Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with monetary cross applications. The tenants filed for return of double the security deposit. The landlords applied for monetary compensation for damage and cleaning; and, authorization to retain the tenant's security deposit.

Both the landlords and the one of the named tenants appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make ***relevant*** submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The proceeding was held over two dates and an Interim Decision was issued on August 13, 2021. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, the tenant was required to re-serve the landlords via email and the landlord was required to send a confirmation of receipt to the tenant. The tenant uploaded an image of the email he sent to the landlord on August 23, 2021 and the landlord's confirmation of receipt. At the reconvened hearing, I also confirmed with the parties that the tenant re-served the landlords as instructed and the landlords received the tenant's complete package. Accordingly, I admitted the materials of both parties and I proceeded to hear both applications.

It should be noted that the tenants' application was originally filed under the Direct Request procedure. The Adjudicator reviewing the Direct Request was unable to determine whether the rental unit was a separate renal unit from the landlord's residence. I confirmed with the parties that the rental unit was a self contained rental unit separate from the landlord's living unit and the parties did not share a kitchen or bathroom. As such, I was satisfied the tenancy was not exempt from the Act and I hae jurisdiction to resolve these disputes.

Issue(s) to be Decided

1. Are the tenants entitled to doubling of the security deposit?
2. Have the landlords established an entitlement to compensation from the tenant, as claimed?
3. Disposition of the security deposit.
4. Award of filing fees.

Background and Evidence

The tenancy started on September 1, 2017 and the landlords collected a security deposit of $450.00.

The landlords did not prepare a move-in inspection report at the start of the tenancy although the landlords testified they performed a move-in inspection with the tenant.

The tenant testified that he moved to his new living accommodation in mid-September 2020 although the tenancy did not end until September 30, 2020 and he returned the keys to the rental unit on that date. The landlords testified twice that the tenant moved out in mid-November 2020 and returned possession of the rental unit along with the keys on November 30, 2020. The tenant was adamant he returned possession at the end of September 2020, not November 2020 and he did not pay rent past September 2020. The landlords described rent as being paid by etransfer and acknowledged the tenant did not pay rent for months he did not occupy the rental unit. As such, I instructed the landlord to review their banking records to determine the last month the tenant paid rent. After doing so, the landlord confirmed the tenant was correct, that she was mistaken in her dates, that the tenancy ended on September 30, 2020 and the tenant had returned possession and the keys to them on September 30, 2020.

The landlords did not set up a move-out inspection with the tenant; however, both parties attended the rental unit on September 30, 2020 with an intention to inspect the unit. The landlords did not bring a move-out inspection report with them and did not compete one. The landlords described the move-out inspection as becoming heated and the landlords told the tenant to leave the property, which he did. The tenant also described being told to leave the property by the landlords before the move-out inspection was completed.

The tenant did not authorize the landlords to retain or make deductions from his security deposit in writing; however, the landlords stated the tenant had orally told them to deduct the cost of the carpet cleaning from his deposit, without authorization to deduct a specific amount.

The tenant sent his forwarding address to the landlords by way of a letter sent registered mail on February 6, 2021. The registered mail was delivered to the landlords on February 10, 2021 according to the Canada Post tracking information. The landlords confirmed receipt of the tenant's forwarding address on February 10, 2021.

All parties were in agreement that the landlords did not issue a refund of the security deposit to the tenant and the tenant did not give the landlords written authorization to retain it. The landlords continue to hold the tenant's security deposit.

On February 27, 2021 the tenant proceeded to file his Application for Dispute Resolution seeking return of double the security deposit on the basis the landlords have withheld his security deposit in violation of the requirements of the Act.

On March 30, 2021 the landlords made their application seeking compensation for damage to the rental unit in the amount of $2300.00; and, authorization to retain the tenant's security deposit. In the landlords' hearing materials was a Monetary Order worksheet providing for five items totalling $3629.00, as reproduced below:

Document Number	*Receipt / Estimate From*	*For*	*Amount*
#1	Dazzle Carpet Cleaning	Carpets	$192.00
#2	Carpenter-Leon	install baseboards etc.	$840.00
#3	Trail Appliance	Hood Fan	$283.91
#4	BC Floors	Mouldings	$112.00
#5	BC Floors	Vinyl Plank /supplies	$2201.11

Since the landlords had put the tenant on notice that they were seeking compensation of $2300.00 by way of their Application for Dispute Resolution, the landlord's potential recovery was limited to $2300.00; however, I did hear submissions for each line item on

the Monetary Order worksheet in the event the landlords were only partially successful or unsuccessful in some of the items for which they were seeking compensation.

