Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-S, MND-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution (application) under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant; and
- recovery of the filing fee.

The landlord's agent (landlord) and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties did not have any questions about my direction pursuant to Rule 6.11.

Both parties affirmed they were not recording the hearing.

The parties confirmed receiving the other's evidence and the tenant confirmed receipt of the landlord's application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of July 30, 2020, a fixed term through July 31, 2021, monthly rent of $1,145, due on the 1st day of the month, and a security deposit of $572.50 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis. Another written tenancy agreement shows that the tenant also paid a pet damage deposit to the landlord in the amount of $572.50. The landlord submitted that the tenancy ended on April 30, 2021.

The landlord's original monetary claim was $7,490.40. At the hearing, the landlord submitted that although they were originally requesting monthly rent due to an early end to the tenancy, they were able secure a new tenant in the month following the end of the tenancy, or May 28, 2021.

At the hearing, the landlord said that they are now just seeking the monetary compensation for damage to the floor, in the amount of $3,955.40.

The landlord also submitted that they are holding the amount of $1,301.00. This amount is comprised of the tenant's security deposit of $572.50 and pet damage of $572.50, and $157.00, which is the prorated monthly rent for May 2021, for four days. I recognise the landlord states retaining $1,301.00, despite those figures totalling $1,302.00. The landlord submitted that the tenant paid the monthly rent for May 2021, but that new tenants moved in on May 28, 2021.

As to the flooring claim, the landlord submitted that there were two move-out inspections and during the first inspection, the inspector did not notice that the flooring had bubbled, due to the cold temperatures. Thereafter, the tenant requested time to make some repairs and there was a second inspection.

The landlord submitted that the floor underlay was saturated with dog urine and it could not be repaired. The only solution was a complete replacement of the flooring, as the owner could not find the same flooring to patch the damaged area. The landlord submitted that the owner wants the complete replacement costs, as they would not have had to replace the flooring if not for the damage. The landlord agreed there were some chips to the flooring already before the start of the tenancy.

In response to my inquiry, the landlord submitted that the flooring was installed sometime in 2016.

Evidence filed by the landlord included a flooring quote and invoice, photographs of the rental unit, the move-in and move-out condition inspection report (Report), an accounting of the claim, and written statements from the inspectors and a flooring company representative.

The tenant said that she agrees to the claim on a partial basis, but pointed out the condo was built in 2014. The tenant submitted that during the first walk-through, the rental unit was cold as she had not been living there. At that time, her father attended the walk-through and felt rushed. Filed in evidence was an online advertisement from a real estate company showing the completion date of the condominium building.

The tenant submitted that she kept her puppy confined while she was away and followed the instructions given to her by the SPCA and two local veterinarians. The tenant submitted she was not neglectful when it came to her puppy and her aunt and uncle would let the puppy out before it was confined too long. Filed in evidence were the inquiry responses from the SPCA and the veterinarians.

The tenant submitted that there were no move-in photos from the landlord, and she referred to her move-out photos. The tenant claimed that she mopped the flooring, so it was possible it was mop water that got under the flooring. The tenant submitted that the flooring was already damaged and the owner has upgraded the flooring, replacing a cheap laminate with a “luxury” vinyl. Filed in evidence were photos showing the depth of the old versus new flooring.

The tenant said she was not allowed to rip up the flooring to save costs, although it was shown she was willing to make other repairs.

Evidence filed by the tenant included photographs of the rental unit, photographs of the type of flooring before the replacement and after the replacement, email communication between the landlord and tenant, and written statements.

In response, the landlord said the flooring was front door to back door, so the entire flooring had to be replaced as they could not find a match for the existing flooring. The landlord said they could not get the smell of urine out of the flooring and it was necessary that it be replaced.

The landlord submitted that the tenant never offered to rip up the floors.

The tenant submitted that she does not believe the entire flooring had to be replaced. The landlord could have put in transition strips between the areas.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

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

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant

is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the landlord claims for the full replacement costs of the damaged floor, reasoning that if it were not for the damage caused by the tenant's dog urinating on the floor, it would not require replacing.

As to the claim for full, flooring replacement, Residential Tenancy Branch (RTB) Policy Guideline 16 states that in a claim for damage, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

In this case, the tenant asserted that the flooring was damaged at the start of the tenancy and that the landlord upgraded the flooring by replacing the laminate flooring with a "luxury" vinyl. However, I find the tenant's negligence caused damage to the flooring and I accept that the entire flooring had to be replaced, as the floor could not be repaired. I therefore, the tenant is responsible to the landlord for compensation.

In the case of fixtures in a rental unit, I find a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, which are depreciating throughout a tenancy through normal wear and tear.

In this case, I find there was insufficient evidence of the age of the flooring. The landlord submitted that the flooring was installed in 2016 and the tenant provided a document showing a completion date of 2014. Policy Guideline 40 suggests that a landlord should be prepared to provide evidence showing the age of the item at the time of replacement. As the landlord did not provide that evidence, I accept the documentary evidence of the tenant that completion date of the condo was 2014. I find the depreciation starts at the date of installation, not the date a tenancy begins in that new structure. As there was no specific date provided by the claimant, I find the start date of depreciation to be January, 2014, which is most favourable to the respondent.

This guideline sets out that the useful life expectancy of tile and carpet is ten years. The policy is silent on laminate, but I find that this floor covering is significantly comparable to both tile and carpet to assign the same useful life expectancy.

In looking at the invoice of flooring installation of the landlord, the total is $3,955.40 and given that there are 120 months in the 10 year useful life of this flooring, I find the flooring depreciated by $32.96 each month. The tenancy ended on or about April 30, 2021, meaning the flooring had depreciated for 88 months during that period for the amount of $2,900.48, or $32.96 each month from January 2014 until April 2021. This leaves a **depreciated value for the flooring of $1,054.92.**

I have reviewed the evidence, which I find shows that the new flooring was an upgrade of the replaced flooring. I additionally considered the undisputed evidence that the flooring was chipped, or damaged, at the start of this tenancy. For this reason, I find it would be unreasonable for the tenant to pay for a better product than that replaced. I therefore find it reasonable to deduct an additional 5% from the depreciated value of the flooring of **$1,054.92**, or **$52.75**, leaving a total of **$1,002.17**.

I find that the landlord has established a total monetary claim of **$1,102.17** comprised of the above-described amount and the $100.00 fee paid for this application.

I order that the landlord retain the security deposit of $572.50, the pet damage deposit of $572.50, and the prorated rent for May 2021, of $157, or **$1,301** held by the landlord in total, in full satisfaction of their monetary claim of **$1,102.17**.

I order the landlord to return the balance due to the tenant, in the amount of **$198.83**.

To give effect to this order, I grant the tenant a monetary order under section 67 of the Act for the balance due of **$198.83.** This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord has established a monetary claim of $1,102.17 as described above.

The landlord has been ordered to deduct this amount from the security deposit of $572.50, the pet damage deposit of $572.50, and the prorated rent for May 2021 of $157, all withheld, or $1,301 in full satisfaction of their monetary claim.

The landlord has been ordered to return the balance due of $198.83 to the tenant and the tenant has been granted a monetary order in that amount.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 1, 2021

Residential Tenancy Branch