Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL, FFL (Landlord)
MNSD, MNDCT, FFT (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed the application February 04, 2020 (the "Landlord's Application"). The Landlord sought compensation for damage to the rental unit, compensation for monetary loss or other money owed, to keep the security deposit and reimbursement for the filing fee.

The Tenants filed the application February 19, 2020 (the "Tenants' Application"). The Tenants sought compensation for monetary loss or other money owed, return of double the security deposit and reimbursement for the filing fee.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose at the outset. During the hearing, Tenant J.D. raised an issue in relation to some late evidence provided by the Landlord. However, when asked further whether the Tenants were taking issue with this evidence, Tenant J.D. said the Tenants were not.

The Landlord confirmed the Tenants paid outstanding utilities after the Landlord's Application was filed and therefore the Landlord withdrew the request for $205.69 for compensation for monetary loss or other money owed.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?

2. Is the Landlord entitled to keep the security deposit?

3. Is the Landlord entitled to reimbursement for the filing fee?

4. Are the Tenants entitled to compensation for monetary loss or other money owed?

5. Are the Tenants entitled to return of double the security deposit?

6. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Floor repair	$1,608.54
2	Filing fee	$100.00
	TOTAL	**$1,708.54**

The Tenants sought the following compensation:

Item	Description	Amount
1	Six days of rent	$570.97
2	Double the security deposit	$2,950.00
3	Filing fee	$100.00
	TOTAL	**$3,620.97**

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 15, 2017 and was for a fixed term ending August 31, 2018. The tenancy then became a month-to-month tenancy. Rent was

$2,950.00 per month due on the first day of each month. The Tenants paid a $1,475.00 security deposit.

The parties agreed the Tenants vacated the rental unit January 25, 2020.

The Tenants testified that they provided their forwarding address to the Landlord December 14, 2019. The Landlord acknowledged receiving this and thought he received it December 15, 2019.

The Landlord acknowledged he did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Landlord took the position that the Tenants agreed to him keeping the security deposit on the Condition Inspection Report (the "CIR"). The CIR was in evidence. The Tenants testified that they did not agree to the Landlord keeping a specific amount of the security deposit on the CIR.

The parties agreed the CIR in evidence is accurate.

The CIR shows the parties did a move-in inspection September 22, 2017, completed the CIR and signed the CIR. The parties agreed the rental unit was empty at the time. Tenant J.D. testified that the Tenants received a copy of the CIR on the date of the inspection.

The CIR shows the parties did a move-out inspection January 25, 2020, completed the CIR and signed the CIR. The parties agreed the rental unit was empty at the time. Tenant J.D. testified that the Tenants received a copy of the CIR February 08, 2020 as evidence for this hearing. The Landlord could not remember whether the CIR was sent to the Tenants prior to this.

The parties agreed the Tenants paid the outstanding utilities originally sought in the Landlord's Application on February 06, 2020.

Landlord's Application

The Landlord sought $1,608.54 in compensation for damage to the floor in the living room of the rental unit. The Landlord's position was that the Tenants' movers damaged the floor while moving the Tenants' possessions out of the rental unit in January. The Landlord testified that the living room flooring is fir. He testified that it is 100 years old

but was refinished in 2012. The Landlord testified that the flooring looked brand new in 2012.

The Landlord testified that he obtained two quotes to fix the damage to the floor and that the amount sought reflects the lower quote. He testified that both companies said they cannot just fix the gouge in the floor and that the entire living room will have to be refinished. The Landlord testified that the quote only covers the living room and not other flooring in the rental unit.

The Landlord testified that the Tenants felt the amount of the quote was too high. He said he gave the Tenants an opportunity to provide another quote from a reputable company. The Landlord testified that the Tenants said they would have the movers fix the floor which he did not find acceptable given they had already damaged the floor and were not part of a professional flooring company.

The Tenants raised two main objections to the Landlord's position.

First, the Tenants pointed out that the flooring is 100 years old and submitted that it is at the end of its useful life. Tenant J.D. testified that it is not worth bringing the flooring back to its original condition.

