Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNDC FF
Landlord: MNDC MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 4, 2021, April 30, 2021, and August 30, 2021.

The Landlord was present, with an agent (collectively referred to as the Landlord). The Landlord attended all hearings. The Tenants were also present with an agent (collectively referred to as the Tenants). The Tenants were present at the first two hearings, but did not attend the final hearing on August 30, 2021. The final hearing was convened to provide closing statements, at the request of the parties. However, only the Landlord attended to provide closing statements. The 3rd hearing only lasted 15 minutes, and no new evidence was presented, only closing statements.

In general, all parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

After some initial confusion regarding service of the Notices of Hearing, and all evidence, both parties confirmed receipt of all Notice of Hearing and evidence packages. The Tenants confirmed receipt of the 2 evidence packages from the Landlord as well as the Notice of Hearing package. The Landlord confirmed receipt 3 packages from the Tenants, one of which contained the Notice of Hearing documentation. Both parties were willing and able to proceed with all evidence. I find both parties sufficiently served each other with their Notice of Hearing and evidence packages for the purposes of this proceeding.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Following the first hearing, an Interim Decision was issued, and in that decision, I provided clear and specific orders pertaining to evidence and amendments. At the second hearing, the Tenants indicated they did not read that interim decision closely, and did not see any of my orders made. In that interim decision, I specifically stated that no amendments may be made, and no further evidence may be submitted following the first hearing. Since the Tenants evidence uploaded on March 9, 2021, was provided contrary to my orders, I find it is not admissible. Further, the Landlord's subsequent late evidence is also not admissible.

Issue(s) to be Decided

Tenant

- Are the Tenants entitled to 12 months compensation pursuant to section 51 of the Act?

Landlord

- Are the Landlords entitled to a monetary order for unpaid rent or utilities?
- Are the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started on or around August 1, 2016, and ended in early October 2020. The Tenants and the Landlords agreed that the Tenants paid a security deposit of $1,250.00 at the start of the tenancy, and this amount was not returned at the end of the tenancy. The parties discussed using the deposit to offset some outstanding rent. However, no formal agreement was signed, in writing, as to what to do with the deposit at the end of the tenancy.

Tenant's Application

The Tenants are seeking 12 month's compensation because they received a 2 Month Notice to End Tenancy for Landlord's Use (the Notice) and the Landlord failed to follow through with the reason indicated on the Notice within a reasonable time period. The Tenants feels the Landlords failed to act in good faith.

The Tenants stated that they initially received an invalid Notice around the end of May 2020, but since these types of Notices were not allowed during the pandemic period (up until June 24, 2020), the parties agreed to set aside that Notice. The Landlords issued, and the Tenants received the valid Notice on July 27, 2020. That Notice was issued for the following reason:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The Tenants explained some context surrounding the issuance of the Notice. It appears the Tenants had financial difficulties in the Spring and Summer of 2020, due to the pandemic, but it also appears the Landlords were having marital issues, and were in the process of legally separating in and around that same time.

The Tenants stated that they received text messages from the Landlords in June speaking to the fact that they may need to sell the house. The Tenants stated that on or about July 13, 2020, one of the Landlords came to the house with a realtor to assess the unit, any upgrades needed, and look at its condition. The Tenants stated that following this, the Landlord issued the Notice.

The Tenants stated that the Notice was supposed to take effect October 1, 2020, but the Landlord agreed to give them a few extra days to move out. The Landlords stated that they only wanted to give a couple days, but the Tenants took 5 days to finish moving and cleaning (around October 5, 2020). The Tenants stated that when they went back on October 5, 2020, to clean the carpets, one of the Landlords told them not to worry about the carpets (cleaning). The Landlord denies saying this.

The Tenants stated they had two dogs, which were not well trained, and they urinated all over the carpets, repeatedly. The Tenants stated they were unable to get the urinating under control, so they admit the carpets were heavily soiled.

The Tenants stated that on October 17, 2020, she went back to the house to pick up mail, saw some house upgrades were underway. The Tenant stated she saw that the Landlords had removed the kitchen cabinets. The Tenants stated that they returned on October 19, 2020, and let themselves in the house, after seeing the garage was open. The Tenants stated they saw the Landlord that the Landlord was replacing fixtures, toilets, cabinets, flooring, and appeared to be doing lots of work.

