



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on December 21, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord and the Tenants both attended the hearing. All Tenants confirmed the receipt of the Landlord's Application, Notice of Hearing, and evidence. The Landlord confirmed receipt of the Tenant's evidence package. I find both parties sufficiently served each other with their evidence for the purposes of this hearing.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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

- Is the Landlord entitled to a monetary order for damage to the unit and for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested?

- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties both agree that a new tenancy agreement was signed, effective September 1, 2019, which is the date this tenancy began. A copy of the lease agreement was provided into evidence, and it corroborates that monthly rent was set at \$4,500.00 and was due on the first of the month. The parties also agree that the Landlord still holds a security deposit in the amount of \$2,100.00.

The Landlord stated that he did not do a move-in inspection when this tenancy agreement was signed, and only did one in September of 2018, when the previous tenancy started. The Landlord stated that a move-out inspection was completed on September 1, 2020, which is one day after the Tenants moved out.

The Landlord is seeking 4 items on his monetary application, as follows:

- 1) \$399.82 – Water Bill

The Landlord provided a copy of the last utility bill which the Tenants never paid. The Tenants do not dispute they owe this amount, and in fact are willing to pay this amount, in full, as it was for utilities they used while they lived in the rental unit.

- 2) \$50.00 – Drywall Hole Patch

The Landlord stated that this is the cost associated with repairing a small hole in the drywall, which was caused by the Tenants. The Landlord provided a receipt for this item. The Tenants agree that they are responsible for this amount, and are willing to pay it, in full.

- 3) \$77.40 – Window Blinds

The Landlord stated that the Tenants damaged a few different blinds in the house, and they had to be replaced. A receipt was provided into evidence for the above amount. The Tenants agree they are responsible for this amount, in full, as they damaged the blinds.

4) \$1,832.67 – Laminate Flooring

The Landlord provided two photos showing the damage caused to the laminate flooring in the dining room and the living room. The Landlord stated that the laminate flooring is “around 8 or 9 years old” but he could not recall exactly. The Landlord did not have any evidence to support the age of the floors, but feels the damage (chunks missing from the laminate) goes beyond what is normal wear and tear. The Landlord stated that he has not repaired the floors yet, but he attached a quote showing what it would cost to replace the all the flooring in the two affected rooms, dining and living rooms. The Landlord stated that due to the age of the flooring, he was unable to find a replacement board, and so whole area needs to be replaced.

The Tenants do not dispute that this damage occurred while they were living in the unit but they are unsure how it happened. The Tenants stated that they had a couch over this one portion, so they presume it was caused by the legs of the couch, even though they had protective padding. The Tenants feel this is normal wear and tear, and the floors were old, and cheaply made, which is why they fell apart under normal use.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows, in the same order as laid out above:

- 1) \$399.82 – Water Bill
- 2) \$50.00 – Drywall Hole Patch
- 3) \$77.40 – Window Blinds

The Tenants agree they owe the first 3 items. They agree they owe the outstanding water bill, the amount is cost to repair the drywall, and the cost to replace the window blinds. I award the above 3 items, in full.

4) \$1,832.67 – Laminate Flooring

With respect to the Landlord's claim for this item, I note the Tenants do not dispute that the marks/chips on the laminate occurred while they were living there. I note this damage was from two different rooms, the dining room and the living room. I note the Tenants feel this is normal wear and tear. However, after reviewing the photos, I find I do not agree. I find the extent of the damage in the flooring surface is beyond what would be considered reasonable wear and tear.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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,

I find the Tenants breached section 37 of the *Act*, and are liable for some of the costs associated with the flooring damage. However, I note the Landlord seemed unsure about the age of the flooring, and estimated that it was around 8-9 years old. I note this type of flooring is not listed in the policy guidelines, in terms of its useful life expectancy. As such, it is difficult to determine how much useful life expectancy remained at the end of the tenancy. I note carpets are listed with a useful life expectancy of 10 years, but I am not convinced carpet and laminate are equivalent, nor is 20 years life expectancy for hardwood flooring. Laminate flooring varies in quality substantially, and there is no evidence to show what type of laminate flooring this was.

In any event, I note that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find a nominal award is more appropriate, given the lack of evidence showing the actual age of the flooring, what quality it was, and how much life it may have had left in it. I award a nominal amount of \$500.00.

Since the Landlord was partially successful with his application, I award the recover of the filing fee in the amount of \$100.00.

In summary, I find the Landlord is entitled to recover \$1,127.22 for the 4 items he applied for, and for the filing fee. I hereby authorize the Landlord to retain this amount from the security deposit of \$2,100.00, which leaves a balance of \$972.78. I order this balance be returned to the Tenants. I will issue a monetary order accordingly.

Conclusion

The Tenants are granted a monetary order in the amount of **\$972.78**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: December 21, 2020

Residential Tenancy Branch