Second, the Tenants submitted that there is no need for the Landlord to do the entire living room floor when the damaged area is only 30 square feet.

Tenant J.D. further testified as follows. The evidence shows the Landlord did the floors in 2012 and so it is unclear why the Landlord now needs a professional company to do the floors. The Tenants did not want the movers to fix the damage, the moving company has a dedicated repair team that the Tenants wanted to use. The Tenants had the moving company contact the Landlord several times.

The Tenants could not point to evidence submitted to support the position that they had the moving company contact the Landlord several times.

In reply, the Landlord testified as follows. He told the Tenants to have the moving company contact him and, if he was satisfied they were qualified to fix the damage to the floor, he would be willing to entertain this suggestion. However, the Tenants never followed up about this. He does not know the name of the moving company and was never contacted by them.

The CIR shows the living room flooring had scratches and was in fair condition on move-in and was damaged on move-out.

The Landlord submitted a photo of the damage to the floor. It is a large scrape or gouge in the floor that covers multiple floor planks.

The Landlord submitted quotes of $2,075.00 and $1,608.54 to fix the floor.

The Tenants submitted written submissions stating as follows. Their movers damaged a 30 square foot section of the floor. The Landlord's quote goes beyond fixing the damage. The Landlord's quote is from an up-scale company for a floor that was already uneven. The floor coloring was already uneven on move-in. The Landlord could have minimized the damage by covering the floor with a carpet. The Landlord did not let the repair team of the moving company fix the damage.

The Tenants submitted an alternative quote for fixing the floor of $580.00 plus GST.

The Tenants submitted a text showing the Landlord asked them to have the moving company call the Landlord about fixing the floor.

The Tenants submitted an email from the Landlord stating he will keep an open mind about the moving company fixing the floor.

The Tenants submitted photos of the floor on move-in.

The Tenants submitted online reviews of the companies the Landlord obtained quotes from.

The Tenants submitted a statement from an insurance company that says, "If properly installed and cared for, hardwood flooring has excellent longevity. A 100-year lifespan for solid wood flooring is possible, though 50-70 years is more likely."

Tenants' Application

The Tenants sought reimbursement for six days of rent. The Tenants submitted that they overpaid rent because they vacated the rental unit Janaury 25, 2020. The Tenants testified that the Landlord allowed the new tenants to move into the rental unit January 25, 2020.

The Landlord agreed he did an inspection with the new tenants January 25, 2020 and gave them the keys to the rental unit this date. The Landlord testified that he told the new tenants they could move some stuff in prior to the start of their tenancy on February 01, 2020. The Landlord testified that the new tenants did not pay rent until February 01, 2020.

The Landlord testified that he received notice from the Tenants ending the tenancy on December 14, 2020. He said the Tenants said they were moving out January 15, 2020. The Landlord testified that he told the Tenants they were required to pay rent for the full month of January given the timing of the notice. The Landlord testified that the move-out inspection was scheduled for earlier in January, but the Tenants asked to change it to January 25, 2020 and he agreed.

In reply, the Tenants testified as follows. The Landlord proposed changing the inspection to January 25, 2020 and they agreed. Tenant J.D. acknowledged the Landlord did not tell the Tenants they had to vacate January 25, 2020.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure (the "Rules"), it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning "it is more likely than not that the facts occurred as claimed".

Security Deposit

Under sections 24 and 36 of the *Residential Tenancy Act* (the "*Act*"), landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the CIR and testimony of the parties, I am satisfied the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

Based on the CIR and testimony of the parties, I am satisfied the Landlord complied with his obligations in relation to the move-in and move-out inspections and did not extinguish his rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*. Further, extinguishment only relates to claims for damage. Here, the Landlord

originally claimed for unpaid utilities. Although the Landlord withdrew this at the hearing, the claim was justified on February 04, 2020 when the Landlord's Application was filed as the Tenants did not pay this amount until February 06, 2020.

Based on the testimony of the parties, I find the tenancy ended January 25, 2020 for the purposes of section 38(1) of the *Act* as this is the date the parties did a move-out inspection and the Tenants gave the keys to the rental unit back.