The Tenants stated that following her visit to the house on October 19, 2020, she filed an application for dispute resolution that same day, because the Landlord appeared to be renovating, not moving in. The Tenants argued that the Landlords must move in within a reasonable period of time, after the effective date of the Notice, and the Landlords must occupy the unit, not just renovate instead. The Tenants argued that the Landlord should have issued a 4 Month Notice to End Tenancy for Demolition, Renovation, or Conversion of the Rental Unit to Another Use.

The Tenants pointed to Policy Guidelines 2A and 2B, including the case law in those guidelines to show that the Landlord cannot issue the Notice in the manner they did, then turn around and do a bunch of renovations prior to moving in. The Tenants also feel the Landlords may have intentions to sell the property and not to live in the unit, long term.

The Tenants also pointed out that since the Landlords' photos are undated and not sworn, they should be given little weight with respect to showing that one of the Landlord's actually moved in, as they have asserted. The Tenants do not feel the Landlord's timeline with respect to moving in is accurate. The Tenant asserts her photos of the rental unit under construction were taken on October 19, 2020. The photos were uploaded into evidence, and under the "details" tab of the file properties, it indicates the photos were in fact taken on October 19, 2020, around noon.

The Landlords stated that the Tenants' assertion that the photos were taken on October 19, 2020, does not coincide with the Landlord's assertion and documentation, showing the flooring was started on October 12, 2020.

The Landlords stated that they were going through a marital separation at this time, and they were exploring how to deal with marital assets, including this rental house, as well as their other family home. The Landlords stated that they may eventually have to sell down the road, but have not made that decision yet, and they noted that the process of figuring out what to do with the property could take a long time, so they need this rental property as their residence in the meantime. One of the Landlords stated that she wanted to move into the house right away in early October. However, after deciding that the carpets were too dirty to live on, they proceeded to hire a flooring contractor to replace most of the carpet and damaged flooring in the house.

The Landlord explained that they started doing the flooring and carpet replacement on October 12, 2020. The Landlords stated that after the flooring was installed around October 12-15, one of the Landlords came in to re-install baseboards. The Landlords acknowledged that they did some work on the unit before one of them moved in, but assert that all the work was minor, and does not constitute “major renovations”, as contemplated by the 4 Month Notice to End Tenancy for renovations. As such, the Landlords assert that they were under no requirement to issue a 4 Month Notice because their primary intention was not to perform major renovations which require vacant possession, but rather to remediate the poor condition of the flooring and a few other things such as toilets, and fixtures. The Landlords stated that they were not initially planning on taking out the kitchen cabinets, but the flooring had to be installed under the cabinets, which required their removal, and some minor plumbing work. The Landlords stated that the cabinets were old, and it was not worth re-installing them once the flooring had been replaced, which is why they were upgraded.

One of the Landlords, T.S, stated that she began to move in on October 26, 2020, and started residing in the house around November 4, 2020. One of the Landlords provided several witness statements showing she had visitors throughout October and November 2020. One of the statements was a friend which helped her hang curtains. Another was a friend who said she was present to smell the urine-soaked carpets after the Tenants vacated, the repairs, and then subsequently visited multiple times in November 2020. Another was a letter from the Landlord’s granddaughter, stating she visited in October, November and December. Another was from a friend of the Landlord’s stating she was over there for her birthday in November, and saw that this was in fact the Landlord’s home. Another was from a different witness, who lives across the street, who saw the Landlord working in the garden in October, and returning to the home after work throughout November 2020.

The Landlord provided a copy of her updated BC Driver's Licence, showing her residence was switched to this new address. However, no date was provided for when this was changed. The Landlord also provided a copy of an e-statement from BC Hydro for November 2020, showing the bill was now under her name for the address in question.

The Landlord expressed that T.S. is still living at the property, as of the time of the second hearing, April 30, 2021. The Landlord acknowledged that the property was listed for sale at the beginning of March 2021, and that the sale was accepted on April 17, 2021. The Landlord explained that the sale completed on or around May 15, 2021. The Landlord feels she took sufficient steps to accomplish the stated purpose on the Notice and did so for the minimum 6 month period.

The Tenants also pointed out that the Landlord listed the house for sale sometime in late February or early March 2021, and that the closing date of the sale was on or around May 17, 2021. The Tenant stated that the property looks like it sold twice in 2021, but was unclear how this was known to be true.

