



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Tenant Ch.L. and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Res Judicata

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

The landlord's application for dispute resolution states that this application for dispute resolution was filed in response to a previous dispute between the parties. The file number for the previous dispute is located on the cover page of this decision. In the previous Decision dated August 13, 2021, the tenants applied for the return of their security deposit, and the landlord was ordered to pay the tenants double their security deposit in the amount of \$876.00 plus the \$100.00 filing fee.

As the tenants were already granted a Monetary Order for the return of double their security deposit, I am not able to hear the landlord's claim for authorization to retain the deposit because the disposition of the security deposit has already been decided. The matter is *res judicata* and cannot be heard again. The landlord's application to retain the tenants' security deposit is dismissed without leave to reapply.

Preliminary Issue- Service

The agent testified that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail but could not recall on what date. The tenant testified that he received the landlord's application for dispute resolution and evidence via registered mail but could not recall on what date. I find that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail in accordance with section 89 of the *Act*.

Tenant Ch.L. testified that he served the landlord with his evidence via registered mail but the tenant could not recall on what date. The agent testified that the landlord did not receive the tenants' evidence. Tenant Ch.L. did not enter the registered mail receipt or other proof of service document into evidence and did not provide the tracking number of the registered mailing in the hearing.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure state that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The agent testified that the tenants' evidence was not received, and the tenant did not provide any proof of service documentation of the registered mailing. I find that tenant Ch.L. has not proved, on a balance of probabilities, that the landlord was served with the tenants' evidence in accordance with section 88 of the *Act*. The tenants' evidence is therefore excluded from consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of tenant Ch.L. and the agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2011 and ended on August 31, 2020. Monthly rent in the amount of \$1,047.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a joint move in condition inspection report was completed by the parties on September 30, 2011, and was signed by both parties. Both parties agree that a joint move out condition inspection report was completed by both parties on September 2, 2020. The move in condition inspection report states that the tenants agree to the contents of the report. The move out condition inspection report states that the tenants do not agree with the contents of the report.

The agent testified that the tenants damaged the carpeting throughout the unit, the kitchen tiles and the bathroom vinyl, all of which required replacement at the end of this tenancy. The agent is claiming \$2,317.56, the cost of replacing the kitchen tiles with vinyl flooring, replacing the bathroom vinyl with new vinyl and refinishing the hardwood floors under the carpet. Receipts for the above claim were entered into evidence. The agent testified that the costs are broken down as follows:

- Material cost to refinish hardwood: \$578.78
- Material cost to replace kitchen/dining area and bathroom vinyl: \$138.78
- Labour to install all flooring: \$1,600.00.

Carpet

The agent testified that the carpets were in good condition at the start of the tenancy and had to be thrown out at the end of the tenancy because they were damaged and stained. The agent testified that the tenants screwed a large piece of plastic to the floor overtop of the carpet which damaged both the carpet and the hardwood floors underneath. The move in condition inspection report states that the carpets were in satisfactory condition at the start of this tenancy and that at the end of the tenancy the carpet was in very poor condition and had burn marks. Page one of the move in condition inspection report states "complete paint out – new carpets- new ceramic tile, kitchen all new".

The agent testified that he did not know how old the carpets were when the tenants moved in. The agent testified that the landlord decided to re-finish the hardwood under the carpets rather than replace the carpets because it was cheaper. The agent entered into evidence pictures of stained carpet and carpet damaged by screws.

Tenant Ch.L. testified that the carpet was clean when he moved in but that it was already worn, and that the lifespan of the carpet had expired by the time this tenancy ended. Tenant Ch.L. testified that the carpet was not new at the start of this tenancy.

Tenant Ch.L. testified that at some point in the tenancy the carpet started to degrade, and the landlord refused to replace it, so he screwed a piece of black plastic over the carpet to cover up the degraded area. No documentary evidence to support the tenant's claim regarding the landlord's inaction was entered into evidence.

Tiles

The agent testified that the kitchen area tiles were in good condition at the start of this tenancy and were broken at the end of this tenancy. The move in condition inspection report states that the kitchen and dining area flooring is in satisfactory condition. The move out condition inspection report states that kitchen flooring is in satisfactory condition and the dining area states, "ceramic flex". The agent testified that he did not know how old the tiles were. The agent entered into evidence photographs of the broken tiles.

Tenant Ch.L. testified that the ceramic tiles in the kitchen were not installed properly

and over time started to crack. Tenant Ch.L. testified that the landlord was told of the issue during the tenancy and refused to fix the issue. No documentary evidence to support this claim was accepted into evidence.

Bathroom Vinyl

The agent testified that the bathroom vinyl was in good condition at the start of this tenancy and was damaged at the end of this tenancy. The move in condition inspection report states that the bathroom flooring is in satisfactory condition. The move out condition inspection report states that the bathroom flooring is in satisfactory condition. The agent testified that he did not know how old the bathroom vinyl flooring was.

The tenant testified that the bathroom vinyl was old when they moved in. Tenant Ch.L. testified that the vinyl floors degraded over time and their lifespan was over at the end of this tenancy. The tenant testified that the vinyl flooring was in “bad” condition at the end of this tenancy.

Analysis

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 21 of the *Residential Tenancy Act Regulation* (the “Regulation”) states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Where the landlord and the tenant disagree on the move in condition of the rental property and other evidence does not clarify the issue, I rely on the move in condition inspection report as both parties signed it and agreed to its content. In regard to the move out condition inspection, I find that the stated condition is not determinative on the condition of the subject rental property because the tenants did not agree to the contents of the report at the time it was completed. To determine the move out condition of the subject rental property, I rely on the evidence presented by the parties.

The move in condition inspection report states that all flooring in the subject rental property was in satisfactory condition and that the carpets, ceramic tile and kitchen were all new. No documentary evidence from the tenant was admitted for consideration. I find that the tenants have not provided a preponderance of evidence to contradict the contents of the move in condition inspection report signed by both parties. Pursuant to section 21 of the *Regulation*, as stated in the move in condition inspection report, I find that the kitchen tiles and carpet were new at the start of this tenancy. I find on a balance of probabilities, that given the new carpet and tiles installed at the start of this tenancy, the bathroom flooring was also new.

Based on the testimony of both parties and the photographs entered into evidence, I find that the carpets, tile and vinyl flooring were damaged beyond repair and required replacement at the end of this tenancy. I accept the agent's undisputed testimony that it was cheaper to refinish the hardwood than to replace the carpet.

Policy Guideline 40 states that the useful life of carpet and tile is 10 years, I will use this estimate for the useful life of the vinyl as well. I find that contrary to the tenants' submissions, the useful life of the flooring had not expired at end of this tenancy and that pursuant to Policy Guideline 40, the flooring should have lasted an additional 13 months after the tenants moved out.

The agent provided evidence that flooring was replaced at a total cost of \$2,317.56. I find that the tenants owe the landlord for the flooring according to the following calculations:

$$\text{\$2,317.56 (cost of new flooring) / 120 (months of useful life) = \$19.31 (monthly cost)}$$

$$\text{\$19.31 (monthly cost) * 13 (months of useful life flooring should have had remaining) = \$251.03}$$

As the landlord was successful in this application for dispute resolution, I find that the

landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$351.03.

The landlord is provided with this Order 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.

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: February 09, 2022

Residential Tenancy Branch