Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 21, 2021 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

W.A. and K.S. (the "Agents") appeared at the hearing for the Landlord. The Tenants appeared at the hearing and called F.M. as a witness. F.M. was not involved in the hearing until required. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties and F.M. provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. The Tenants confirmed receipt of the hearing package and Landlord's evidence. The Tenants mentioned not having time to submit evidence. The Tenants noted receiving the Landlord's package 14 days prior to the hearing. The Tenants confirmed they were prepared to proceed and said their only evidence is witness testimony.

An issue arose during the hearing in relation to a pet damage deposit. Tenant E.B. testified that they paid a $200.00 pet damage deposit. The Agents testified that they

have no record of a pet damage deposit being paid. The Application does not show that there was a pet damage deposit paid and therefore I find the issue of a pet damage deposit is not before me in the Application. If a pet damage deposit was paid, the parties can agree on how to deal with the pet damage deposit or make further Applications for Dispute Resolution in relation to the pet damage deposit if necessary.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid May and June insurance	$40.00
2	Cleaning	$150.00
3	Mailbox lock replacement	$35.00
4	Painting	$150.00
5	Replace floors	$1,050.00
6	Bathroom tile damaged	$150.00
7	Filing fee	$100.00
	TOTAL	**$1,675.00**

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started February 01, 2020 and was for a fixed term of six months. Rent was $1,318.00. The Tenants paid a $650.00 security deposit.

Tenant M.L. testified that they did not live in the rental unit and were simply a co-signer of the tenancy agreement.

The parties agreed the tenancy ended June 30, 2021.

The parties agreed the Tenants provided the Landlord a forwarding address in writing July 10, 2021.

The Agents acknowledged the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security deposit.

A Condition Inspection Report (the "CIR") was submitted. The Agents testified that the CIR is accurate as it relates to the move-in inspection.

Tenant M.L. testified as follows in relation to a move-in inspection. The inspection was done with a different property manager. The property manager completed a Condition Inspection Report on their tablet, there was no paperwork done. The property manager pointed out issues in the rental unit and noted things on their tablet. The Tenants signed the Condition Inspection Report on the tablet. The property manager later produced a paper copy of the Condition Inspection Report.

The CIR in evidence is signed and I asked the Tenants about this. The Tenants testified that the CIR was signed without them looking at it or reading it through. The Tenants could not point to documentary evidence showing the original Condition Inspection Report done on the tablet was different than the CIR in evidence. The Tenants referred to witnesses providing testimony about the condition of the rental unit at the start of the tenancy but also noted that the witnesses were not at the move-in inspection.

The Agents testified that the CIR in evidence is the same as the Condition Inspection Report done on the tablet.

The Agents testified as follows in relation to a move-out inspection. Both parties did a move-out inspection. The CIR was completed. The CIR was signed for the Landlord but not by the Tenants.

The Tenants testified as follows in relation to a move-out inspection. A move-out inspection was not done by both parties. The Tenants were still moving when agents for the Landlord attended for the inspection. There was hostility between the parties and both parties left. The Tenants did not hear from the Landlord again until they

received the hearing package for the Application. No move-out inspection was done and the Tenants were not offered two opportunities, one on the RTB form, to do a move-out inspection.

#1 Unpaid May and June insurance $40.00

The Tenants agreed to pay for this claim.

#2 Cleaning $150.00

The Tenants agreed to pay for this claim.

#3 Mailbox lock replacement $35.00

The Agents testified that the Tenants did not return a mailbox key and pointed to a work order in evidence for replacing the mailbox lock at a cost of $35.00.

The Tenants testified that they were given a mailbox key at move-in, the mailboxes were broken into and the original key no longer worked so it was returned to an agent for the Landlord. The Tenants testified that they never received another mailbox key. The Tenants could not point to documentary evidence to support their position.

#4 Painting $150.00

The Agents testified as follows. The rental unit was painted at the start of the tenancy. The Tenants were only in the rental unit for one year and six months. The Tenants tried to paint the rental unit themselves; however, the color used did not match. Areas of the walls had patches on them and the walls had to be repainted. The patches are shown in the photos submitted. The Landlord paid the painter $189.00 but is only claiming $150.00 of this.

The Tenants testified as follows. There were tack holes in the walls which were painted. The paint used was not a good match. They patched all walls. It is documented that the rental unit was last painted 10 years prior. The paint was not fresh at move-in.

In reply, the Agents relied on pages 18-20 of their materials to show the unit was last painted at the start of the tenancy.

#5 Replace floors $1,050.00

The Agents testified as follows. The Tenants had a pet and pet urine damaged the floor of the rental unit. The Landlord had no choice but to replace the floor. The photos submitted also show damage to the floor. Pages 20 to 22 of their materials show the cost of replacing the floors. The floor in the rental unit was last replaced in October of 2011 and should last 20 years. The laminate floor was replaced with laminate.

