Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The landlord filed an application for dispute resolution (the "Application") on October 2, 2020 seeking an order for compensation for damage caused by the tenant, and compensation for monetary loss or other money owed. Additionally, the landlord seeks to recover the filing fee for the application.

The landlord provided evidence showing their delivery of this dispute's Notice via Canada Post registered mail. Postal information provided shows the delivery on October 8, 2020, and its receipt on October 13, 2020. This information verifies that the landlord's material was sent to the tenant. The landlord sent evidence to the tenant via registered mail on December 22; the tenant received this material on December 24, 2020.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 21, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

Preliminary Matter

In the hearing, the landlord confirmed their receipt of the tenant's prepared evidence. The tenant stated they provided a response "only to the lawyer" who is the representative for the landlord in this hearing. The tenant stated the landlord received this package on January 14th while the landlord stated they received it on January 15th. Drawing attention to the *Residential Tenancy Branch Rules of Procedure*, the

representative for the landlord stated the tenant "was one day late in sending the evidence package." In response to this, the tenant stated: "the *Act* says five days in advance of the hearing."

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement between the parties, and neither party disputed its terms. Both parties signed the agreement on June 11, 2019 for the tenancy starting on July 1, 2019. The monthly rent was $1,950 per month, and the tenant paid both a security damage deposit and a pet damage deposit, for $975 each, on June 11, 2019. An addendum attached to the agreement, at section 8, contains specific instructions on pet clean up and other specific guidelines.

The landlord provided that there was an initial inspection of the rental unit on June 28, 2019. The 'Condition Inspection Report' submitted by the landlord shows a specific requirement of "pet clean up completed at move out." Both the landlord and tenant signed this agreement at the time of the inspection meeting.

The landlord submitted a series of ten photos that show the state of the unit, dated August 14, 2018. They also provided receipts to show materials purchased for renovation of the unit in spring 2018. These are receipts particular to items of the landlord's claim for damages, itemized below. These were renovations completed approximately 2 months prior to the tenant's move in.

The tenancy ended when the landlord gave the tenant their notice to end tenancy. This set the specific date for the end of tenancy to be March 31, 2020.

A final inspection meeting, with both parties present, was scheduled by the landlord for March 31, 2020. This is documented in the updated Condition Inspection Report, signed by the parties on March 31, 2020. The report states: Pet Clean Completed at move out: "NO" and shows: "NOTE permanent cat urine damage to be assessed yet". The tenant indicated they "agree that this report fairly represents the condition of the rental unit", with "some of this wear & tear". The tenant signed the document on that same date. The landlord provided a copy of this report to the tenant approximately one week later.

The landlord provided 281 pages in support of their claim. The tenant provided detailed responses to each of the 20 points the landlord listed for compensation – this is with reference to timelines and photos provided by the landlord. Throughout, the tenant makes submissions on conversations had as well as attempting to establish a correct timeline for all events in question. The tenant called the landlord's credibility into question by setting out the landlord's unauthorized entries into the unit in the past. They also questioned the veracity of evidence provided in the form of text messages where many of the messages were undated.

The landlord's total loss claimed is $24,674.05. This breaks down in the subheadings below.

a. Damages – Floor

Damages – Floor		
Item	What	Cost
replacement flooring	Replace	5,014.96
wall/cutting	rip out	1,221.00
flooring	install	3,895.50
remediation	labour	533.73
paint/sleeves	repair/painting	167.62
enzymatic spray		31.43
baseboards	supply/install	709.12
	Total	11,573.36

The landlord presents there was new flooring in the unit at the start of the tenancy, including the tile in the entryway. They presented a series of photos to show pet damage, attributable to cat urine. A witness who accompanied the landlord to the unit on the day of the move-out inspection provided a statement. This gives the detail of their detection of an odour upon entry, and their observations of baseboard "visible liquid damage" in one bedroom.

The contractor who replaced flooring provided a letter in the landlord's evidence. This gives their account of "extensive urine damage" in the unit. With a remediation contractor, they decided to remove drywall from the bottom of the walls to expose the beams in order to apply enzymatic spray and odour-blocking sealant.