Below, I have summarized the landlord's claims against the tenant and the security deposit.

Carpet cleaning -- $192.00

The landlords submitted that in the year prior to the end of the tenancy they noticed a stench coming up to their living unit from the rental unit below. The landlords testified that they asked the tenant about it during the last year of tenancy and he responded that it was likely from garbage that needed to be taken out. The landlords noticed the strong smell persisted during the move-out inspection and they assumed it was the result of the tenant cooking and burning food.

The landlords testified that they also noticed the carpeting was wet near the laundry closet, and stained, during the move-out inspection and the tenant orally authorized the landlords to have the carpets cleaned and to deduct the cost from his security deposit.

The landlords had the carpet cleaned on October 15, 2020 at a cost of $192.00.

The tenant agreed to compensate the landlords $192.00 for carpet cleaning during the hearing.

Flooring damage and replacement -- $2201.11 + $112.00

The landlords testified that the carpet cleaning was ineffective in removing the stains and they determined the carpets required replacement due to the staining, water damage and smell.

As for water damage, the landlords stated they could not find a source of the leak and they speculate that the tenant must have overloaded the washing machine, causing it to overflow.

The landlords obtained a quote for the purchase of new vinyl plank for 1238 sq. ft. of area, and transition mouldings, on January 4, 2021 in the total amount of $4626.23 including tax. The landlords are seeking the tenant compensate them 50% of the vinyl plank cost and 100% of the cost for the transition pieces on the basis the tenant did not

notify the landlords that there had been a water leak and the water leak must have occurred long before the end of the tenancy given the smell that resulted from mould.

The landlords testified the carpeting was approximately 10 years old although they also testified they had built the house 18 years prior. The landlords also testified that the hood fan in the rental unit was 15 years old. The landlords explained that the rental unit was originally built for their mother/mother-in-law and that there were years where nobody was occupying the rental unit. The landlords acknowledged that the vinyl plank is a superior product than the carpeting that had been installed in the rental unit and it will wear better in a rental unit.

The tenant acknowledged the landlords asked him about the smell in his suite, but he described the landlord's enquiries as taking place in the last month of his tenancy only, not in the last year. Nor, did the landlords did not inspect his rental unit in the last year of tenancy.

The tenant attributed the smell in the rental unit to food that spoiled in the fridge and the tenant's failure to take the garbage out when he moved to his new accommodation in mid – September 2020.

The tenant was of the position there were no signs of water damage that he saw and he did not notice a smell from mould. If there had been, he would have notified the landlords.

The tenant submitted that the appliances in the rental unit were older and that if water had leaked from the washing machine he could not see any water on the floor as there is very little space between the laundry machines and the wall.

The landlords responded that the age or possible leak from the appliances is irrelevant to this case as it was upon the tenant to notify them of any problems. The landlords are of the view the tenant must have known of a leak because the carpeting was wet and there was staining in the closet of the bedroom that is behind the laundry closet. As for the smell, the landlords thought it was from burned food but upon discovering the water damage they realized the smell was mould which only disappeared once they drywall was cut open and removed.

The tenant countered that he did not see staining or mould in the bedroom closet.

Wall and moulding repair -- $840.00

The landlords submitted that the water leak also damaged the drywall and mouldings. The landlords removed the damaged drywall and mouldings themselves and had a carpenter install new drywall and mouldings. The landlord stated he is well connected in the building industry and he produced an email dated February 27, 2021 depicting a charge of $800.00 plus $40.00 in GST for 16 hours of labour at $50/hr to "install baseboards and misc."

As described in the section above, the tenant did not take responsibility for the water damage and was not agreeable to paying for installation of new baseboards or drywall.

Hood fan replacement -- $283.91

The landlords submitted that the hood fan was left so greasy and dirty that it had to be replaced. The landlords estimated the hood fan to be approximately 15 years old but stated the rental unit was hardly occupied over the years.

The tenant testified that his sister removed the wire mesh on the hood fan to soak it before cleaning it. The tenant acknowledged that the underside of the hood fan was more difficult to clean because it could not be removed and soaked; however, the hood fan was still functional and it did not need to be replaced.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Tenant's application

Section 38(1) of the Act provides that the landlord has 15 days from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either: refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit unless the tenant extinguishes his right to its return.