The Tenants testified as follows. The Landlord is claiming that water damage from a flood is pet urine. There was a flood in the rental unit which caused water damage to the floor. The edges on the flooring were lifting because that is the nature of laminate flooring. There were gouges in the floor before the tenancy. There was not cat urine all over the floor. The floor was 11 years old and not in great condition from the start.

In reply, the Agents testified that the water from the flood did not go into the floor of the rental unit and instead went below the rental unit. The Agents referred to photo 12 showing a drag mark from furniture on the bedroom floor.

#6 Bathroom tile damaged $150.00

This claim was withdrawn by the Agents.

Witness Testimony

The Tenants planned to call R.L. as a witness at the hearing. The Tenants advised that R.L. would testify that he heard the cleaner tell the Landlord's representative about gouges on the floor of the rental unit being there at the start of the tenancy. The Agents agreed that we did not need to call R.L. to hear this testimony and accepted that R.L. would testify that he heard the cleaner tell the Landlord's representative about gouges on the floor of the rental unit being there at the start of the tenancy.

F.M. testified as follows in response to questions from both parties. F.M. is Tenant E.B.'s spouse. There was wear and tear including little scratches and scuffs on the floor of the rental unit before the Tenants brought their furniture into the unit. There was a panel of flooring in the bedroom that was scratched at the start of the tenancy. There was a panel in the living room with the edges scuffed up. There was water damage on the wall of the storage room which workers had to come in and repair. There was water on the floor in the closet and the wall was wet. F.M. does not remember the date they

moved into the rental unit. F.M. and Tenant E.B. had pets but the pets used a litter box in the washroom.

Documentary Evidence

The Landlord submitted the following documentary evidence:

- Photos of the rental unit at the end of the tenancy
- CIR
- Lease ledger
- Invoices
- Work order
- Purchase orders
- Notice to Vacate
- Emails

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties, I find the Tenants participated in the move-in inspection and therefore did not extinguish their rights in relation to the security deposit pursuant to section 24 of the *Act*.

The parties disagreed about what occurred in relation to the move-out inspection; however, based on the testimony of both parties, I find this was not a situation where the Tenants were offered two opportunities to do a move-out inspection, one on the RTB form, and declined to participate and therefore I do not find that the Tenants extinguished their rights in relation to the security deposit pursuant to section 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because

extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for unpaid insurance, cleaning and mailbox lock replacement, none of which is damage to the rental unit.

Based on the testimony of the parties, I accept that the tenancy ended June 30, 2021.

Based on the testimony of the parties, I accept that the Tenants provided the Landlord a forwarding address in writing July 10, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from July 10, 2021. The Application was filed July 21, 2021, within time. I find the Landlord complied with section 38(1) of the *Act* and was entitled to claim against the security deposit when the Application was filed.

Compensation

Section 7 of the *Act* states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;

- the party who suffered the damage 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.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 Unpaid May and June insurance $40.00

The Tenants agreed to pay for this claim and therefore the Landlord is awarded this amount.

#2 Cleaning $150.00

The Tenants agreed to pay for this claim and therefore the Landlord is awarded this amount.

#3 Mailbox lock replacement $35.00

Section 37(2)(b) of the *Act* states:

> (2) When a tenant vacates a rental unit, the tenant must…
>
> > (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The move-in CIR shows the Tenants were given one mailbox key at the start of the tenancy. Further, the Tenants acknowledged they were given a mailbox key at the start of the tenancy. There is no issue that the Tenants did not return a mailbox key at the end of the tenancy because the parties agreed on this.

The Tenants state that the mailbox key stopped working during the tenancy because the mailboxes were broken into and therefore the key was returned to an agent for the Landlord. I would expect to see documentation about the mailboxes being broken into and keys or locks changing or documentation that the mailbox key was returned to an

agent for the Landlord during the tenancy because information about the mailbox key is recorded on the move-in CIR. The Tenants did not provide any evidence to support their testimony about the mailbox key. In the absence of further evidence to support the Tenants' testimony, I am not satisfied the mailbox key was returned to an agent for the Landlord during the tenancy and I find the Tenants breached section 37(2)(b) of the *Act*.

I am satisfied the Landlord had to replace the mailbox lock and key. Based on the work order at page 17 of the Landlord's materials, I am satisfied replacing the mailbox lock and key cost $35.00 and I find this amount reasonable. The Landlord is awarded the amount sought.

#4 Painting $150.00

Section 37(2)(a) of the *Act* states:

> (2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear…

I am satisfied based on the purchase order at page 18 of the Landlord's materials that the rental unit had touch up paint to the walls done January 27, 2020, just prior to the start of the tenancy.

I accept based on the photos in evidence that the Tenants patch painted the walls in the rental unit in a manner that left different color patches all over the walls of the rental unit. I did not understand the Tenants to dispute that they patch painted the walls and that the color used was not a good match.

Based on the photos, I find the damage to the walls caused by the Tenants patch painting with the wrong color of paint is beyond reasonable wear and tear because the patches are numerous and obvious. I find the Tenants breached section 37 of the *Act*.

