Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEXT DOOR PROPERTIES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL, MNSDB-DR, FFT

Introduction

This hearing dealt with cross-applications filed by the parties. On June 13, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 7, 2021, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

N.C. attended the hearing as an agent for the Landlord. Both Tenants attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

N.C. advised that each of the Tenants was served a Notice of Hearing package by

registered mail on or around July 7, 2021, and the Tenants confirmed that they received these packages. As such, I am satisfied that the Tenants were duly served the Notice of Hearing packages.

Tenant S.S. advised that they did not serve their Notice of Hearing package to the Landlord. I note that the Tenants were required to serve this package to the Landlord, pursuant to Rule 3.1 of the Rules of Procedure (the "Rules"), in order to inform the Landlord of the nature of their claim. As the Tenants did not comply and serve this package, the Tenants' Application for Dispute resolution is dismissed without leave to reapply.

N.C. advised she served some of the Landlord's evidence to Tenants in the Notice of Hearing package, and she served additional evidence to the Tenants by registered mail and email on or around December 9, 2021. With respect to the Landlord's digital evidence, she stated that she asked the Tenants if they were able to view this evidence; however, the Tenants ignored her requests. The Tenants confirmed that they received the Landlord's evidence and that they were able to view the digital evidence. As the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules, and as the Tenants were able to view the Landlord's digital evidence, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

S.S. advised that the evidence submitted on their Application was not served to the Landlord. Tenant C.L. advised that their evidence, that was submitted on the Landlord's Application, was served to the Landlord on December 27, 2021 by email. N.C. confirmed that the Landlord received this evidence on December 27, 2021; however, she stated that there was no information explaining what this evidence was, and it is her position that this evidence was served late. When reviewing this evidence, it does not appear to be relevant to the matters at hand. Regardless, as it does not appear to be prejudicial to the Landlord to accept this evidence, the Tenants' evidence will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on July 1, 2020 as a fixed term tenancy ending on June 30, 2021; however, the tenancy ended on March 31, 2021 instead, by way of a mutual agreement. Rent was established at $7,000.00 per month and was due on the first day of each month. A security deposit of $3,500.00 and a pet damage deposit of $3,500.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on June 22, 2020 and that a move-out inspection report was conducted on May 31, 2021. A copy of the signed condition inspection reports was submitted as documentary evidence. As well, all parties agreed that the Tenants provided their forwarding address in writing to the Landlord on the move-out inspection report on May 31, 2021.

N.C. advised that the Landlord is seeking compensation in the amount of **$27,000.00** because the Tenants and/or their pet damaged the hardwood flooring beyond repair. She stated that the flooring was 10 years old, and that the Landlord re-finished the flooring a month before the tenancy started, at a cost $13,000.00. She referred to an invoice submitted as documentary evidence to support this position. She stated that due to the nature of the flooring material, this re-finishing would have been the last time that this could have been done before the lifespan of the material would have been exhausted.

She submitted that the flooring was in essentially brand-new condition at the start of the tenancy, and that this is consistent with the agreed upon condition in the move-in inspection report, and with the pictures submitted as documentary evidence. She stated that, due to their pet and as a result of dragging furniture, the Tenants caused many scratches and deep gouges in the majority of the flooring. Given the severity of this damage, and as the flooring could not be re-finished again due to its age, the flooring must be replaced. She referenced the damage marked in the move-out inspection report as well as the pictures and videos to support her position that the flooring was heavily damaged.

She referenced three quotes submitted as documentary evidence to demonstrate the cost of replacing the flooring. As the quote for comparable hardwood flooring was estimated at $54,000, she advised that the Landlord is seeking half of this cost.

S.S. advised that he was informed at the move-out inspection that the Landlord had plans to renovate the rental unit. Therefore, it is his belief they are being taken advantage of as the flooring was near the end of its useful life. He confirmed that the flooring was in new condition at the start of the tenancy, as indicated on the move-in inspection report, and that the Landlord's pictures were an accurate reflection of that condition. He also confirmed that they caused damage to the flooring and that the Landlord's pictures accurately depicted this damage. However, it is his position that these scratches were not present on the entirety of the flooring and that these scratches would be considered reasonable wear and tear.

