Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX MASTERS REALTY
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 April 13, 2021, the Landlords 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 these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 15, 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*.

These Applications were originally set down for a hearing on October 14, 2021 at 1:30 PM, but was subsequently adjourned for reasons set forth in the Interim Decision dated October 14, 2021. These Applications were then set down for a final, reconvened hearing on May 26, 2022 at 1:30 PM.

Landlord P.S. attended the reconvened hearing, with J.J. attending as an agent for the Landlords. Tenant F.L. attended the reconvened hearing, with A.S. attending as counsel for the Tenants. 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. As well, all parties in attendance, with the exception of A.S., provided a solemn affirmation.

Service of documents was discussed at the original hearing. As I am satisfied that all documents and evidence have been served in accordance with the *Act* and the Rules of Procedure, I have accepted all of the parties' evidence and will consider it 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

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards these debts?
- Are the Landlords 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 April 1, 2020, and that the tenancy ended on March 31, 2021, when the Tenants gave up vacant possession of the rental unit. Rent was established at $3,750.00 per month and was due on the first day of each month. A security deposit of $1,875.00 and a pet damage deposit of $1,875.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

At the original hearing, all parties agreed that a move-in inspection report was conducted on March 30, 2020, and that a move-out inspection report was conducted on March 31, 2021. A copy of the signed condition inspection reports was submitted as documentary evidence.

F.L advised that the Landlord asked him to wait outside during the move-out inspection, and he assumed that this was due to COVID protocols. He stated that he did not push back on this request, that he signed the move-out inspection report that day, and that he agreed that they caused damage to kitchen hardwood. Tenant G.R. contrarily advised that they were not asked to stay outside, and they were outside because they were attempting to clean up the yard. She testified that she went around the rental unit later, with the Landlord, and reviewed the move-out inspection report.

J.J. advised that the Tenants were not asked to wait outside during the move-out inspection, but they chose to be outside as they were cleaning the yard. He stated that the Tenants were provided with multiple opportunities to view the rental unit, that F.L. brought up damages they caused to the rental unit, that G.R. reluctantly went through the unit with the Landlord, and that she agreed that there was damage to the rental unit.

All parties agreed that the Tenants provided their forwarding address in writing to the Landlord on the move-out inspection report on March 31, 2021.

J.J. advised that the Landlords were seeking compensation in the amount of **$4,200.00** because the Tenants and/or their pets damaged parts of the oak hardwood flooring, which required repair. He stated that there was visible scratching and damage to the flooring. As well, there was a pungent smell of pet urine, which was confirmed by contractors. He referenced the move-in inspection report, which did not indicate floor damage, and he pointed to the pictures submitted as documentary evidence that support the position that the flooring was in good shape at the start of the tenancy. He then cited pictures submitted of the damage and the repaired flooring afterwards. He drew my attention to invoices submitted as the cost of the work to complete these repairs; however, he stated that the true cost exceeded the amount being claimed. He stated that he was uncertain of the age of the flooring.

F.L. advised that the damage to the flooring that J.J. was referring to was existing damage and that the claim was not adjusted to account for the useful life of the material. He then claimed that the flooring was worn and old at the beginning of the tenancy, that the finish was already removed, and that the flooring was beyond its useful life.

However, he confirmed that there were no notations on the move-in inspection report about any deficiencies in the flooring. He then acknowledged that they had pets in the rental unit and that they did damage the flooring; however, he disputed that there was a strong pet odour present.

G.R. advised that there was some scratching near the sliding door, but it was there at the start of the tenancy. As well, she stated that there was already water damage caused by a plant pot.

At the reconvened hearing, J.J. advised that the Landlords were seeking compensation in the amount of **$850.00** because the Tenants' pets soiled the flooring of a cold/storage room, and the odour could not be removed. Therefore, the flooring needed to be replaced. He stated that G.R. walked into the rental unit with the Landlord and this odour was observed together. He referenced documentary evidence submitted to support this position. As well, he noted that this claim amount represents the lower of the two estimates provided.

A.S. advised that there was no evidence to support the age of this flooring. As well, Policy Guideline # 40 does not have a category for this type of flooring and suggested that this material would be similar in useful life as a carpet. Consequently, the useful life of this material has likely already expired. In addition, there is insufficient evidence to support that entire replacement of the flooring was necessary.