I find the Tenants left the Landlord no choice but to repaint the rental unit given the poor paint job done by the Tenants. I find based on the purchase order that repainting the walls cost $189.00, which I find to be a very reasonable amount. Further, the Landlord is only seeking $150.00 which I find more than reasonable given the condition of the

walls at the end of the tenancy as shown in the photos. I award the Landlord the $150.00.

#5 Replace floors $1,050.00

Section 37(2)(a) of the *Act* applies to this claim as well.

Further, section 21 of the *Residential Tenancy Regulation* states:

> 21 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.

I accept that the CIR in evidence is accurate as to the state of the rental unit at the start of the tenancy. The only evidence to the contrary provided is the testimony of the Tenants, the statement about what R.L. heard and the testimony of F.M.

In relation to the testimony of the Tenants, I do not accept that they signed the CIR without looking at it or reading it through. The CIR is obviously an important document in a tenancy. The CIR used by the Landlord is on the RTB form which is clear and straightforward. The main content of the CIR is only three pages long. It is easy to see that the Landlord noted no issues with the rental unit in the CIR because there are simply check marks or "N/A" at every line. Further, page three of the CIR specifically states "I [the Tenants] agree that this report fairly represents the condition of the rental unit" and there is a large check mark noted next to this box. In the circumstances, I find it unlikely that the Tenants signed an important document such as this without looking at it sufficiently to see that it showed there were no issues with the rental unit at move-in.

In relation to the statement of R.L., I find this is hearsay and of no weight because R.L. is simply relaying what a cleaner said and I have no evidence from the cleaner confirming the statement and no further details or context from the cleaner.

In relation to the testimony of F.M., I put some weight on it although less than that of an independent third party because F.M. is the spouse of Tenant E.B. and lived in the rental unit with E.B. Further, F.M. is testifying about the condition of the rental unit two years prior to the hearing, which I find to be a lengthy period of time.

Considering the evidence before me, I place more weight on the CIR completed and signed by the parties at the start of the tenancy. The whole purpose of the CIR was to document the condition of the rental unit at the start of the tenancy. Although photos or videos contradicting the CIR may have satisfied me that the CIR is not accurate, the Tenants did not provide such compelling evidence. I do not find that the testimony of the Tenants and F.M. overcomes the signed CIR. I do not find that the Tenants have provided a preponderance of evidence to the contrary and therefore I accept the CIR as accurate.

Based on the CIR, I find the flooring in the rental unit was good on move-in. Based on the CIR and photos, I find there was some damage to the floor at move-out. I do not accept that the edges of the laminate lifting as shown in the photos was due to the nature of laminate because the damage that is beyond reasonable wear and tear is only on one of the laminate boards, not all of them. I note that the photos show further scratches on the flooring, some of which I find to be beyond reasonable wear and tear and some of which I do not find to be beyond reasonable wear and tear. The scratches that are beyond reasonable wear and tear are the ones that are numerous, lengthy and deeper than a surface scratch. I am satisfied the Tenants breached section 37 of the *Act* in relation to some of the damage to the flooring shown in the photos.

The parties disagreed about whether the flooring in the rental unit was damaged by pet urine. I do not find that the Landlord submitted compelling evidence that the floor was damaged by pet urine as I only see this noted in the CIR at move-out which agents for the Landlord authored and the Tenants did not agree with. In these circumstances, I would expect to see further evidence of damage to the flooring from pet urine; however, the Landlord has not submitted further evidence of this.

I have some concerns about the Agents' submission that the flooring had to be replaced because I understood this to be based on the submission that the flooring was damaged by pet urine, which I am not satisfied of based on the evidence provided.

Further, I note that the flooring was almost 10 years old and therefore at half its useful life according to RTB Policy Guideline 40 (page 5).

Given the above, I award the Landlord $150.00 for the floor damage. I find this amount covers the reduction in the value of the rental unit caused by the scratches on the floor that I do find to be beyond reasonable wear and tear and therefore compensates the Landlord for the loss resulting from the Tenants' breach. The $150.00 takes into

account the condition of the floor as shown in the photos as well as the age of the floor and lack of evidence of pet urine damage.

#6 Bathroom tile damaged $150.00

This claim was withdrawn by the Agents.

#7 Filing fee $100.00

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Unpaid May and June insurance	$40.00
2	Cleaning	$150.00
3	Mailbox lock replacement	$35.00
4	Painting	$150.00
5	Replace floors	$150.00
6	Bathroom tile damaged	Withdrawn
7	Filing fee	$100.00
	TOTAL	**$625.00**

The Landlord can keep $625.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remaining $25.00 to the Tenants and the Tenants are issued a Monetary Order in this amount.

Conclusion

The Landlord is entitled to $625.00 and can keep this from the security deposit. The Landlord must return the remaining $25.00 to the Tenants and the Tenants are issued a Monetary Order in this amount. If the Landlord does not return the $25.00, this Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: March 08, 2022

Residential Tenancy Branch