Landlord's Application

The Landlords are seeking to recover unpaid rent, as well as costs to repair and replace damaged flooring. The Landlords listed these items on a monetary order worksheet, as follows:

1) $642.85 – Flooring
2) $7,419.47 – Flooring and Baseboards
3) $53.35 – Disposal of old carpets

The Landlords stated they provided invoices for the above 3 amounts. However, these invoices were not included in the evidence packages they presented to the RTB. The Landlords stated that these were the costs that were incurred to replace the damaged flooring in the rental unit.

The Landlords stated that the first two items are the material and labour cost to purchase vinyl plank flooring, to replace the kitchen linoleum as well as the damaged carpet throughout the rental unit. The Landlords stated that this flooring was damaged by the Tenants pets.

The Landlords were not sure how old the flooring in the kitchen was, but acknowledged that it was likely installed many years ago by a previous owner. They replaced this kitchen flooring with new vinyl plank flooring, as they did in the carpeted areas that had pet damage.

The Landlords provided a letter from their real estate broker, speaking to the condition of the rental unit at the start of the tenancy in the summer of 2016. The broker stated he viewed the residence in early July 2016, and provided his advice that the house needed a general clean up, a fresh coat of paint, and new carpets. The broker then stated he attended the rental unit towards the end of July 2016, and noted that all the suggestions were completed. The broker stated that the carpets and flooring were “brand new”, although he acknowledged that the kitchen and bathrooms were dated but presentable. The Landlords provided receipts to show new carpet was purchased in 2016 for this house, but no photos were taken, and no condition inspection report was completed.

The broker noted that, when he attended the unit at the end of the tenancy, he was overwhelmed by the smell of “dog” and pet urine. The broker noted that there were stains on the carpet in almost every room. The broker opines that the carpets likely would not have been salvageable, except for 2 bedrooms, which seemed ok.

The Landlords provided statements from their carpet installer, hired to replace the damaged carpets, who opined that the carpets were heavily stained and damaged from pet urine, which had permeated the subfloor, and was the worst he had seen. The Landlords also provided a letter from a witness who noted the distinct odour of urine in the house after the tenancy ended, as well as large stains on the carpets, which were being removed at the time he arrived.

The Landlords provided another letter from a friend, who corroborated that the Landlords put down new carpet in the living room, prior to the Tenants moving in. She also spoked to the smell of pet urine after the Tenants left. The Landlords provided at least 2 other witness accounts of the smell of pet urine at the end of the tenancy.

The Landlords provided photos of the damaged and stained carpet and underlay, and photos of the flooring in some of the rooms, but not all.

The Tenants stated that they did not damage the kitchen linoleum, and feel the Landlords are simply trying to get them to pay for upgrades to a very old and worn linoleum floor, which was well beyond its useful life expectancy. The Tenants acknowledge that their pet dog had issues with urinating in the house, and on the

carpets, but do not feel they should have to pay for this whole amount. The Tenants stated that the carpets that the Landlords installed before they moved in were poor quality, and they should not have to pay for upgraded vinyl plank flooring, which they assert is more expensive. The Tenants stated that the Landlords appeared to accept the pet damage to the carpets at the end of the tenancy, as they were likely going to be replaced anyways, which is partly why the carpets were not properly cleaned before the Tenants moved out.

The Landlords deny that they ever said the carpet damage was okay.

4) $5,000.00 – Unpaid rent

The Landlords explained that when the COVID pandemic began, the Tenants started to fall behind on rent. More specifically, the Landlords stated that the Tenants were short on rent for the months of April, May, June, July, and August 2020. The Landlords stated that the Tenants were short by $1,000.00 for April, May, June, July, and August 2020, totalling $5,000.00.

The Tenants were given an opportunity to respond to the above noted amounts, and stated they do not dispute that they failed to pay rent, in full. The Tenants did not provide any further specific information, and stated they are “okay with paying for rent”.

Analysis

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

For each of the applications before me, the applicant bears the burden of proof 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 other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant 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.

Tenant’s Application

In this case, the Tenants are seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x $2,500.00) because the Landlord did not use the rental unit in the manner they indicated on the Notice that was issued. More specifically, the Tenants assert that the Landlords must occupy the rental unit, within a reasonable period of time, following the end of the tenancy, and that they must occupy the space, rather than renovate. The Tenants cited the case *Baumann v. Aarti Investments Ltd.,* 2018 BCSC 636, to show that the Landlords bear the onus to establish they are acting in good faith, with no ulterior motive, and intend to do what they said they were going to do (occupy the residence as per the grounds on the Notice).