P.S. advised that he lived in the rental unit for a long time, that this cold/storage room was in good shape at the start of the tenancy, and that this area was never meant to be lived in. He testified that the Tenants' cats urinated against the walls and that this soaked through the flooring and into the plywood underneath. He stated that there was an extremely strong smell of urine on the flooring and that the plywood was in good shape, other than the urine stains. As well, he noted that the useful life of plywood is approximately 40 to 50 years.

J.J. advised that the Landlords were seeking compensation in the amount of **$950.00** because there were urine and feces stains on the carpets from the Tenants' pets. These could not be spot cleaned, and the odour was present through the entire home. He referenced documentary evidence to support the claims of damage, as well as estimates for the cost to remedy this damage. He submitted that the actual cost to clean the carpets of **$752.94** was less than the original amount claimed.

F.L. advised that they hired a person to clean the rental unit prior to move out, and he stated that the rental unit was clean at the end of the tenancy. He submitted that they paid this person $250.00 to clean the entire house and the carpet. This was paid in cash, and they did not get a receipt for this job. He testified that this person had “some kind of vacuum on her back”; however, he was not sure what type of appliance this was exactly. He was also unsure if this person shampooed the carpets.

A.S. reiterated that the Tenants testified that they had the rental unit cleaned. As well, she emphasized that the Landlords’ claim has been reduced to $752.94.

Finally, J.J. advised that the Landlords were seeking compensation in the amount of **$250.00** because the deck facing the rental unit was dirty beyond reasonable wear and tear. He referenced documentary evidence to demonstrate the before and after condition of this area. As well, he referenced the two quotes submitted to support the cost of rectifying this issue.

A.S. advised that the tenancy agreement does not indicate that the exterior of the rental unit required cleaning or pressure washing, and she stated that it would not be surprising that the outside would get dirty. However, this was not the Tenants’ responsibility to clean, and they did this on their own volition. Furthermore, the estimates provided do not indicate that the work was actually completed and paid for by the Landlords.

F.L. advised that green mould did develop on this deck and that they spent approximately 30 minutes cleaning it with a broom and water. He stated that the area was slippery at the end of tenancy, that he wanted to take responsibility for things if they were supposed to fix them, and that they wanted to leave the rental unit in a good condition. He confirmed that he saw the Landlord’s pictures and that “obviously they missed a couple of spots.” He stated that it was his belief that the Landlord’s quote was high and that it would take approximately 10-15 minutes to clean.

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 Landlords 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 Landlords 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 Landlords 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 Landlords 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 Landlords to claim against a security deposit or pet deposit for damage is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords 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*.

The consistent and undisputed evidence is that a move-in inspection report was conducted. With respect to a move-out inspection report, I note that the Tenants provided contradictory testimony about being asked to wait outside. As well, G.R. advised that they stayed outside of their own volition as they were cleaning the yard. Given that their testimony was inconsistent, I find that this causes me to doubt their credibility. As such, I find it more likely than not that they were provided with an opportunity to participate in the move-out inspection, but they elected not to do so. Furthermore, as the move-out inspection report was signed by F.L., I am satisfied that the Landlords completed these reports in accordance with the *Act*. Consequently, I find that the Landlords have not extinguished the right to claim against the deposits.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit and pet deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' deposits, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive 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 Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords 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 March 31, 2021, when the move-out inspection was completed, and that the Landlords received the Tenants' forwarding address in writing on this date. As the Landlords' Application was made within 15 days of March 31, 2021, and as the Landlords 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.

Moreover, as the Tenants made their Application on April 15, 2021, their Application was filed a day early. As such, their Application is dismissed. Regardless, as the Landlords applied to claim against the deposits on time, the matter with respect to the deposits will still be addressed.

With respect to the Landlords' 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 Landlords prove the amount of or value of the damage or loss?
- Did the Landlords 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 Landlords' claim for compensation in the amount of $4,200.00, I have before me the move-in inspection report, which only indicates a round stain on the floor. Otherwise, there is no damage on the flooring noted anywhere, nor is there any indication that the floor was in any other condition but good. Moreover, there are pictures of the move-in condition of the flooring, and pictures that depict the condition that the Tenants left the rental unit in. Finally, there is documentary evidence of the cost from different professionals in remedying this damage.

