



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and both Tenants were present for the hearing. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord stated that she did not receive the Tenants’ evidence and the Tenants confirmed that their evidence was not served to the Landlord as she had previously seen the photos. However, as stated in the *Residential Tenancy Branch Rules of Procedure*, a party must serve the other party with copies of the evidence they intend to rely upon at the hearing. As this was not done, the Tenants’ evidence is not accepted and will not be considered in this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

On the Application for Dispute Resolution, the Tenants’ names were listed with their last names first. The Tenants’ names were clarified with the Tenants at the hearing and this was therefore amended on the Application for Dispute Resolution and on the cover

page of this decision. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy began on August 1, 2018 and ended on July 31, 2019. Month rent was \$1,700.00 and the Tenants paid a security deposit of \$850.00 at the start of the tenancy. The Landlord confirmed that she is still in possession of the full security deposit amount.

The Landlord has applied for compensation in the amount of \$4,515.00 for the cost of repairing the living room floor of the rental unit. The Landlord testified that the Tenants participated in the move-in and move-out inspection which confirms that there were scratches on the living floor that were not present at the start of the tenancy.

A copy of the Condition Inspection Report was submitted into evidence and the parties confirmed that the move-out inspection was conducted on July 31, 2019, the same day that the Tenants' forwarding address was provided as noted on the inspection report.

The Landlord stated that the floors were new at the start of the tenancy. The Tenants agreed that the floors in the living room were in good condition at the start of the tenancy and signed their agreement that there were scratches on the floor at the end of the tenancy. The parties agreed that they discussed repair of the flooring at the time of the move-out inspection but that no specific amount was agreed upon.

The Landlord stated that she had some leftover bamboo floor boards from when the unit was renovated, but that she did not have enough to complete the repairs. She stated that she had approximately 8 floor boards and would require approximately 20 to

complete the repairs. The Landlord stated that the scratched floor boards were in multiple areas in the living room. She stated her understanding that the scratches were not intentional, but that it was beyond reasonable wear and tear. The Landlord submitted photos of the floor into evidence.

The Landlord submitted that she attempted to find the same flooring to conduct the repairs but was unable to and that her contractor was also unable to. As such, she stated that the entire living room floor would need to be replaced. The Landlord submitted a quote for the work in the amount of \$4,515.00 dated and stated that this was the lowest quote she received.

The quote for the amount of \$4,515.00, dated August 11, 2019 notes that they are unable to find matching flooring and that the Landlord does not have sufficient flooring to replace the damaged areas. The quote includes disposal of the current flooring and installation of the new flooring.

The Landlord also submitted additional quotes. This includes a quote dated August 11, 2019 in the amount of \$3,885.00 for engineered flooring, which is from the same company as the quote mentioned above.

From a second company, the Landlord submitted a quote dated August 12, 2019 for hardwood floor replacement in the amount of \$4,725.00. This company also provided a quote for engineered wood floor replacement in the amount of \$3,675.00. Through the evidence submissions, the Landlord also noted that she would be fine to go ahead with a repair of the floor if the Tenants were able to find the same flooring, as she has not been able to.

The Landlord confirmed that she has not yet completed the living room floor replacement.

The Tenants stated that they agree regarding the scratches in the living room floor but stated that the whole living room was approximately 20 floor boards and therefore questioned the cost of the quotes provided. The Tenants stated that they tried to repair the scratches in the living room in the three areas and that they are barely noticeable from above. The Tenants described the scratches as normal wear and tear.

The Tenants stated that they called someone and confirmed that as the Landlord still had a few boxes of the floor boards, the cost of installing these would be \$60.00 per board.

The parties were offered the opportunity to come to a settlement agreement but were unable to reach an agreement.

Analysis

Regarding the Landlord's claim for damages to the floor, I refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As stated in Section 37 of the *Act*, a tenant must leave a rental unit reasonably clean and undamaged at the end of the tenancy. I accept the evidence before me as well as the testimony of both parties that there were scratches in the living room flooring at the end of the tenancy that were not present at the start of the tenancy. Although the Tenants stated that the scratches were reasonable wear and tear, I find the photos to support the Landlord's position that the scratches were beyond what would be considered reasonable wear and tear.

In determining whether compensation is due, *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord submitted four quotes regarding complete replacement of the flooring and is seeking an amount of \$4,515.00. The Landlord stated that this amount was the least

expensive of the options received, although it seems that she also received quotes for replacement with engineered floors instead of hardwood that were less expensive.

As stated, I do find that the Tenants were in breach of the *Act* due to the damage caused to the living room floor, however I am not satisfied that the Landlord established the value of the loss.

The Landlord submitted 4 quotes for replacement of the floors, one of which stated that the original flooring was no longer available. I find insufficient evidence to establish that the Landlord checked with other companies to confirm that they did not have access to the original flooring either. The Landlord also provided testimony that she was seeking the amount of \$4,515.00, which was the lower quote, although she did not explain why she was not able to go with one of the engineered flooring options which would have been less. As the Landlord also noted that she would conduct a repair instead of a replacement if available, I am not satisfied that she has established that she experienced a loss valued at \$4,515.00.

However, as I do find that the floors were damaged during the tenancy, I find that the Tenants should compensate the Landlord for the damages, despite not being satisfied as to the amount claimed by the Landlord. Therefore, in acknowledgment of the damage that occurred to the flooring, I award a nominal amount for the damage in the amount of \$400.00.

Regarding the security deposit, as stated in Section 38(1) of the *Act*, a landlord has 15 days from the later date of when the tenancy ends, or the forwarding address is provided in writing to return the deposit or file a claim against it. As the tenancy ended on July 31, 2019, the same day that the Tenants' forwarding address was provided in writing, the Landlord had 15 days from this date. The Landlord filed the Application for Dispute Resolution on August 13, 2019 and therefore applied within the time allowable under the *Act*. As such, the Landlord does not owe the Tenants double the deposit and may retain the deposit towards compensation owed.

Pursuant to Section 72 of the *Act*, I award the Landlord the recovery of the filing fee in the amount of \$100.00. As the amount owed to the Landlord is less than the security deposit amount, the Tenants are awarded a Monetary Order for the return of the remainder of the security deposit in the amount outlined below:

Security deposit	\$850.00
Less floor repair	(\$400.00)
Less filing fee	(\$100.00)

Total owing to Tenants	\$350.00
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Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$350.00** for the return of the security deposit after deductions as outlined above. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this 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: December 09, 2019

Residential Tenancy Branch