With respect to the issue of good faith, as laid out in the *Baumann v. Aarti Investments Ltd.,* I note this issue is applicable when making determinations about the validity of the Notice to End Tenancy, and whether or not the Landlord is entitled to an order of possession based on that Notice. I note this application is for compensation, based off the 2 Month Notice, and the issue of good faith, as laid out in the *Baumann v. Aarti Investments Ltd.* Case is not relevant to the determination of compensation under section 51 of the Act. Compensation on this matter is laid out in section 51(2) of the Act, below.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

> ***51*** *(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*
>
> > *(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
> > *(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*
>
> *(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*

> *(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

With respect to the Tenants' argument that the Landlord should have issued a 4 Month Notice to End Tenancy for Renovations, rather than the 2 Month Notice for Landlord's Use, I find there is insufficient evidence to demonstrate that the wrong Notice was issued.

In making this determination, I note the Landlord could have issued a 4 Month Notice to End Tenancy to renovate the rental unit, which is an option the Landlord can proceed with if they want to renovate or repair the unit in a manner which requires the unit to be vacant. A 4 Month Notice for renovations, is often used for renovations that are major, extensive, and known in advance at the time the Landlord is determining which Notice is most appropriate for the situation. I note the Landlords replaced a significant amount of flooring in the rental unit, removed cabinets, vanities, toilets, sinks, and fixtures. However, I do not find the renovations were extensive or major such that the Landlord would have been required to use a 4 Month Notice, rather than a 2 Month Notice. The renovations do not appear structural and are not inconsistent with an attempt to refresh the unit to make it more suitable for occupation, alongside a 2 Month Notice.

I do not find it is unreasonable to refurbish or renovate some dirty, worn, or aging building materials, appliances, prior to occupancy, even after issuing a 2 Month Notice for Landlord's Use, particularly when the Landlord is taking over a space that had been previous used as a rental for several years, with some aging building elements. I do not find the mere issuance of a 2 Month Notice of this nature precludes the Landlords from doing renovations prior to moving in, as long as they are taking sufficient steps to make the rental unit more suitable for their occupation, within a reasonable period of time. The Landlord also must occupy the unit for at least 6 months.

I note that section 51(2) states that 12 months worth of compensation is due (unless there are "extenuating circumstances") if the Landlord has failed to do either of the following:

> *(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy,*

or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I turn to the following portion of Policy Guideline #50:

Taking Steps to Accomplish the Stated Purpose

A step is an action or measure that is taken to accomplish a purpose. What this means depends on the circumstances. For example, if a landlord ended a tenancy to renovate or repair a rental unit, a step to accomplish that purpose might be:

- Hiring a contractor or tradesperson;

- Ordering materials required to complete the renovations or repairs;

- Removing fixtures, cabinets, drywall if necessary for the renovations or repairs.

Evidence showing the landlord has taken these steps might include employment contracts, receipts for materials or photographs showing work underway.

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

[…]

If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays.

In this case, I note a “reasonable period” is generally a short amount of time, within the context of ending a tenancy so that the Landlords can use the space for themselves in a residential manner.

I have reviewed the totality of the evidence and testimony from the respective parties, and their witnesses. I note the Tenants question when and if the Landlord, T.S., moved into the rental unit. I note the Tenants returned to the rental unit a couple of times after they moved out at the beginning of October. The Tenants filed this dispute after attending the rental unit on October 19, 2020, when they saw the Landlord was in the midst of doing lots of work on the house, and had not “moved in” yet. The Landlord does not refute that she had not moved in by October 19, 2020, and acknowledges that there were in the midst of refurbishing flooring, replacing kitchen and bathroom cabinets and fixtures. The Landlord provided several witness statements, speaking to the fact that the Landlord started moving into the house near the end of October, and that she started occupying the house in November 2020. In support of this, the Landlord provided a copy of her updated driver’s licence, with her new address being the subject property, as well as a copy of the BC Hydro account statement, for the property, in her name, from November 2020.

I note the Tenants do not believe the Landlord, T.S., moved into the rental house as she stated, around the end of October or early November. However, there is little corroborating evidence showing this did not occur. In contrast the Landlord, T.S. has provided several witness statements, which speak to the fact she was seen coming and going from the house regularly. The witnesses state the Landlord was seen coming and going from the house, throughout November and that she would come back to the house each day after work. The witnesses also state she hosted social functions, small gatherings, and had made this unit her home. I have weighed the Tenants’ assertions against the evidence and testimony from the Landlords, and I find the Landlords have provided a more detailed and compelling version of events with respect to when, and if, T.S. moved into the house in late October/Early November. I place more weight on the Landlord’s version of events, as supported by the witness statements and other documents. I find it more likely than not that the Landlord began to move into the house in late October, and was likely living there by early November 2020.