C.L. confirmed that the damage outlined was caused by their pet; however, he advised that these were minor scratches and that this was reasonable wear and tear. He submitted that the angle of the pictures submitted by the Landlord enhance the actual condition of scratches. He stated that the Landlord's maintenance person made routine visits to the rental unit and never commented on the condition of the flooring. Finally, he indicated that the Landlord's quotes for repair were all created by the same company but were quotes for different materials. He stated that they are "young professionals" and that it is his belief that the Landlord's claim for damages is an attempt to renovate the rental unit at their expense.

N.C. responded that the Landlord had already spent $13,000.00 re-finishing the flooring just prior to the tenancy commencing, so it does not make sense that the Landlord would now want to renovate the rental unit.

N.C. advised that the Landlord is seeking compensation in the amount of **$250.00** because the Tenants damaged a part of the hot tub and they agreed that they were negligent for this. The part was not damaged at move in, and she referenced an invoice submitted as the cost to repair this item.

The Tenants did not make any submissions with respect to this claim.

N.C. advised that the Landlord is seeking compensation in the amount of **$350.00** because the Tenants stained the kitchen counter. She stated that the stain was not on the counter at the start of the tenancy, as per the move-in inspection report, and she referenced the pictures submitted demonstrating the nature of the damage. She cited quotes submitted to support the cost of repairing this damage.

C.L. advised that he did not notice the condition of the countertop upon move-in nor did he observe a stain upon move-out.

S.S. advised that he had no idea how the countertop became stained, and he could not explain how it appeared in the Landlord's pictures. He acknowledged that N.C. pointed out this stain during the move-out inspection and he claimed that he did not respond to her when this was brought up. He confirmed that this stain was noted, at the time, on the move-out inspection report.

N.C. advised that the Landlord is seeking compensation in the amount of **$44.80** because the Tenants broke a light fixture and they agreed that they were responsible for this damage. The fixture was not broken at the start of the tenancy and she referenced an invoice submitted for the cost to fix this issue.

The Tenants did not make any submissions with respect to this claim.

Finally, N.C. advised that the Landlord is seeking compensation in the amount of **$200.00** because the Tenants incurred many strata warnings and fines; however, there was only one outstanding. She referenced a number of these strata infractions and letters that were submitted as documentary evidence pertaining to a variety of complaints; however, this remaining fine was due to a parking issue. She submitted that the Tenants hosted many parties, and the complaints and strata fines were indicative of the manner with which the Tenants showed little regard for the rental unit or for neighbouring residents.

The Tenants did not make any submissions with respect to this claim.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that a move-in inspection report and a move-out inspection report was conducted, I am satisfied that the Landlord completed

these reports in accordance with the *Act*. As such, I find that the Landlord has not extinguished the right to claim against the deposits.

Furthermore, Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' deposits, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, I am satisfied that the tenancy ended on May 31, 2021 when the move-out inspection was completed, and that the Landlord received the Tenants' forwarding address in writing on this date. As the Landlord's Application was made within 15 days of May 31, 2021 and as the Landlord claimed for pet damage as well, I do not find that the doubling provisions apply to the security deposit or pet damage deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, 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. Given the somewhat contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claims for compensation, the first one I will address is the claim in the amount of $250.00 for damage to the hot tub. As the Tenants do not dispute being negligent for this damage, I grant the Landlord a monetary award in the amount of **$250.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of $350.00 for a stain on the kitchen countertop, the consistent and undisputed evidence is that there was no stain on the countertop at the start of the tenancy as per the move-in inspection report. Furthermore, S.S. confirmed that there was a stain on the countertop at the end of tenancy, which is consistent with the Landlord's pictures and the move-out inspection report, and he acknowledged that it was pointed out to him at the move-out inspection. S.S. testified that when this stain was brought up to him at the move-out inspection, he simply remained silent. It seems odd to me that if an issue was brought up to the Tenant's attention, that he would simply stand there in silence without some form of response. Given that S.S. confirmed that there was a stain on the countertop at the end of the tenancy, even though he claimed that he did not know how it got there, I am satisfied on a balance of probabilities that the Tenants were more likely than not responsible for this damage. As such, I grant the Landlord a monetary award in the amount of **$350.00** to repair this issue.

With respect to the Landlord's claim for compensation in the amount of $44.80 for damage to the light fixture, as the Tenants do not deny being responsible for this damage, I grant the Landlord a monetary award in the amount of **$44.80** to rectify this issue.

