tenancy by September 30, 2018” by “Jana”. A response the same date by the tenant, D.M. requests a copy of the attachment “Can you please execute the agreement?” on September 6, 2018. Another email request by the landlord’s agent on September 6, 2018 to “sign it first”. A response on the same date by the tenant, D.M. providing a signed copy and then a request by the tenant, D.M. on September 7, 2018 requesting a signed copy from the landlord to be returned. A response by the landlord’s agent dated September 10, 2018 “I will follow up sign copy of Mutual Agreement”.

The landlord has provided 5 photographs and a video of scratched flooring, a completed condition inspection report for the move-in dated May 1, 2018 and an incomplete condition inspection report for the move-out dated October 2, 2018 for comparison of the floor condition before and after the tenancy began. The move-in report shows “Normal Wear and Tear on the floor some scratches prior to move in”, yet the move-out report on October 2, 2018 states that there are significant scratches in front of island. The move-in report does not note an entry area that was inspected, yet the move-out notes light scratches in the entry flooring.

The landlord has submitted an email dated October 25, 2018 from a flooring contractor, which states in part,

After our site inspection, it is not recommended to sand and refinish the floors in the area of the kitchen and living room without stopping at a natural break. If the finishing of the wood stops at the hallway there will be two different looks on the floor which would look terrible. Also, when you sand the floors the texture of the floor disappears which will leave you two different floors.

The noted email chain also provided two quotes, the first for completely replacing the hardwood flooring in the entire unit for a cost of \$7,922.25 and the second for \$4,987.50 for the entry/hallway/storage areas only.

The tenants have disputed the scratches on the floor claimed by the landlord. The tenants stated that a condition inspection report for the move-out was not completed. The tenants also referred to the completed condition inspection report for the move-in dated May 1, 2018 which notes, scratches in the flooring for the living room prior to move-in.

The landlord has argued that a \$25.00 NSF Charge was incurred for September 2018 rent as the online payment was “Reversed” by the tenants. The landlord provided a

copy of an email confirming that September 2018 rent was not paid. The landlord submitted a copy of an email sent to the tenant notifying them of the “Reversal”. The tenants confirmed in their direct testimony that a “Stop Payment” was requested by the tenants.

In support to these claims, the landlord has provided copies of:

- Signed Tenancy Agreement
- Completed condition inspection report for the move-in
- Partially completed condition inspection report for the move-out
- 5 photographs showing the damaged floor
- 2 videos of the damaged floor
- 3 Estimates for repair of the damaged floor

At the end of the submission from both parties, the tenant put forward the request for return of the original security deposit and the argument that the landlord had extinguished his right to the security deposit by failing to give notice of a final opportunity to complete a condition inspection report with the tenant.

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 testimony of both parties and find in this case the landlord’s claims as set out below.

The landlord’s monetary claims for:

\$687.00	Loss of Difference in Rent with New Tenant, Dec 14, 2018-April 2019
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\$930.00 Liquidated Damages

On these claims the landlord has failed to establish a claim. It is clear based upon the tenants' undisputed evidence submission of emails that the landlord agreed to and accepted a mutual agreement to end tenancy on September 30, 2018. Although both parties have confirmed that no actual completed signed copy was presented, I find that a mutual agreement was made via this email conversation as shown by the tenants' submitted evidence. On this basis, the landlord is not entitled to liquidated damages or any losses in rent for a new tenant. These portions of the landlord's claim are dismissed.

As for the landlord's claim for a \$25.00 NSF Charge, I find based upon testimony of the tenants that a "stop payment" request was made by the tenants which resulted in the NSF charge. As such, the landlord has been successful for this portion of the claim.

On the landlord's claims for loss of rent due to damaged floors for the below noted.

\$3,100.00	Loss of Rent, October 2018
\$3,100.00	Loss of Rent, November 2018
\$1,300.00	Loss of Rent, December 2018
\$7,922.25	Damaged Floor, Scratches

I find that the landlord has failed to establish a claim. Although the landlord relies heavily on 5 submitted photographs and a video of scratched flooring, a completed condition inspection report for the move-in noted "Normal Wear and Tear on the living room floor some scratches prior to move in", yet no notation in the move-out report. Noted was flooring damage "are significant scratches in front of island" of the living room space. I note that there was no inspection of the entry way at the beginning of the tenancy as per the move-in report compared to the move-out report provided. I also note that as the compensation sought was based upon an estimate and not an actual paid invoice, the landlord was able to re-rent the property on December 14, 2018 without replacement of the flooring. On this basis, I find that there are inconsistencies which lead me to conclude that the landlord has failed to provide sufficient evidence that the tenants caused damage to the flooring and loss as well as a loss of rental income for the entire period sought. This portion of the landlord's claim is dismissed.

The landlord has established a total claim for \$25.00. The landlord having been partially successful is also entitled to \$50.00 for return of part of the filing fee.

On the tenants' request for return of security deposit as the tenants claim that the landlord extinguished their right to the security deposit, I find that the landlord did give atleast two opportunities to schedule a condition inspection report and did provide a notice of final opportunity to conduct the move-out report. As such, the landlord complied with the Act.

In offsetting the landlord's claim, I authorize the landlord to retain \$75.00 from the currently held \$1,550.00 security deposit and order return of the balance owed of \$1,475.00.

Conclusion

The tenants are granted a monetary order for \$1,475.00.

This order must be served upon the landlord. Should the landlord 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: April 25, 2019

Residential Tenancy Branch