Having reviewed the evidence and testimony, I do not find the Tenants have sufficiently demonstrated that, as of the end of October, the renovations inside the house were such that the Landlords could not have started to move in, and that they could not have reasonably started occupying and residing in the space in early November. I find it more

likely than not that the Landlord, T.S., moved in and started occupying the house in early November.

The Landlord, T.S., stated that as of the date of the second hearing, April 30, 2021, she was still living in the house. The Tenant pointed out that the Landlord, T.S., listed the house for sale in or around March 2021. The Tenant asserts the house sold twice this year already, but she did not clearly explain how she knew this, nor did she provide any corroborating evidence. The Landlord stated that the house has not sold twice, but she acknowledged that she did list the house for sale in March 2021, an offer was accepted on April 17, 2021. The Landlord stated that the house sale completes and she has to move out by May 15, 2021. The Tenant did not provide any testimony or evidence to suggest this sale is not occurring as the Landlord summarized. The Landlord asserted that because she lived there for at least 6 months, she has fulfilled her obligations under the Act.

I find there is a temporal aspect which must be addressed regarding whether or not the Landlord took sufficient steps to accomplish the stated purpose, within a “reasonable period” after the effective date of the Notice. The Tenants believe that the amount of time the Landlord took to move in, is not reasonable. The Tenants state that they moved out on in early October (around October 3, 2020), and the Landlords renovated the house for the majority of October. Regardless of whether or not the Landlords took 2 weeks to renovate the house (until mid-October), or 1 month to renovate the house (until early November), prior to starting to occupy the house, I find this is not an unreasonable time frame.

There is evidence that the Landlords were taking significant steps to refresh and update the unit, such that it would be more suitable for occupation. I find the steps taken to refresh the house prior to moving in are sufficient to demonstrate that the Landlords took reasonable steps to accomplish the stated purpose in the Notice, within a reasonable time period after the effective date of the Notice (which was October 1, 2020).

I note that Policy Guideline #50 states that a Landlord cannot renovate or repair a rental unit *instead* of occupying it. However, I find the Landlord is entitled to do repairs and renovations in order to make the unit more suitable for their occupation, provided they take actions reasonably quickly and actually move in afterwards.

I note this rental unit had older appliances, cabinets, flooring, and fixtures, many of which had been used for years by the Tenants, and had some pet damage.

With respect to the sale of the property, I accept that the Landlords are in the midst of a divorce, and it appears the property was listed sometime in March 2021. I accept the Landlord, T.S.'s, explanation that she still resides in the unit, as the Tenants had little to no evidence showing otherwise and the sale does not complete until around May 15, 2021, which is over 6 months after the Landlord, T.S., moved into the rental unit. I accept that the house sale completes officially in May 2021. Having reviewed this matter, I note the Landlords obligations are set out under section 51(2) of the Act. Once those obligations are fulfilled, the Landlords are entitled to change direction, including selling the house to accommodate evolving family and marital demands.

In summary, I find the Landlord took sufficient steps and measures to accomplish the stated purpose on the Notice within a reasonable period of time, and I find it more likely than not the Landlord has used the rental unit for at least 6 months in duration, beginning within a reasonable period of time after the effective date of the Notice. The Tenants' application for compensation under section 51 of the Act is dismissed, without leave.

Landlord's Application

The Landlords are seeking to recover unpaid rent, as well as costs to repair and replace damaged flooring. The Landlords listed these items on a monetary order worksheet, as follows:

1) $642.85 – Flooring
2) $7,419.47 – Flooring and Baseboards
3) $53.35 – Disposal of old carpets

The Landlords stated they provided invoices for the above 3 amounts. However, these invoices were not included in the evidence packages they presented to the RTB. The Landlords stated that these were the costs that were incurred to replace the damaged flooring in the rental unit.

I note the following portion of the Policy Guideline *#40 - Useful Life of Building Element*s, to assist with determining what residual value remains, and what is reasonable for compensation amounts. This guideline states as follows:

> This guideline is a general guide for determining the useful life of building elements for 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.
>
> 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.

The useful life expectancy of listed items is intended as a guideline, and is not prescriptive.

