Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for a monetary order in the amount of $3,169.76 for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlords, and the tenant AN (tenant) attended the teleconference hearing and gave affirmed testimony. The landlords and tenant were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The hearing began on March 9, 2020 and after 59 minutes, the hearing was adjourned to allow additional time to hear testimony from the parties and to consider documentary evidence. On March 9, 2020, an Interim Decision was issued, which should be read in conjunction with this decision. On May 11, 2020, the hearing continued and after an additional 54 minutes, the hearing concluded.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant requested an adjournment based on the landlord withhold the tenant's security deposit and due to a device not being available and due to his partner having to work. The criteria for granting an adjournment are set out in the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). The criteria that apply are:

1. the views of the parties;
2. whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1. Rule 1 notes that the objectives of the Rules of Procedure are to secure a consistent, efficient and just process for resolving disputes;
3. whether the adjournment is required to provide a fair opportunity to be heard, including whether a party has sufficient notice of the hearing;
4. the degree in which the need for an adjournment arises out of the intentional actions or the neglect of a party seeking the adjournment; the possible prejudice to each party.

Based on the above, the tenants' request for an adjournment was denied as I find that none of the reasons stated by the tenant are important enough to justify delaying the hearing and that the tenant attended the hearing and could proceed. I also find that to delay the hearing would not be fair to the landlord who had to wait since October 2019 for the hearing which began in March 2020. As a result, the hearing proceeded.

In addition, the email addresses for the parties were confirmed with the parties. The parties confirmed their understanding that the decision would be emailed to the parties. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Finally, the surname of the female tenant was corrected pursuant to section 64(3)(c) of the Act.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 24, 2016 and reverted to a month to month tenancy after May 1, 2017. The monthly rent was $2,034.00 per month and was due on the first day of each month. The tenants paid a security deposit of $1,000.00 and a pet damage deposit of $200.00,

which the landlords continue to hold. The landlords wrote on the addendum that the pet damage deposit is non-refundable, which I will address later in this decision.

The landlords' monetary claim for $3,169.76 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Missing light bulbs and repair to damaged drawer	$129.67
2. Window screens that were never installed but was deducted	$421.00
3. Damage to floors due to pet urine	$2,139.60
4. 6 hours of deep cleaning by owner and husband ($50.00 per hour)	$300.00
5. Broken and damaged blinds	$179.49
TOTAL	**$3,169.76**

Regarding item 1, the parties reached a mutually settled agreement regarding item 1, which will be described later in this decision.

Regarding item 2, the landlord has claimed $421.00 for window screens that the landlord testified was deducted from rent but never installed by the tenants. The landlord testified that the tenants did not leave any blinds in the rental unit even though the landlords agreed to deduct $87.34 from September rent and $335.00 from October rent for a total of $422.34, which the landlord stated they rounded down to $421.00. The tenant's response was that they did purchase the screens but that the landlords refused to accept the screens. The landlord testified that they would not refuse the screens as they would have stayed with the rental unit if they were purchased. The landlord argues that the tenants received a deduction in rent and allege that the window screens were used by the tenants to receive a rent deduction to pay for blinds and the blinds were not at the rental unit when they vacated.

The landlord stated that the tenants have failed to provide 2 receipts to support that they purchased the blinds. The landlord also stated that even if the blinds were purchased, they were not left in the rental unit, so the landlord has suffered a loss as rent was deducted to pay for the blinds. The landlord referred to several documents supporting that rent was deducted for the purpose of the tenants purchasing blinds.

Regarding the incoming Condition Inspection Report (CIR) the landlord stated that that because the landlords were out of the country at the time the incoming CIR was

completed by her elderly mother, and that their elderly mother mistakenly left the original incoming CIR with the tenants, which was not returned to the landlords.

