



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FFL

Introduction

On September 16, 2019, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the rental unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenants attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order for damage to the rental unit?
- Are the Landlords entitled to keep the security deposit towards their claims?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on August 1, 2018 as a one-year fixed term tenancy. Rent in the amount of \$1,600.00 was to be paid to the

Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$800.00. The parties testified that the Tenants moved out of the rental unit on July 31, 2019.

The Landlord is seeking compensation in the amount of \$787.50 to recover costs for the repair of flooring in the rental unit.

The Landlord testified that there was a move in inspection at the start of the tenancy and any deficiencies were noted. The Landlord testified that they had some concerns with the Tenant, so they issued a notice of inspection and entered the rental unit on March 7, 2019. The Landlord testified that at that time they noticed the flooring was dented.

The Landlord testified that the flooring was 1.5 years old and is high quality flooring. The Landlord submitted that they asked the Tenants to repair the flooring before they moved out.

The Landlord testified that the Tenant Ms. S.M. was present for the move out inspection and the Landlord noted on the report that the floor was dented. The Landlord stated that the Tenant did not agree that the Landlord could keep the security deposit. The Landlord provided a copy of a two-page inspection report with a move out inspection date of August 1, 2019. The move out section of the report is not signed by the Tenant and does not contain a forwarding address for the Tenants. The report indicates the living room floor is dented.

The Landlord provided three color photographs of the flooring. One photograph shows a large area of flooring, and another photograph shows flooring planks laying outside on the lawn. The Landlord provided a copy of an invoice date August 15, 2019 in the amount of \$787.30 for the cost of the floor repair.

The Landlord testified that on September 7, 2019 he received a letter from the Tenant requesting the return of the security deposit, so the Landlord applied for dispute resolution, and provided the Tenants with a copy of the inspection report. The Landlord provided a copy of a letter received from the Tenants dated September 7, 2019 containing their forwarding address.

The Landlord applied for dispute resolution making a claim against the security deposit on September 16, 2019. The Landlord testified that he sent the Tenants the amount of \$12.50 on September 18, 2019.

In reply, the Tenants provided testimony that the dents are not visible and any dents in the flooring is just normal wear and tear from furniture. They testified that their tenancy agreement states they are not responsible for normal wear and tear.

The Tenant testified that at the time of the move out inspection they had a different opinion on the matter and did not agree that they were responsible for damage. The Tenants submitted that there is no evidence of damage on the planks.

The Tenant testified that the Landlord had their email address and their phone number. The Tenants submitted that the Landlord's right to claim against the deposit is extinguished if the Landlord does not provide a copy of the inspection report within 15 days.

The Tenants testified that they provided the Landlord with their forwarding address on September 7, 2019 using mail.

The Tenants confirmed that they received an e-transfer of \$12.50 from the Landlord.

Security Deposit

The Landlord is seeking to keep the security deposit of \$800.00 and pet damage deposit in satisfaction of the Landlord's claims.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Section 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit at the end of the tenancy before a new tenant begins to occupy the rental unit. The Landlord is required to complete the condition inspection report; and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 36 (2) (c) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 18 of the Residential Tenancy Regulation provides that the landlord must give the tenant a copy of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

- (i) the date the condition inspection is completed, and
 - (ii) **the date the landlord receives the tenant's forwarding address in writing.**
- (2) The landlord must use a service method described in section 88 of the Act [service of documents].

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I make the following findings:

The Landlord must provide proof that the damage or loss exists. I have considered the Landlords evidence and the Tenants submission that any damage present is wear and tear. I find that the photographs do not show damage to the flooring beyond normal wear and tear. I find that there is insufficient evidence from the Landlord to prove that the Tenants are responsible for damage to the flooring.

The Landlords claim for compensation of \$787.50 for floor repair costs is dismissed without leave to reapply.

Security Deposit

The Act provides that documents served to party are deemed to be delivered on the fifth day after they are mailed. I find that the Landlord received the Tenants forwarding address on September 12, 2019, the fifth day after it was mailed.

On September 16, 2019 the Landlord applied for dispute resolution requesting to keep all or part of the security deposit. The Landlord applied to keep the deposit within 15 days of receiving the Tenants forwarding address. The Landlords evidence indicates the Landlord served the Tenants using registered mail sent on September 22, 2019. I find that the Landlord provided the Tenants with the inspection report within 15 days of receiving the Tenants forwarding address.

I find that the Landlord is holding a security deposit in the amount of \$787.50.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were not successful with their claim, I decline to order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I order the Landlord to repay the amount of \$787.50 to the Tenants. I grant the Tenants a monetary order for \$787.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords were not successful with their claim for compensation for the cost of flooring.

I order the Landlords to repay the security deposit to the Tenants. I grant the Tenants a monetary order in the amount of the amount of \$787.50.

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: February 6, 2020

Residential Tenancy Branch