I note the first 3 items are all relating to the costs to replace the flooring, and dispose of old damaged flooring. As such, they will be addressed together. I note the Landlord failed to conduct a proper move-in and move-out inspection, and complete a condition inspection report. This is a violation of the Act, and the regulations, which require that this be done. Regardless, this does not prevent the Landlords from filing an application for damage they feel has been done by the Tenants, provided they have other evidence to sufficiently support the condition of the rental unit.

In this case, the Landlords provided statements from realtors and friends, who assert that the Landlords replaced the carpets just prior to the start of this tenancy, in the summer of 2016. The Landlords provided receipts to corroborate this flooring transaction. I accept that the carpets were new at the start of the tenancy. With respect to the age of the kitchen and bathroom floors, I find there is insufficient evidence to establish how old these floors were. The Landlord specifically noted that the kitchen flooring was older linoleum. The Tenants assert it was many years old. It is difficult if not impossible to ascertain what amount of useful life expectancy would have remained in the kitchen flooring at the end of the tenancy. The Landlords have failed to meet the onus placed on them to demonstrate this matter.

Further, I find the Landlords' witness statements and testimony are not sufficiently detailed and consistent, such that I could know, with any degree of certainty, which flooring was replaced, and which was not. The Landlords realtor noted that the "carpets and flooring were brand new" in 2016, but the Landlords stated in the hearing the kitchen flooring was not new. Another witness statement from the Landlords spoke to the fact that the Landlords replaced the living room carpets prior to this tenancy, but she did not indicate if other rooms were also replaced.

The Landlord has poor evidence to reliably demonstrate the condition of the rental unit at the start of the tenancy, which flooring was new, and which was not. No photos or condition inspection report was provided to help on this matter. The Landlords have made this process more difficult by failing to document the condition in accordance with the Act. Further, the Landlord spoke to 3 invoices for the above 3 items. However, the Landlords did a poor job explaining which amounts were for which building materials, for which rooms, and what amount was for labour.

I find there is insufficient evidence to establish what damage was caused to the kitchen flooring, and that it was due to the Tenants, not due to the age of the item (which is unknown). Given the lack of evidence to establish the age of the item, I find the Landlord has failed to establish that the flooring had any useful life expectancy left, such that the Tenants ought to be responsible for its replacement.

It appears the Landlords have put down similar, if not the same flooring throughout the rental unit, at the end of the tenancy. However, there was a poor explanation as to which costs were related to the kitchen flooring, and which were for other carpeted living areas. This makes it very difficult to ascertain which portion of the Landlords costs relate to which flooring area, and what percentage of the overall square footage this would be.

All of this being said, and as stated above, I accept that the Landlords replaced a significant amount of carpet in 2016, just prior to the tenancy starting. It is undisputed that the Tenants had a dog which urinated on the carpets in numerous places. I accept that this urine would have damaged the carpet and likely the underlay/subfloor to some degree. I find the Tenants ought to be responsible for some of these costs, given the damage goes well beyond reasonable wear and tear. However, given the lack of details, breakdown, and evidence from the Landlords, noted above, I find a nominal award is more appropriate for this item, rather than the full claim.

I note that as an arbitrator, I may also 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.

I award a nominal award of $1,000.00 for all carpet damage caused by the Tenants.

4) $5,000.00 – Rent owed

I note the Landlord explained that the Tenants ran into financial trouble in the Spring of 2020, and fell behind on rent. More specifically, the Landlord stated that the Tenants only paid $1,500.00 of the $2,500.00 monthly rent for the months of April – August 2020, for 5 months. The Tenants were given a chance to speak to this item, and stated that they were "okay with paying for rent" and the amount was not disputed. The Tenants chose not to elaborate further. As such, I find the Tenants owe and have failed to pay $5,000.00 in rent for the above noted months. I award this item, in full.

Landlord's application entitles them to:

- $1,000.00 for Nominal Award
- $5,000.00 for Unpaid Rent
- Subtotal: $6,000.00

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I order the Tenants to repay the filing fee paid by the Landlord of $100.00.

Section 72 of the *Act* also allows me to authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants.

The Landlord is entitled to the following monetary order:

Claim	**Amount**
Nominal Award - Flooring	$1,000.00
Unpaid Rent	$5,000.00
Filing Fee	$100.00

Less:	
Security Deposit currently held by Landlord	($1,250.00)
TOTAL:	**$4,850.00**

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **$4,850.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord 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: August 30, 2021

Residential Tenancy Branch