Regarding item 3, the landlord has claimed $2,139.60 for the cost to repair damaged flooring due to pet urine. The landlord stated that there was laminate throughout the rental unit with the exception of the kitchen and living room. The landlord presented the receipts, which match the amount being claimed. The landlord was asked about the age of the flooring at the start of the tenancy. The landlord testified that due to flooding in the rental unit in 2014, the flooring was installed new in 2014 so would have been 2 years old at the start of the tenancy in 2016. As the tenancy ended in October 2019, that would make the flooring 5 years old by the end of the tenancy. The landlord testified that they have not charged the tenants for the cost of baseboards, floor levelling and disposal of old flooring. This was to minimize their claim according to the landlord. The landlord also submitted supporting documents, which indicate that the flooring was purchased in 2014.

The landlords were aware that the tenants would be getting a puppy; however, the landlords were not expecting the puppy to have peed continually on the laminate to the point of soaking the underlay with dog urine. Furthermore, the landlord testified that they only became aware of how bad the pet urine damage was when the laminate flooring was lifted to expose the soaked underlay beneath. In the November 4, 2019 email presented by the landlords, the flooring contractor AK (contractor) wrote in part:

> Upon floor removal at [the rental unit] I have noticed significant water damage through out the apartment. Worst of the damage was in the kitchen next to the exterior door and in the living room by the french doors. Also, dining area and both bedrooms had floor damage. As per your concern I do not believe that the fridge was the cause of any of the damage in the kitchen. Floor underneath the fridge was in perfect condition. Laminate flooring even though it is very durable it does not like water. Simply spilling something or walking with really wet shoes can cause significant damage. During floor removal I started to smell a very strong odor of animal urine. The smell came from the underlay inside the apartment. The would explain the odor and the damage through out. Please refer to the attachment to see what liquid can do to laminate flooring.

The tenant’s response to item 3 was that the flooring was already “messed up” when the tenancy began; however, the emails the tenant stated they had they did not submit in evidence. The tenant requested several times to submit late evidence, a request which was denied as I find that the timelines to serve evidence had long since passed

by the time of the hearing, and the parties were also informed that an adjournment would not extend any applicable deadlines for service of evidence and that to do so would prejudice the landlord who did submit their evidence on time in accordance with the RTB Rules. The tenant denied that their dog damaged the flooring. The tenant alleged that contractors who entered the rental unit before they vacated could have damaged the flooring. The tenants did not submit any documentary evidence such as photo evidence to support the condition of the rental unit at the start of the tenancy versus the end of the tenancy.

Regarding item 4, the landlord has claimed $300.00 for the cost to deep clean the rental unit for 6 hours. The landlord stated that the amount was reached as both landlords spent 6 hours to clean the rental unit. The landlord also stated that 6 hours was a conservative amount as they spent more time than they have claimed for in their application. The landlord referred to several colour photos including photos of dog feces in the backyard, black garbage bags left behind by the tenants, leashes and chains for their dog, and glass items removed from garburator. The landlord also presented photos of a dirty stove and blinds. The landlord also testified that at the end of the tenancy that tenant stated to the landlord “you have no walkthrough so I don’t have to clean” and smiled at the landlord.

The landlord presented photo evidence of a dirty dishwasher, a very dirty washing machine filter that the landlords stated appeared never to have been cleaned during the tenancy, and a dirty freezer and dirty passage way door. The landlords testified that they rent themselves and were taken aback at the dirty condition the tenants left the rental unit in and their attitude.

The tenant’s response to item 4 was that the landlords were liars and that the pictures were taken before the tenants moved out. The tenant also claims they hired a professional cleaner; however, admitted they had no evidence submitted to support that they paid a cleaner to clean the rental unit before they vacated. The tenant stated that regarding the dog feces that the “landlords are trying to play their game.” The tenant claims that the flooring was damaged from a fridge leak that was there when they moved in.” The landlords responded to the tenant by referring back to the November 4, 2019 email from AK, which was described earlier above. The landlords stated that the flooring person AK checked under the fridge and there was no water damage, as claimed by the tenant during the hearing.