In contrast, I have F.L.'s testimony that the flooring was worn and old at the beginning of the tenancy, that the finish was already removed, that the damage existed at the start of the tenancy, and that the flooring was beyond its useful life. However, contrary to this testimony, he acknowledged that there were no indications on the move-in inspection report to corroborate his testimony. In addition, when reviewing the pictures provided of the condition of the flooring at the end of the tenancy, I find that there are significant, large stains on the flooring. I do not find it reasonable that these would not have been noticed by the Tenants, and consequently noted on the move-in inspection report. Furthermore, if the flooring was beyond its useful life at the beginning of the tenancy, it is not clear to me why the Tenants did not raise this as a concern to be repaired. Finally, and more significantly, I note that F.L. acknowledged that their pets did damage the flooring.

When reviewing the totality of the evidence before me, given that F.L. admitted to their pets damaging the flooring, I find that I prefer the Landlords' evidence on the whole. Furthermore, I found F.L.'s testimony to be contradictory and not consistent with common sense. Moreover, I found the general tenor of F.L.'s submissions to be somewhat dismissive and apathetic, leaving little doubt, in my view, that the Tenants were intentionally careless and/or negligent with how they managed their pets in the

rental unit. 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 Landlords did not provide an age of the flooring, I accept that the Landlords have already had the benefit of a portion of this flooring's useful life. As the burden of proof rests with the Landlords to substantiate the value, I do not find that the Landlords have legitimized a claim for the amount of $4,200.00. However, I do find that there is still a loss that the Landlords suffered as a result of the Tenants' negligence. As such, I grant the Landlords a monetary award in the lower amount of the estimates provided of **$3,554.25**.

Regarding the Landlords' claim for compensation in the amount of $850.00 for the pet damage to the cold/storage room, given that I am satisfied that the Tenants were negligent in the management of their pets during the tenancy, I am also satisfied that their pets were responsible for the damage caused to this room. As the Landlords have likely already had the benefit of a portion of this flooring's useful life, I grant the Landlords a monetary award in the amount of compensation of the lower estimate provided of **$850.00**.

With respect to the Landlords' claim for compensation in the amount of $950.00 for the cost of cleaning the carpets, given that that I am satisfied that the Tenants were negligent in the management of their pets during the tenancy, I am also satisfied that their pets were responsible for stains on the carpets. While F.L. testified that they hired a cleaner, I note that he did not provide any documentary evidence to support this. Moreover, I find his uncertain testimony about whether this person even shampooed the carpets to be consistent with his general, vague testimony throughout the hearings. I find it more likely than not that his ambiguous testimony was an effort to feign ignorance, and this causes me to question his credibility on the whole. Based on a balance of probabilities, I am satisfied that the Tenants' pets soiled the carpets and that the Tenants did not shampoo them at the end of the tenancy. As such, I grant the Landlords a monetary award in the amount of **$752.94**, which was the actual cost spent to remedy this issue.

Finally, regarding the Landlords' claim for compensation in the amount of $250.00 because the Tenants did not clean the deck, while A.S. claimed that it was not indicated

anywhere that the Tenants were responsible for cleaning this, I note that the move-in inspection report notes that the deck was clean at the start of the tenancy. Moreover, F.L. acknowledged that he attempted to clean it, but was unsuccessful. I do not accept that F.L. went out of his way to do the Landlords a favour by attempting to clean the deck even though he was not required to do so. I find it more likely than not that he made this attempt at cleaning the deck because he understood that this was part of their responsibility to clean. Moreover, I find that this half-hearted attempt to clean the deck was not only consistent with the manner with which the Tenants appeared to treat the rental unit, but also consistent with F.L.'s indifferent and unpersuasive demeanour. When reviewing the totality of the evidence presented before me, I am satisfied that the Tenants had little regard for the rental unit and it was obvious, in my view, that they were clearly unconcerned with upholding their responsibilities for returning it to a re-rentable state. Ultimately, I grant the Landlords a monetary award in the amount of **$250.00** to satisfy this claim.

As the Landlords were partially successful in these claims, I find that the Landlords are 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 Landlords 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 Landlords

Item	Amount
Flooring repair	$3,554.25
Cold/storage room repair	$850.00
Carpet cleaning	$752.94
Deck cleaning	$250.00
Recovery of Filing Fee	$100.00
Security deposit	-$1,875.00
Pet damage deposit	-$1,875.00
Total Monetary Award	**$1,757.19**

Conclusion

I provide the Landlords with a Monetary Order in the amount of **$1,757.19** 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: June 8, 2022

Residential Tenancy Branch