Based on the testimony of the parties, I am satisfied the Tenants provided their forwarding address to the Landlord in December of 2019.

January 25, 2020 is the relevant date in relation to section 38(1) of the *Act*. Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of January 25, 2020. The Landlord's Application was filed February 04, 2020, within the 15-day time limit. I find the Landlord complied with section 38(1) of the *Act*. Therefore, the Tenants are not entitled to double the security deposit back pursuant to section 38(6) of the *Act*.

The Landlord took the position that the Tenants agreed to him keeping the security deposit on the CIR. I have reviewed the CIR. The Tenants did not agree to the Landlord keeping a specific amount of the security deposit and therefore the Landlord is not entitled to keep a specific amount pursuant to section 38(4) of the *Act*.

Compensation

Section 7 of the *Act* states:

> 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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - 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.

Landlord's Application

Section 37(2) of the *Act* states:

> (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…

There is no issue that the Tenants' movers damaged the floor of the living room of the rental unit as the parties agree on this. The Tenants are responsible for damage caused by people they allow onto the property and therefore are responsible for the damage to the floor.

The floor was damaged while the movers were moving the Tenants' belongings. This is not natural deterioration that occurs due to aging and other natural forces. I am satisfied based on the photo of the damage that it is not minimal or minor damage. The scratch or gouge is deep, thick and covers multiple floor planks. I am satisfied the damage is beyond reasonable wear and tear. I am satisfied the Tenants breached section 37 of the *Act* in relation to this damage.

I note that it was not the Landlord's repsonsiblity to ensure the floor was not damaged by putting carpets on it as suggested by the Tenants in their written submissions. It was the Tenants' responsibility to ensure their movers did not damage the floor. If this meant putting carpets down, the Tenants should have done so.

I am satisfied the Landlord has suffered damage or loss due to the floor damage. The damage is significant enough that I am satisfied it decreased the value of the floor and rental unit. Further, it is significant enough that I am satisfied it is reasonable for the Landlord to fix the damage.

The Landlord submitted two quotes for fixing the damage to the floor. The Landlord has sought compensation for the lower amount being $1,608.54. The Tenants take issue with this amount.

I am not satisfied the amount of compensation awarded to the Landlord should be reduced on the basis that the Tenants tried to have the moving company fix the floor. In the absence of further evidence showing the moving company was qualified to fix the floor, I am not satisfied they were. I do not accept that the Landlord should have to use whomever is willing to fix the floor, regardless of their qualifications. Given the nature of wood flooring, and the damage, I am satisfied the Landlord is entitled to hire a professional company that has experience to fix the floor.

Further, I am not satisfied the Tenants took reasonable steps to have the moving company fix the floor. I am not satisfied the Tenants had the moving company contact the Landlord as requested. The documentary evidence shows the Landlord told the Tenants to have the moving company contact him. The Tenants could not point to documentary evidence showing they followed up and had the moving company contact the Landlord. I would expect there to be some documentary evidence of this given the parties communicated about this issue over text and email. The only documentation about this I see in evidence is from the Tenants after the fact asserting that they tried to have the moving company fix the floor. I do not find the Tenants' own statements to this effect compelling evidence that they did in fact take reasonable steps to have the moving company fix the floor.

I am satisfied the amount of compensation awarded to the Landlord should be reduced due to the age of the floor. I am satisfied the floor is 100 years old and therefore the Landlord has had many years of use out of it.

However, I am not satisfied the Landlord is not entitled to any compensation because of the age of the floor. Based on the CIR, I am satisfied the floor was in fair condition on move-in. Based on the photos submitted, I am satisfied the floor is in reasonable shape and do not find it unreasonable for the Landlord to fix the floor to get further use out of it. I have also considered that the floor has been refinished in the past. The Landlord testified this was done in 2012. The materials seem to suggest it was done in 2009.

Regardless, I am satisfied the floor was refinished and therefore the Landlord is not now seeking to address 100 years of damage.