Regarding the Landlord's claim in the amount of $200.00 because the Tenants incurred many strata warnings and fines, given that the Tenants do not dispute any of the strata complaints, I grant the Landlord a monetary award in the amount of **$200.00** as compensation for the strata fine that was left unpaid.

Finally, with respect to the Landlord's claim for compensation in the amount of $27,000.00 for the cost to repair damage to the hardwood flooring that the Tenants and/or their pet(s) caused, the consistent and undisputed evidence is that the flooring was in essentially brand-new condition at the start of the tenancy but was left with scratches at the end of the tenancy. While the Tenants claimed that the scratches to the flooring were only isolated to a particular area of the rental unit, when reviewing the pictures and the videos, I am satisfied that a substantial portion of the flooring in the rental unit was scratched. Furthermore, while the Tenants suggested that the scratches amounted to reasonable wear and tear, I find it important to note that Policy Guideline # 1 describes this as follows:

> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

When reviewing the pictures and the videos submitted, these scratches do not appear to be natural deterioration due to aging or natural forces, nor does it appear as if the Tenants used the rental unit in a reasonable fashion. While the Landlord allowed the Tenants to have a pet, I accept that the Landlord could reasonably expect some markings from that pet. Moreover, as the Tenants were permitted to have a pet, there is an onus on the Tenants as well to mitigate any damage that the pet might cause, by laying down carpet for example. However, given the sheer number of scratches, the length of those scratches, and the depth of those scratches, this clearly was not done. Furthermore, in my view, it is not possible that these scratches were solely caused by a pet. Given the length of the scratches, it is evident that items were dragged across significant portions of the flooring.

At this point, I find it important to note the Tenants' undisputed documented history while living in the rental unit, as it is likely indicative of the intentions of the Tenants and the manner with which they approached living in the rental unit.

- On June 24, 2020, it was determined that cigarette butts were thrown from the balcony of the rental unit onto the balcony of the unit below.

- On July 10, 2020, it was again determined that cigarette butts were thrown from the balcony of the rental unit onto the balcony of the unit below, for which the Tenants were fined $200.00.
- On August 8, 2020, it was determined the Tenants hosted a party until 3:40 AM, which resulted in noise complaints from neighbouring residents, for which the Tenants were again fined $200.00.
- On August 9, 2020, it was determined for a third time that cigarette butts were thrown from the balcony of the rental unit onto the balcony of the unit below. They were again fined $200.00 for this third infraction.
- On July 19, 2020, it was determined that the Tenants allowed their pet to defecate in common areas of the property and they did not remove this pet waste. Furthermore, on August 10, 2020, pictures were received of the Tenants' dog feces that was discovered in palm trees and on other patios. A warning letter from the strata was submitted to support these incidents. While no fine was levied, the Tenants were warned by the Landlord to picks up their pet's feces.
- On August 12, 2020, an email was sent to the Tenants warning them that smoking was prohibited pursuant to the strata bylaws and in addition, the throwing of materials off their balcony was also a ground to end the tenancy. The strata warning letters and infractions were posted to the Tenants' door on this date.
- On September 10, 2020, the Landlord had a conversation with the Tenants. The Tenants promised to refrain from hosting big parties. As well, they informed the Landlord that there would be no further issues with pet feces, noise complaints, or discarded cigarette butts.
- On November 12, 2020, the Tenants incurred a visitor parking infraction and were fined $200.00.
- On May 8, 2021, it was determined that cigarette butts were thrown from the balcony of the rental unit onto the balcony of the unit below for the fourth time; however, no fine was levied for this infraction.

In assessing these undisputed incidents from an objective standpoint, I find that there is no doubt that a clear and definitive pattern of questionable conduct and behaviours by the Tenants emerges. Right from the outset of the tenancy, the Tenants engaged in objectionable actions, for which they were warned, yet they continued those same behaviours or participated in others, which led to further incidents, warnings, and fines. I find it important to note that any of the noted incidents may have sufficed as adequate grounds to end their tenancy under a One Month Notice for Cause. In addition, it is also

noteworthy that the Tenants believed it acceptable to host at least one party, during the time period of a pandemic, where it was not legal to do so.