The landlord's provided a written warning letter to the tenant on November 5, 2019 requesting "that all pet damage. . . by fully repaired by a reasonable deadline of November 30." The landlord included an account of their visit with the tenant on October 25 when they identified damage and clarified the nature of the damage due to its scent – the tenant was present at this meeting. At this time the landlord advised of the probable need for replacement of damaged areas.

On November 29, 2019 the tenant sent a response to the landlord. They set out that the landlord identified cat damage on October 25, 2019. At this time, they committed to replacing damaged baseboards

The following January, the tenant arranged for a contractor to repair damaged baseboards. Their note to the landlord on January 24, 2020 states: "I am willing to accept full responsibility for floorboard damage and will pay the cost for repair and replacement." In the hearing the landlord acknowledged this work by the tenant; however, they stated there was no way to tell which portions of baseboards were replaced. More damage after January 2020 meant the entirety of the baseboards needed replacement.

In a comprehensive email to the tenant on January 25, 2020, the landlord identified "seepage into a small amount of the Gyproc as well as into the underlay and potentially the subfloor." They note they could not inspect the deeper problem accurately "without lifting a large area of the flooring which could result in damaging the flooring." They referred the tenant to a website that provided cleaning tips and identified "the area of the most concern is the area to the left of the patio doors stretching into the entrance/door of the kitchen."

After this, the landlord discovered more damage in February. On February 3, they advised the tenant that any further damage would be their cost to bear, and they would need to conduct regular condition inspections of the unit.

The landlord noticed the need for re-replacement of baseboards. In total there were 277 feet of baseboards, and the whole extent of the need for replacement was not known until spring. The final inspection meeting was documented in the Condition Inspection Report and the notation on that document reads: “note permanent cat urine damage to be assessed yet”. The landlord submits this means the tenant was aware of the assessment ongoing after the end of the tenancy.

The landlord attempted their own remediation in June 2020, this involved washing damaged areas, using enzymatic spray and an application of special paint that combats odours of pet-damaged areas. This was when the flooring was lifted and the main work of repairing floors began.

The landlord submitted 37 photos they took in June 2020. This was as the work on replacing and repairing floors progressed in each of the dining room, hallway, kitchen, living room, master bedroom, and bedroom.

In response to this, the tenant in their written submission noted they had previously replaced the baseboards. At that time the contractor “did not notice any further reason to lift the floorboards.” Their furniture covered areas depicted in the landlord’s pictures; the tenant gave details on photos they provided to show this for specific pieces in specific rooms. They submitted the cat was not able to soil in areas where furniture sat, including a cabinet unit and mattress. According to the tenant, there is “no proof that the cat caused damage to the centre [floorboard] pieces”.

The tenant also pointed out the discrepancy between the landlord’s requested amount for baseboards (dated January 29, 2020) for which they paid $284.64, and the amount for this hearing that is $709.12. In the hearing the tenant stated the pet did not do more damage after January 2020.

The tenant also drew attention to various discrepancies in dates of the landlord’s photos. These are between the end-of-tenancy date and earlier inspections and later pictures from the restoration and repair stage.

b. Damages

Damages		
Item	What	Cost
light fixture	replace	176.74
light fixture	install	236.25
bathroom holes	repair	294.00
patio blinds	replace	75.03
kitchen cabinet	supply/install	2079.57
wall damage	repair/painting	3,944.00
bull stair nose	replace	345.10
	Total	$7,150.69

The landlord and tenant had the opportunity in the hearing to present and respond to each of these points:

- For the light fixture, the landlord noticed the fixture came right down in January 2020 – they speculated in a message to the tenant that it came down when a new security system was installed. The cost of removal and replacement on January 27, 2020 was $225. The tenant responded to this to say there is no way someone could reach the light to have it pulled down, and they set out how they randomly heard a bang then found the fixture separated from the ceiling and broken the following day.