I am also satisfied the amount of compensation awarded to the Landlord should be reduced given the Landlord's quote is to refinish the entire living room floor. I accept that the flooring companies stated this needs to be done. I do not find this unreasonable. However, I am not satisfied the Tenants are responsible for the cost of refinishing the entire living room floor because this will address wear and tear and damage that has occurred since 2009 or 2012 and not just the damage caused by the Tenants.

The Tenants submitted an alternate quote of $580.00 plus GST to fix the floor. I understand this quote to be the cost of addressing the damage caused by the Tenants alone and nothing further. The Landlord raised issues with this quote in his written submissions. I do have some concerns about the quote. It does not include replacing the damaged planks or filling the scratch or gouge. It appears to contemplate the damage being pressed wood. I do have questions as to whether the proposed work would actually fix the damage. Further, the quote itself raises concerns as it is simply a typed word document and does not appear to be an official quote or from a professional company.

Considering all of the above, I find the appropriate amount of compensation to be $609.00. I have based this amount on the Tenants' quote for the work but not solely because I accept or rely on the quote. I find this to be an appropriate amount considering the extent of the damage, age of the floor and considering I am not satisfied the Tenants are responsible for the cost of refinishing the entire living room floor. I find this amount balances the factors noted above.

The Landlord is awarded $609.00 for the floor repair.

Given the Landlord was partially successful in the Landlord's Application, I award the Landlord reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Tenants' Application

The Tenants seek reimbursement for six days of rent that they did not reside in the rental unit.

There is no issue that the Tenants provided notice ending the tenancy December 14, 2019. At the time, this was a month-to-month tenancy. Rent was due on the first day of each month. Pursuant to section 45(1) and 53 of the *Act*, the notice did not end the tenancy until January 31, 2020.

Pursuant to section 26 of the *Act*, the Tenants were required to pay rent for the duration of the tenancy agreement. Therefore, they were required to pay rent up until January 31, 2020. Further, rent was due on the first day of each month and, therefore, on January 01, 2020 the Tenants were required to pay $2,950.00 for January rent. The Tenants did so.

The parties agreed the Tenants vacated the rental unit Janaury 25, 2020. I find the Tenants did so by choice. It may be that this date was the most convenient for all to do the move-out inspection and hand over keys. But I do not find this to be the point. If the Tenants wanted to stay in the rental unit until January 31, 2020, they were entitled to do so. The Tenants acknowledge that the Landlord did not tell them they had to vacate on January 25, 2020 or otherwise require them to do so. Therefore, in my view, the Tenants chose to do so. The Tenants are not entitled to reimbursement for six days of rent when they chose to vacate the rental unit early.

The Tenants were not entitled to end the tenancy through their notice until January 31, 2020. The Landlord was entitled to receive rent up until January 31, 2020. The Tenants choosing to vacate early does not change this.

If the Landlord had collected rent from the new tenants starting January 25, 2020, I may have found differently. But I am satisfied the Landlord did not do so and therefore do not find this to be a situation where the Landlord benefited from the Tenants vacating January 25, 2020.

The Tenants are not entitled to reimbursement for six days of rent.

I decline to award the Tenants reimbursement for the filing fee. The Tenants were not successful in their claim for return of double the security deposit. The Tenants were not successful in their claim for six days of rent. The Tenants will be receiving $766.00 of

their security deposit back; however, this was determined on the Landlord's Application and the result would have been the same had the Tenants not filed the Tenants' Application.

Summary

In summary, the parties are entitled to the following compensation.

Landlord:

Item	Description	Amount
1	Floor repair	$609.00
2	Filing fee	$100.00
	TOTAL	**$709.00**

Tenants:

Item	Description	Amount
1	Six days of rent	-
2	Security deposit	$766.00
3	Filing fee	-
	TOTAL	**$766.00**

The Landlord can keep $709.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remaining $766.00 to the Tenants. The Tenants are issued a monetary order for this amount.

Conclusion

The Landlord is entitled to $709.00. The Landlord can keep $709.00 of the security deposit. The Landlord must return the remaining $766.00 to the Tenants. The Tenants are issued a Monetary Order for this amount. If the Landlord does not return this amount, the Monetary Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: June 29, 2020

Residential Tenancy Branch