



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S MNRL-S

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlords' application for dispute resolution. In accordance with section 89 of the *Act*, I find that the tenants deemed served with the landlords' application for dispute resolution. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for losses or money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This fixed-term tenancy began on August 1, 2018, and ended on July 29, 2019. The monthly rent was set at \$3,000.00 payable on the first of every month. The tenants paid a security deposit in the amount of \$1,500.00, which the landlords still hold.

The landlords are seeking the following monetary orders:

Item	Amount
Loss of Rental Income	\$3,000.00
Cost of refinishing flooring	3,767.40
Filing Fee	100..00
Total Monetary Order Requested	\$6,867.40

The landlords are seeking a monetary order for the cost of refinishing the cork flooring, which the landlords believe was damaged by the tenants' dog. The landlords testified that no pet damage deposit was ever collected for this tenancy, as the tenants failed to disclose that they had a dog which would be residing at the rental unit. The tenants disputed this testimony, stating that the agent was made aware that a dog would be over occasionally, but that the agent did not elect to take a pet damage deposit.

The landlords testified that the tenants had attempted to move out before the end of this fixed-term tenancy, which was to end on July 31, 2019. The landlords testified that the tenants only signed the termination document on June 28, 2019 after they were caught attempting to move-out before the end of the tenancy. The landlords provided a document dated June 5, 2019 showing that the tenants requested an early end to the fixed term tenancy on June 30, 2019. The tenants dispute this stating that they had given proper notice to the landlords ,and paid the July 2019 rent as required by the *Act*. The landlords were able to re-rent the home for \$2,750.00 as of September 15, 2019, but testified that they had lost one and half month's rent. The landlords are seeking reimbursement of a month of lost rental income due to the fact that they had to perform repairs and due to the tenants' failure to accommodate showings. The tenants dispute the landlords claims that they were uncooperative, and testified that the landlords had the option to perform the repairs earlier.

The landlords confirmed that cork flooring was the original flooring from when the building was built in 2008. The landlords provided a receipt to show that the flooring was refinished in October of 2014. The landlords testified that the flooring was in good shape

at the beginning of the tenancy. The tenants dispute the landlords' claims, stating that the flooring was already showing signs of wear and tear as shown in the move-in inspection report. The report, which was submitted in evidence, indicates dimples and gouges. The landlord called a witness in the hearing who testified to the condition of the flooring. The witness testified that she had seen the flooring before the tenants had moved in, and that there was some wear and tear, but that it was not excessive, including depressions from furniture, and some sun damage. The witness testified that after the tenants moved out there were tiny hairline scratches everywhere, which were not present before they had moved in.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. It is disputed by both parties as to whether the landlords were informed of the tenants' dog. Regardless of whether the landlords were aware of the dog or not, I must consider whether the tenants or their dog had caused damage to the landlord's floor, and whether the tenants should be responsible for the losses incurred with any damage caused by them.

The landlords testified that the cork flooring, which was last refinished in 2014, was damaged by the tenants' dog. The tenants dispute this, stating that the flooring showed signs of wear and tear before they had even moved in. I have reviewed the evidence and testimony before me, and I am satisfied that although the cork flooring did show signs of wear and tear, the tenants' dog did further damage to the cork flooring by scratching the flooring to the extent that refinishing would be required. I am satisfied that due to the tenants' actions, the landlords suffered a loss, and are entitled to some monetary compensation for this loss.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the flooring.

As per this policy, the useful life of hardwood or parquet flooring is 20 years. The flooring was the original flooring from when the unit was built in 2008, and therefore had approximately 9 years left at the end of the tenancy. It is noted that the landlords did refinish the flooring in October of 2014, 6 years later. The landlords are seeking a monetary order for the cost of refinishing the flooring, and not a full replacement, which satisfies their obligation to mitigate the tenants' exposure to their losses as required by section 7(2) of the *Act*. I am also satisfied that at the time the tenants had moved in, the refinished cork floors already showed signs of wear and tear almost 5 years after the floors were last refinished. I accept that due to the nature of the cork flooring that the landlords may need to maintain the floors by continuing to refinish the floors as shown by the landlords' own evidence and history of repairs. I find that the tenants' pet did contribute to some damage that exceeded normal wear and tear, and therefore should be responsible for a portion of the landlords' cost of refinishing the floors. I find it reasonable that the tenants should be responsible for half the cost of the floor refinishing. The landlords are granted a monetary order in the amount of \$1,883.70.

Although the landlords testified that the tenants had attempted to end the fixed-term tenancy early, I find that the evidence shows that the tenants had ultimately given notice, and moved out in accordance with the *Act*. The landlords are seeking a monetary order for one month of lost rental income due the tenants' actions. As stated above, the burden of proof falls on the landlords to prove their claim, and that they had taken reasonable steps to mitigate these losses. I am not satisfied that the evidence presented supports that the landlords had suffered a loss of rental income due to the tenants' actions, and accordingly this portion of their claim is dismissed without leave to reapply.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$483.70 in the landlords' favour under the following terms which allows the landlords to retain the security deposit in satisfaction of the monetary claim for damages, plus recover the \$100.00 filing fee for this application.

Item	Amount
Monetary Order for floor damage	\$1,883.70
Filing Fee	100.00
Less Security Deposit	-1,500.00
Total Monetary Order	\$483.70

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenants 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.

The remaining portion of the landlords' application is dismissed without leave to reapply.

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 16, 2019

Residential Tenancy Branch