  The tenant provided a copy of an email they sent to the landlord on January 24, 2020 wherein they identify there was no proper conversation about this. In an earlier message to the landlord on January 3, 2020, they stated: "Did TELUS break that light as I noticed it was on the steps." To this, the landlord replied "no", and the tenant responded "We wouldn't touch that light. I don't think [tenant] could reach it either."

- The landlord presented a message from the tenant wherein they admitted to the towel rack breaking off from a wall in the bathroom. This caused holes in the wall and the landlord was not informed until the contractor visited to repair the light fixture. This cost of $280 was for required replacement with new drywall and this

meant it was “mudded taped & painted” then the contractor “installed [the] towel rack.” They explained to the tenant on January 20 that “gyproc was pulled off with the rack leaving large holes”

The tenant presented how the towel rack randomly came off the wall, they tried to fix this themselves due to poor installation, similar to a problem with TV installation that caused a problem prior where the TV almost completely fell of the wall. In the same January 24 email, the tenant identified how they “noticed that the towel rack was always somewhat loose.”

- The tenant accepts the replacement of patio blinds as damages, stating in their written submission: “If I have to pay the $75.03, I will.”

- The landlord presented materials from a contractor that explained the need for 10 cupboard doors needing replacement. This was due to “gouges, scratch’s [*sic*], scrapes – finish damaged”. This meant “Repair of cupboard doors is not practical or cost effective in the circumstances.” This was due to the superior quality of the cabinetry at the start of the tenancy; repair was not possible due to the “curvature” and would “have an impact on the wood grain”. The landlord presents that the cost of “refacing” the cabinets is $2,079.97. These are “Thermofoil” doors which present a cheaper option.

  The landlord presented 11 photos that show damage to the kitchen cabinets. These are exclusively the lower floor-level doors, i.e., from the countertop down. The Condition Inspection Report from the move-out meeting does not indicate damage to the kitchen – all items within the kitchen are covered by a large-scale checkmark for a code, meaning “good”.

  The tenant here noted there is “no noticeable damage” to the cabinets as shown in the landlord’s provided pictures. Further, they stated: “Where are the pictures from when we did the final inspection walk-through?” – this question raises their point that the pictures provided by the landlord here were taken 3 months after the tenant’s move out.

- The landlord identified a need for painting throughout. The landlord presents the time of day of the move-out inspection meeting meant that certain of the damage was not visible. Upon closer inspection after the move out, there were marks noted on the walls throughout the unit, and someone’s attempts at removal

meant the sheen was damaged. They reiterated the wall damage came from the pet stains, and the unit was new in 2018.

The tenant questioned why the need for painting throughout did not appear in the move-out inspection report when these marks are noted in the later assessment as "highly visible."

- The landlord provided a receipt for the $345.10 cost of the "bull stair nose." A record of damage for this item does not appear in the move-out Condition Inspection Report. The landlord provided photos showing chips to this item.

c. yard clean-up

This $100 portion of the claim arises from the tenant's pet dog. There was clean up of the yard after the tenant moved out. The landlord put this down to 4 hours' work at $25 per hour. They provided an image of their message to a person who undertakes clean-up work of this type, from 2019. This is to give an approximation of the cost. The landlord's claim four hours of their time for this clean-up because the tenant did not clean this up on their move-out.

The tenant responded to query how they would perform this clean up when there was snow on the ground on their move-out day. They also questioned why the move to make this clean-up occurred at the end of June when the tenancy ended March 31.

d. loss of rent income for repairs

For this part of the claim, the landlord provided a list of all the work undertaken to show how it added time. Notable in this list is the "time required to obtain and secure a date for contractor" to complete flooring work and cabinetry work. There is also the time of the actual work performed. The relevant dates occur through late April, May and June, with the flooring work commencing in mid-June. The landlord arrived at the date of July 1, 2020 as the date when "the unit repair [was] completed and ready for renting out." This is three months' rent amount at $1,950 each month, for the total of $5,850.

