Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL-S, FFL

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 sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlords served the tenant with their application for dispute resolution via registered mail. I find that the tenant was served in accordance with section 89 of the *Act.*

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2018. The tenant provided the landlords with a verbal notice to end tenancy on May 13th effective May 31, 2020. The landlords informed the tenant that one full month's notice to end tenancy was required and that the tenant would be responsible for paying all of June 2020's rent. The tenant then gave the landlords verbal notice to end tenancy effective June 30, 2020. The tenant moved his belongings out of the subject rental property on May 31, 2020. The landlords were able to find a new tenant to move into the subject rental property for June 15, 2020. The tenant consented to new tenants moving in earlier in exchange for only ½ months' rent being due and payable for June 2020.

Both parties agreed to the following facts. Monthly rent in the amount of $1,337.00 was payable on the first day of each month. A security deposit of $650.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenant did not provide the landlords with his forwarding address in writing.

Both parties agreed that the tenant did not pay any rent in June 2020. Both parties agree that the tenant asked the landlord to use his security deposit for June 2020's rent but the landlords refused because of alleged damage to the subject rental property.

Both parties agree that they completed a move in condition inspection report on July 4, 2018. A handwritten condition inspection report was entered into evidence. The landlords testified that only the damages to the subject rental property were noted on the report. The tenant testified that in addition to the damages recorded in the move in condition inspection report, there was damage to the drywall. The landlords did not dispute this testimony. The move in condition inspection report did not note any damage to the floor.

The landlords testified that they asked the tenant to complete a move out condition inspection report but he stopped responding to their texts after they claimed the tenant

damaged the flooring. Both parties agree that a move out condition inspection report was not completed.

The landlords entered into evidence several photographs of deep scratches in the flooring of the subject rental property. The landlords testified that the affected pieces of laminate could not individually be replaced, and that due to the open nature floorplan of the property, all the flooring in the kitchen, living room and dining room will have to be replaced. The landlords entered into evidence a quote for the above work in the amount of $2,077.58. The landlords testified that the subject rental property, including the flooring, was brand new when they purchased the property in June of 2015.

The tenant testified that his movers made one of the scratches claimed by the landlords but denies that any of the other damages were caused by himself or his movers.

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means

that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act,* I find that the tenant was obligated to pay the monthly rent in the amount of $1,337.00 on the first day of each month. Based on the testimony of both parties I find that the tenant did not pay rent in accordance with section 26(1) of the *Act.*

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

> (a)is not earlier than one month after the date the landlord receives the notice, and
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> (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

This issue is expanded upon in Policy Guideline #5 which explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

I find that the tenant provided the landlords' notice to end the tenancy verbally on May 13, 2020 and that the earliest effective date of that notice, that complies with section 45 of the Act, was June 30, 2020. Therefore, the tenant owed the landlords for the month of June 2020. However, the landlords moved quickly to mitigate their damages and found a new tenant for June 15, 2020. Pursuant to sections 26 and 45 of the *Act*, I find that the landlords are entitled to rent for June 1-14, 2020 in the amount of $668.50.

Flooring

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the testimony of both parties and the move in condition inspection report, I find that a person permitted on the property by the tenant, scratched, in at least one location, the floor of the subject rental property. I accept the testimony of both parties that the floor was not scratched and the beginning of this tenancy. I find the tenant's submissions that the landlords must have made the other scratches after the tenant moved out to be unsupported and that a more reasonable explanation would be that the tenant's movers, the tenant, or other people permitted on the property by the tenant, damaged the flooring during this tenancy. I accept the landlords' undisputed testimony that the scratched floorboards could not individually be replaced and that all the flooring must be replaced to remediate the damage. I accept the landlords' testimony that the flooring was approximately 5 years old at the time the tenant moved out.

Residential Tenancy Guide #40 states:

> This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.
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> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement….
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> If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or

information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

Policy Guideline #40 does not provide a useful life for laminate flooring but states that carpet and tile flooring have a useful life of 10 years (120 months). I find this to be a reasonable estimate as to the useful life of laminate flooring. Therefore, at the time the tenant moved out, there was approximately 60 months of useful life that should have been left for the laminate flooring of this unit. I find that since the laminate required replacing after only 60 months, the tenant is required to pay according to the following calculations:

$2,077.58 (cost of new flooring) / 120 months (useful life of flooring) = $17.31 (monthly cost)

$17.31 (monthly cost) * 60 months (expected useful life of flooring after tenant moved out) = $1,038.60.

Security Deposit

Section 38(1) of the *Act* states that 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.

I accept the testimony of both parties, that the tenant has not provided the landlords with his forwarding address in writing.

I find that the landlords made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act.*

As the landlords were successful in their application, I find that they are entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act.*

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of $650.00.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	**Amount**
June rent	$668.50
Flooring replacement	$1,038.60
Filing Fee	$100.00
Less security deposit	-$650.00
TOTAL	**$1,157.10**

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: November 09, 2020

Residential Tenancy Branch