I find it appropriate to highlight these numerous infractions, over such a short period of time, because in my view, it demonstrates one of two scenarios. Either, at the very least, these incidents revealed that the Tenants possessed a complete lack of common sense and respect/prudence/judgement, or at worst, these incidents portrayed the Tenants as having an attitude of entitlement and/or blatant and willful disregard for anything that did not benefit their interests.

When taking into consideration the totality of these uncontested infractions, in combination with the undisputed damages above, I am satisfied that the latter is a more accurate reflection of the Tenants' attitude during this tenancy. While they claimed to be "young professionals", it is entirely possible that this could be an accurate description in their chosen occupations. However, "professional" would certainly not apply to the manner with which the Tenants elected to reside in the rental unit. Furthermore, I found the general tenor of the Tenants' submissions during the hearing to be somewhat vague and evasive, which causes me to question the credibility and reliability of those submissions. Overall, I find N.C. to be more credible than either of the Tenants, as she provided consistent, logical testimony, which was supported with documentary and video evidence. As a result, I prefer the Landlord's evidence on the whole.

While the Tenants do not dispute causing damage to the flooring, it is their belief that the condition they left it in would be considered reasonable wear and tear. As noted above, there is no evidence provided from the Tenants indicating that they took any action to attempt to mitigate any damage from their pet(s). Moreover, given their history during the tenancy, the other damages that they acknowledged, and the undisputed, repeated, similar strata infractions, there is no doubt that the Tenants were intentionally careless and/or negligent with how they treated the flooring. Based on the evidence provided of the condition of the flooring, especially the videos, I am satisfied that the length, depth, and excessive number of scratches is unquestionably beyond what would plausibly be considered reasonable wear and tear. As a result, I am satisfied that the Tenants are responsible for damages caused to the flooring as it was obviously not used in a reasonable fashion.

In determining the value of the flooring and the calculation of damages, I note that Policy Guideline # 40 outlines that the approximate useful life of hardwood flooring is 20 years. However, this is just a guideline and this number can vary depending on the

quality of the materials used. Given that the flooring is 10 years old already, I accept that the Landlord has already had the benefit of a portion of this flooring's useful life. Moreover, N.C. indicated that the flooring was recently refinished for the last possible time, just prior to the tenancy commencing. I can reasonably infer from this submission that the flooring has been refinished in the past, as opposed to this being the one and only time. As such, I am satisfied that this would place the flooring as closer to the end of its useful life, rather than at its midpoint. Consequently, while the Landlord is requesting relief in the amount of half of the cost of complete replacement of the flooring, I do not find this to be appropriate. As burden of proof rests with the Landlord substantiate the value, I do not find that the Landlord has legitimized a claim for this amount. However, I do find that there is still a loss that the Landlord suffered as a result of the Tenants' negligence.

While it is not possible to determine an exact amount of useful life remaining, I do not find it reasonable to conclude that the Landlord would have spent $13,000.00 refinishing it before this tenancy if there was not an expectation that the flooring would not have had at least a few years of useful life remaining. Based on the pictures of the condition of the flooring at the start of the tenancy and the notes in the move-in inspection report, the flooring appears to be in good condition. As the flooring was 10 years old and was just refinished for the last time, I find it unlikely that it would have achieved a useful life of 20 years. However, I do find it reasonable to conclude that it could have likely lasted another five years.

As the Landlord spent $13,000.00 on the last round of refinishing, I find it appropriate to then calculate the expected depreciation of the value of the flooring as $13,000.00/5 years = $2,600.00 per year. Given that the Landlord enjoyed the benefit of close to one year of the estimated remaining useful life, I grant the Landlord a monetary award in the amount of the remaining four years that the Landlord lost, totalling **$10,400.00**.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of these claims.

As the Tenants' Application was dismissed without leave to reapply, I do not find that they are entitled to recover the $100.00 filing fee paid for their Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Hot tub repair	$250.00
Countertop stain repair	$350.00
Broken light fixture	$44.80
Strata fine	$200.00
Flooring	$10,400.00
Recovery of Filing Fee	$100.00
Security deposit	-$3,500.00
Pet damage deposit	-$3,500.00
Total Monetary Award	**$4,344.80**

Conclusion

I provide the Landlord with a Monetary Order in the amount of **$4,344.80** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

The Tenants' Application is dismissed without leave to reapply.

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: January 14, 2022

Residential Tenancy Branch