Analysis

The *Act* section 37 requires a vacating tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

a. Damages – Floor

The landlord's evidence shows they brought this matter to the attention of the tenant on October 25 when they visited the rental unit. At that time, the area identified was the dining room. They gave the tenant until November 30 to repair the damage. By January, the tenant replaced the baseboards. I find from this point onwards, the landlord was aware of the pet damage problem, and they were clear in their communication to the tenant that the cost for any further work involved would be payable by the tenant.

The tenant maintained that a contractor replacing the baseboards in January never identified the need for floorboard underlay inspection or removal. The landlord identified the possibility of this to the tenant around this time; however, they did not proceed on this deeper analysis at that time. The landlord pledged they would continue to make inspections more periodically – presumably, this was to focus on possible further pet damage.

By March 31 upon the tenant's move out, the landlord made note of an ongoing assessment of pet damage, as indicated on the Condition Inspection Report. The tenant seemed agreeable to this.

By June 2020, the real deeper work of removing floorboards began, and the landlord made their submissions to show the damage stemming from the tenant's pet went much deeper. Eventually, this led to 1000 square feet of laminate replacement, with significant underlay work to remove odour, and baseboard and drywall repair and/or replacement.

The landlord's photos show different areas of damage throughout the rental unit, including bedrooms. The tenant submitted that some of these areas were just not possible for the pet to reach and therefore could not have been soiled by the pet.

I am not satisfied from the landlord's evidence that all areas were identified in the same timeframe. The tenant bears a significant responsibility in identifying other problematic areas to the landlord. The messaging between the parties in later 2019 shows this is the time when the issue first became prominent. By January 25, the landlord identified "seepage" as an issue and noted they could not inspect this issue without a removal of flooring requiring a closer inspection. This would affect other areas of the flooring as well.

I award the landlord one-third of the cost they claim for flooring. This is for the area of the dining room as identified with the tenant in the fall of 2019.

I am not satisfied of the need for entire laminate replacement to the measure of 1000 square feet throughout. The problematic area identified by the landlord – in the tenant's presence – in October 2019 was "the area to the left of the patio doors stretching into the entrance/door of the kitchen". It is unknown how large this area is in terms of square footage.

Again, the tenant has a responsibility to identify other areas of concern. With the pet damage being identified in October 2019, there is no indication that the tenant went through the remainder of the rental unit to discover other areas of concern. However, the same holds true for the landlord. By January the landlord identified the possibility of deeper damage to the underlay; however, there is no record of the landlord making an assessment to the entirety of the unit to ascertain whether other damage resulted from the same problem throughout the unit. They were certainly aware of a significant cost

to bear with the nature of the issue necessitating removal of flooring – this of course bears a significant, even a burdensome, cost.

The deeper assessment still had not occurred by the time of the tenant's move out in March 2020 and was not fully assessed until June 2020 when the landlord began the extensive work of removing floors to examine the problem underneath,

I acknowledge this is a significant amount of work to accurately examine the underlay and flooring to determine the extent of damage. I find the evidence shows the landlord did their homework on the issue and notified the tenant of the significant problem. Yet there is no accounting for the lack of the beginning of the deeper work until June 2020. The evidence shows a contractor made the landlord aware of the potential for the problem to spread if it remained unresolved. By the time the landlord brought their initial claim in this matter, heard on August 11, 2020, this assessment was still not complete.

In sum, the problem was definitely palpable, and the deeper concern was identified in January 2020. Yet the further inspection for this problem throughout all of the unit did not begin until June 2020.

I understand the tenant's submission that there was a less likelihood that a pet would soil in areas covered by furniture. The landlord's photos of damage to these areas is not specific to point out which areas were or were not covered by furniture, and this is impossible to resolve after the fact. While the landlord's photos do show damage in other rooms, I take this as evidence that a fulsome assessment of the pet damage to floors did not take place in as timely a fashion as possible in order to minimize cost.

I find the landlord's claim here covers an area larger than that identified to the tenant (either initially when discovered, or at the end of the tenancy) and this is not in line with minimizing damage or loss. In essence, a full assessment of the damage did not occur until 6 months after it was first identified. I find it more likely than not that an earlier deeper more thorough investigation would have minimized the impact to other areas of the house, and possibly averted additional damage altogether.