In addition, the landlords referred to several documents which support the condition of the rental unit at the start of the tenancy. The landlords testified that on April 15, 2016,

the rental unit was very clean and that as an investment property, the landlords take pride in keeping the rental unit in clean condition for tenants. The landlords referred to three documents submitted in evidence, the first one of which was a text from the tenant dated April 15, 2016, which shows the condition of the rental unit in a clean condition. The landlord stated the tenant was asked for these photos on September 29, 2019, which is supported by the texts submitted in evidence. There are three interior photos and two exterior photos all dated April 15, 2016. All 5 of the photos appear to show a clean and tidy rental unit inside and outside.

The tenant denies that the tenants took the photos the landlord is referring to, and the female landlord stated that it was too bad that the other tenant did not participate in the hearing as it was tenant JD who took the photos, so the male tenant denying the pictures doesn't make sense to the landlords, when the texts support the tenant sent them to the landlords. The tenant admitted to saying to the landlord that there was no incoming inspection but denies that he is the type of person to laugh about it to the landlord.

Regarding item 5, the parties reached a mutually settled agreement regarding item 5, which will be described later in this decision.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlords bear the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I will deal with the pet damage deposit being listed as non-refundable. Section 7 of the *Residential Tenancy Regulation* (the Regulation) applies and states:

> **Non-refundable fees charged by landlord**
>
> **7**(1)A landlord may charge any of the following non-refundable fees:
>
> (a)direct cost of replacing keys or other access devices;
>
> (b)direct cost of additional keys or other access devices requested by the tenant;
>
> (c)a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
>
> (d)subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
>
> (e)subject to subsection (2), a fee that does not exceed the greater of $15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
>
> (f)a move-in or move-out fee charged by a strata corporation to the landlord;
>
> (g)a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

I find that security deposits and pet damage deposits are not listed as a non-refundable fee under this section, which are the only non-refundable fees a landlord can charge a tenant under the Act and regulation. As a result, **I caution** the landlords to comply with sections 19 and 38(1) of the Act, which apply and state:

> **Limits on amount of deposits**
>
> **19**(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
>
> (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

and

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a)the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Item 1 – The parties reached a mutually settled agreement regarding item 1, where the tenant agreed to compensate the landlords $129.67 for missing light bulbs and the repair to a damaged drawer pursuant to section 63 of the Act.

Item 2 - The landlord has claimed $421.00 for window screens that the landlord testified was deducted from rent but never installed by the tenants. Based on the documentary evidence before me including emails from the landlord and the payments, which show the deductions, I find that the landlords have met the burden of proof to support that the tenants deducted $421.00 for blinds, yet those blinds were either removed by the tenants or never installed in the rental unit. Therefore, I find the tenants are liable and must compensate the landlords $421.00 as claimed as I am not persuaded by the tenant’s testimony alleging that the landlords refused to accept the screens. In reaching this finding I have taking the landlords’ testimony that they denied refusing the screens and I find that it would be highly unlikely that the landlords would refuse to accept items that they ultimately paid for by allowing a rent reduction in the amount of $421.00. Given the above, I grant the landlords **$421.00** as claimed for item 2.

Item 3 - The landlords have claimed $2,139.60 for the cost to repair damaged flooring due to pet urine. I accept the undisputed age of the flooring, being 5 years old by the time the tenancy ended. I also accept the testimony of the landlords that they were minimizing their claim by not charging the tenants for the cost of baseboards, floor levelling and disposal of damaged flooring. I find that the tenant denying that their dog damage the flooring is inconsistent with the photo evidence, which I find clearly shows dog damage to the blinds and given that the dog was a puppy, described during the

hearing when the tenancy began, I find that it is more likely than not that the severe urine smell was from the tenants' dog and that the smell was so bad that the flooring had to be replaced.

I also afford the November 4, 2019 email (flooring email) presented by the landlords significant weight as it is from the flooring contractor AK (contractor) who confirmed that the area under the fridge was in perfect condition at the end of the tenancy and that the urine-soaked areas were next to the exterior door and in the living room by the french doors. I also find that the tenants' allegation that the fridge leaked causing floor damage to be contrary to the flooring email. In addition, I find the tenants provided insufficient evidence to support that the flooring was "messed up" as claimed. I find the tenant failed to provide specifics on how the flooring was "messed up" and note that there were no photos or emails to support the tenants' testimony.