A tenant extinguishes his right to return of the security deposit by refusing or failing to participate in a move-in or move-out inspection despite the landlord giving the tenant at

least two opportunities to do so. As for extinguishment, I see no evidence to suggest the tenant extinguished his right to return of the security deposit. If the landlords had scheduled an inspection at the start and end of the tenancy, the landlord's own testimony was the tenant attended the property and participated until they told him to leave. However, it is clear the landlords extinguished their right to make a claim against the security deposit for damage to the rental unit under sections 24 and 26 of the Act as they failed to prepare a move-in and move-out inspection report as required.

In this case, the tenancy ended on September 30, 2020 and the landlords received a forwarding address, in writing, from the tenant on February 10, 2021. As such, I find the landlords had 15 days from the later date of February 10, 2021, or February 25, 2021, to comply with the section 38(1) of the Act by either: sending a refund to the tenant, getting the tenant's written authorization to retain the security deposit, or filing a Landlord's Application for Dispute Resolution to make a claim against it.

The landlords did not refund the security deposit and did not get the tenant's written consent to retain it. The landlords did not file a claim against the deposit until March 30, 2021 which is well over the time limit for doing so. Therefore, I find the landlords failed to comply with section 38(1) of the Act and they must now pay the tenants double the security deposit, or $900.00.

In light of the above, I award the tenants $900.00 for return of double the security deposit plus recovery of the $100.00 filing fee they paid for their application for a total award of $1000.00.

Landlord's application

Except for specific provisions providing for payment of certain amounts (such as return of double the security deposit), awards for compensation are provided in section 7 and 67 of the Act. As provided sections 7 and 67; and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. For the landlords claims against the tenant, the landlords bear the burden to prove entitlement to the amount(s) they seek to recover.

Carpet cleaning

The landlords claimed and the tenant was agreeable to compensating the landlords $192.00 for carpet cleaning. Therefore, I award the landlords $192.00 for carpet cleaning.

Flooring damage and replacement

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair, maintain, and renovate a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

Similarly, replacing a damaged items with a superior product would constitute a betterment and an award must not result in a betterment.

Residential Tenancy Policy Guideline 40 provides policy statements and information with respect to the useful life of building elements and making awards for damage caused by a tenant.

Policy guideline 40 provides that the useful of life of carpeting is, on average, 10 years. In this case, the landlord acknowledged the carpeting was approximately 10 years old. I am of the view the carpeting may be even older than that considering the landlord stated they built the house 18 years ago and the hood fan was 15 years old. However, the landlord also stated the rental unit was not occupied for a number of years. As such, I accept that the years in use was likely 10 years.

The landlords submitted that the tenant is responsible to compensate them for the cost to replace the flooring due to water damage and staining of the carpets that was not removed with cleaning.

The cause of the water leak is unclear to me as both parties speculated or suggested different causes for a water leak and I find both suggestions are plausible in the absence of other evidence to demonstrate the actual cause. The landlords further argued that despite the cause of the water escape, the tenant was negligent in failing to notify them of a leak; however, the tenant countered that argument by stating a water leak was not apparent to him.

Despite the opposing positions before me concerning the cause of the water leak and whether there was negligence on part of the tenant to report a water leak, I find the landlords have failed to satisfy me they are entitled to recovery of the amount they seek from the tenant for flooring replacement for the following reasons:

- The landlord acknowledged that the vinyl plank flooring is a better product than the carpeting. Tenants are not responsible to compensate a landlord for a betterment as awards are to be restorative.
- The carpeting was 10 years old which is the approximate life expectancy of carpeting and to require the tenant to compensate the landlords for new flooring in place of 10 year old carpeting would constitute a betterment.
- The quotation for new vinyl plank reflects materials for an area of 1238 sq. ft. The “site address” appearing on the quotation was left blank. The rental unit is a one bedroom basement suite with carpeting in the living room and bedroom. When I look at the landlord’s photographs, it appears to me the living room is rather small as it accommodates a loveseat, coffee table, small TV stand and a small round table; and, the photograph of the bedroom, which is off of the living

room, does not appear large either. As such, I find it very hard to believe the carpeted area is any where close to 1238 sq. ft. Even if I were to include the small kitchen, bathroom, and laundry closet, I see the area of the rental unit to be much less than 1238 sq. ft in area.