The tenant paid for baseboard replacement in early 2020. I find this work was not accounted for when the landlord undertook further baseboard replacement at the cost of $709.12. I subtract this claimed amount from the overall award for flooring. This leaves $10,864.24. Reducing this by one-third for the dining area adjacent to kitchen identified at the start of 2020, the award for damage to flooring is $3,621.41.

b. Damages

The landlord easily identified the light fixture coming off at sometime in late 2019. The tenant and landlord had an indirect discussion on this via email. The tenant maintains it fell down on its own, and points to the near crash of their TV from the wall as something similarly improperly installed. The tenant posits the same for the towel rack in the bathroom. I find the tenant credible on this point for both of these issues. I find these two issues are related to their initial installation. I find this more likely than not attributable to installation error, and not wilful or negligent damage by the tenant. There are no pictures depicting the damage to the towel rack wall; however, the photos if the light show damage that is more in line with the unit falling out on its own rather than crashing due to other impact. I make no award for the cost of the light fixture or work for these two items' repair.

I award the $75.03 cost for the blinds to the landlord. The tenant accepted this amount as claimed.

I make no award for the replacement of supply and installation of kitchen cabinet doors. From the evidence provided I am not sure of the need for replacement. The photos do not depict damage that I can discern as being beyond reasonable wear and tear. This is even within the overall shorter tenancy here. I take the tenant's point here that there is no noticeable damage. Moreover, there is no mention of this in the Condition Inspection Report that is intended to be a comprehensive document on the state of the rental unit at the end of the tenancy. The landlord has not established that damage exists on this piece of their claim.

Similarly, I am not satisfied of the damage to the "bull stair nose". It is an item that is on the floor. It is reasonable to expect that it will suffer normal wear and tear. It was not identified on the Condition Inspection Report.

For painting, I make award for $500. This is for the damage associated with the baseboards and other work associated with pet damage, confined to the dining area. The landlord provided photos of the unit throughout. Some of these are dated March 31, and others are dated June 2. There is no clear indication on the Condition Inspection Report that painting throughout the unit was required. Nor is there an account from the landlord why this assessment was two months after the end of the tenancy. Additionally, I am not satisfied of the need for painting to the extent claimed. Most of the photos provided by the landlord show small dents and impacts.

c. yard clean-up

I accept that the yard was not clean to an acceptable standard by the end of the tenancy. The tenant has questioned how they could make this clean up at the end of their tenancy when there was still snow on the ground. Due to the nature of this clean up, I find this point is irrelevant by the tenant. It is reasonable for the landlord to recoup this cost given that it is entirely associated with the tenant's own pet. I so award the claimed amount of $100.

d. loss of rent income for repairs

in line with the fourth criteria above I assess this portion of the landlord's claim in terms of the steps they took to minimize the damage or loss.

They did not present evidence that they had tentative plans to re-rent the unit after the end of this tenancy. The landlord did not present an established plan for having another tenancy in place, even in terms of months. With this, I find there is no effort at minimizing this kind of loss. It does stem from the residual damage done by the tenant; however, quotes and estimates which can go quite some ways to establishing a timeline of completion are not in place until quite some time after the end of this tenancy.

At the start of June 2020, they were still assessing damages, taking photos throughout. One example of this is with respect to their claim for needed paint. Another is that of the cabinetry. This type of work was not identified at the very end of the tenancy.

I award the landlord one-month additional rent cost for this portion of their claim. This is $1,950.

As the landlord is successful in this Application for compensation, I find that the landlord is entitled to recover the $100 filing fee.

The landlord has made their claim against the security deposit and the pet deposit. With the landlord holding this amount of $1,950, I order this amount deducted from the recovery of the utility and cleaning amounts totalling $4,396.44. This is an application of section 72(2)(b) of the *Act*.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $4,396.44 for damage and other monetary loss, and a recovery of the filing fee for this hearing application. The landlord is 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 *Act*.

Dated: February 23, 2021

Residential Tenancy Branch