I also find that RTB Policy Guideline 40 – Useful Life of Building Elements applies and states that the useful life for tile flooring is 10 years and the useful life for hardwood is 20 years. Given that laminate flooring is not listed, I find that laminate is a closer comparison to tile flooring at 10 years, versus hardwood flooring at 20 years. Therefore, I find that laminate flooring has a useful life of 10 years and that the landlords have had 5 years of use of the flooring. Therefore, I will apply a 50% depreciated value to the cost of the laminate flooring and underlay, but I will not apply depreciation the labour as I find the damage from the dog is negligence and that the labour rate should not be depreciated as I find if it were not for the dog, the flooring would likely not be in need of repair. Therefore, I grant the full amount of labour at **$937.00**, which incorporates the $695.00 labour and $242.00 for flooring removal costs. The remainder of the $2,139.60 amount claimed, which totals $1,202.60, I award the landlords 50% after depreciation is applied for an amount of **$601.30.** Based on the above, I find the landlords have met the burden of proof for a total amount of **$1,538.30**, which is comprised of $937.00 for labour, plus $601.30 for the depreciated flooring.

Item 4 - The landlord has claimed $300.00 for the cost to deep clean the rental unit for 6 hours. Section 37(2) of the Act applies and states:

> **Leaving the rental unit at the end of a tenancy**
>
> **37**(2) When a tenant vacates a rental unit, the tenant must
>
> (a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear**, and

> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.
>
> [Emphasis added]

I have reviewed the photo evidence and find that the evidence supports that the rental unit was not professional cleaned by the tenant as the tenant claimed. Furthermore, the tenant provided no documentary evidence such as a cleaner invoice and I find the photos of dog feces, numerous garbage bags, glass items removed from the garburator, a dirty dishwasher, very dirty washing machine, dirty freezer and a dirty passage way door and other items left behind by the tenant supports the landlord's claim, which I find to be reasonable at $300.00. In addition, regardless of the condition of the rental unit at the start of the tenancy, a tenant is required to leave the rental unit in a reasonably clean condition at the end of the tenancy, so I find the tenant breached section 37(2) of the Act.

As tenant JD did not attend the hearing, I afford little weight to the tenant stating that JD did not take the photos submitted to the landlord as JD was not available to provide direct testimony. Therefore, I find the landlords have met the burden of proof and I award the landlords **$300.00** as claimed for this portion of their claim.

Item 5 - The parties reached a mutually settled agreement regarding item 5, where the tenant agreed to compensate the landlords $179.49 for broken and damaged blinds pursuant to section 63 of the Act.

As items 1 and 5 were resolved by way of a mutually settled agreement in accordance with section 63 of the Act, the parties confirmed that their agreement was made on a voluntary basis and that the parties understood the binding nature of the full and final settlement of those specific matters.

As the landlords' claim had merit, I grant the landlords the recovery of the cost of the filing fee in the amount of **$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlords have established a total monetary claim of **$2,668.46** as described above. I grant the landlords authorization to retain the tenants' full security deposit of $1,000.00 and full $250.00 pet damage deposit in partial satisfaction of the landlords' monetary claim. Pursuant to section 67 of the Act, I grant the landlords a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenants to the landlords in the amount of **$1,418.46**.

Conclusion

The landlords' claim is mostly successful.

I order the parties to comply with the portions resolved by way of a mutually settled agreement pursuant to section 63 of the Act.

The landlords have established a total monetary claim of $2,668.46. The landlords have been authorized to retain the tenants' combined deposits of $1,250.00 in partial satisfaction of the landlords' monetary claim pursuant to sections 38 and 67 of the Act.

The landlords have been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlords in the amount of $1,418.46.

Should the landlords require enforcement of the monetary order, the monetary order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlords only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 27, 2020

Residential Tenancy Branch