- The quotation was not signed by the landlord indicating acceptance of the quotation or that the landlords proceeded with the purchase of this material. Nor did the landlords provide a rationale for claiming 50% of the quoted amount.
- The landlords did not provide an explanation as to why they submitted a quotation rather than an actual invoice even though the flooring has since been replaced.

In light of all of my reservations concerning the amount claimed and the quotation provided in support of amount claimed, as described above, I find I am unsatisfied the tenant is responsible to compensate the landlords $2201.00 to have new vinyl plank flooring installed in place of the carpeting, or the associated $112.00 for transition pieces, and I dismiss this portion of the landlord's claim against the tenant.

Wall and moulding repair

The landlords claim for wall and moulding repair also stems from their claim the tenant is responsible for causing water damage or failing to notify them of a water leak.

As described in the previous section, the cause of the water leak is not clear and I was provided opposing positions as to the tenant's negligence. However, I find it unnecessary to make a determination regarding cause and negligence as I find the landlord's evidence in support of the amount claimed is questionable when I consider the following:

- The landlords requested compensation of $840.00 to "install baseboards, etc." on the Monetary Order worksheet. When I turn to the email provided in support of this amount, I note the description of work was for "install baseboards and misc." The email provides for 16 hours of work and there is no explanation from the carpenter to describe the "misc" tasks included in the 16 hours charged. It is curious to me why the landlords described the amount claimed to include "etc." and the carpenter described performing "misc" work rather than state drywall installation was provided if that is in fact what is included in the charge. It is clear that work was included in the amount charged that is not sufficiently described or separated from the charge for baseboard installation, and I find the lack of

adequate description leaves me unsatisfied that the tenant is responsible for the entire charge.

- The email does not describe the location of the work performed or the rooms where new baseboards were installed. Considering the water damaged baseboards were in the small laundry closet, as seen in the photographs, and in the bedroom closet, as stated by the landlord, I find a charge of 16 hours to install baseboards in those two areas to be excessive.
- The email also includes a charge of $40.00 for GST yet there is no GST registration number provided and I was not provided an explanation as to why a proper invoice was not prepared. Nor was proof of payment provided.

In light of the above, I find I am unsatisfied the tenant is responsible to pay the landlords $840.00 for installation of baseboards and “misc” or “etc.” and I dismiss this portion of the landlords’ claim against the tenant.

Hood fan

The hood fan provided to the tenant was approximately 15 years old and I heard it still functional at the end of the tenancy; however, both parties provided consistent statements that the hood fan required additional cleaning at the end of the tenancy.

Rather than clean the hood fan, the landlords decided to replace the existing hood fan with a new hood fan and they seek recovery of the cost of the new hood fan from the tenant. However, I find the claim for the cost of a new hood fan to be unreasonable when I consider:

- Given the life expectance of a kitchen appliance as provided in policy guideline 40 as being between 10 and 15 years, I find a hood fan of 15 years is at or nearing the end of its useful life.
- The photograph of the existing hood fan shows a very basic and dated looking hood fan whereas the new hood fan, upon search of the model number appearing on the receipt, is a modern looking stainless steel version and to require the tenant to pay or the cost of a new hood fan would constitute a betterment for the landlords.

In recognition of the tenant’s failure to clean the hood fan adequately and this may have contributed, in part, to the landlord’s decision to replace the hood fan, I provide the landlords with a nominal award of $25.00 which I find to be a more reasonable measure of the value of the former hood fan or an hour’s worth of effort to clean the hood fan.

Filing fee

The landlords had very limited success in their claims against the tenant and the tenant was agreeable to compensating the landlords for the carpet cleaning. Therefore, I only award the landlords $25.00 toward the filing fee they paid for their application.

In summary, the landlords are awarded a total of $242.00 [$192.00 carpet cleaning + $25.00 hood fan + $25.00 filing fee].

Monetary Order

In keeping with section 72 of the Act, I offset the landlords' award against the tenants' award and I provide the tenants with a Monetary Order for the net difference of $758.00 to serve and enforce upon the landlords.

Conclusion

The tenants are awarded $1000.00 for return of double the security deposit and recovery of the filing fee.

The landlords are awarded compensation totalling $242.00 for cleaning and a portion of the filing fee. The balance of the landlords' claim for damage against the tenant is dismissed without leave to reapply.

The landlords' award is offset against the tenants' award and the tenants are provided a Monetary Order for the net difference of $758.00 to serve and enforce upon the landlords.

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 8, 2021

Residential Tenancy Branch