



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 26, 2023. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlords' Notice of Dispute Resolution Proceeding and initial evidence package well in advance of the hearing. The Landlords stated they sent a second evidence package to the Tenants, via email on January 16, 2023, containing audio and video recordings. However, the Tenants stated that this evidence was served late and they did not have a chance to open and view the files.

Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. The Landlords' second evidence package was significantly late. I also note there is no evidence this package contained new and relevant evidence such that it could not have been provided in the first package, with reasonable planning and preparation. I find the Landlords' second evidence package is not admissible as it was served late, and the Tenants did not have a chance to view it.

The Landlords confirmed receipt of the Tenants' evidence package. No further service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order for damage or loss under the Act?
- Are the Landlords entitled to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested?

Background and Evidence

As per the tenancy agreement provided into evidence, monthly rent was set at \$1,500.00. The Landlord collected, and still holds, a security deposit of \$750.00 and a pet deposit of \$750.00.

The tenancy started on or around July 3, 2021, and ended on April 30, 2022. The Landlords stated that they performed a move-in and move-out inspection but did not complete a condition inspection report for either event.

The Landlords are seeking the following, as per this application form:

- 1) \$1,500.00 – Flooring replacement

The Landlords stated that the Tenants damaged the laminate flooring in the kitchen/living room and as a result, they have to replace the entirety of the flooring in these two rooms. The Landlords stated that they cannot simply replace a couple of boards because the flooring contractor said they would all have to be ripped up and replaced. The Landlords provided a couple of undated and wide-angle photos taken before the Tenants moved in, as well as several up-close photos taken after the Tenants moved out. The Landlords also provided a letter from the flooring contractor for his labour costs, plus an estimate from Home Depot for the flooring material cost.

The Landlords stated that this repair could cost them around \$3,000.00, but they are only wanting to collect \$1,500.00 which is the amount they hold in deposits and the amount they applied for.

The Landlords stated that they bought the house and took possession on or around July 2, 2021, and the Tenants moved in the following day. The Landlords stated that the flooring was only a few months old (as per what the previous owner told them) when they took possession.

The Tenants stated that the flooring had pre-existing damage at the start of the tenancy, and was worn and damaged in several areas when they moved in. The Tenants also stated that the floor clearly hadn't been installed correctly, since it would shift, pop, and squeak when it was walked on in several areas. The Tenants stated that most of the damage predates their tenancy, and they never caused any wear or damage that goes beyond "reasonable wear and tear." The Tenants stated that they asked for copies of the inspection report, but it was never provided to them.

Analysis

Security Deposit

Under 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.

Section 24 of the Act states:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

[my emphasis added]

Based on the testimony of the parties, I find the Landlord did not complete a condition inspection report (CIR) and give a copy of this report to the Tenants in accordance with the regulations at the start of tenancy or the end of the tenancy. Given this, I find the Landlord extinguished their right to claim against the security and pet deposit for damage to the rental unit pursuant to section 24 of the Act.

I am satisfied that the tenancy ended on April 30, 2022, which is the date the tenants moved out. The Landlords confirmed that they received the Tenants' forwarding address in writing on May 6, 2022.

Pursuant to section 38(1) of the Act, the Landlord would have 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. However, the Landlords had extinguished their right to claim against the security and pet deposit for damage to the rental unit pursuant to section 24 of the Act and therefore the Landlords were required to claim against the deposit for something other than damage or return the security deposit to the Tenants within 15 days of May 6, 2022. The Landlords did not claim against the security or pet deposit for something other than damage or return the deposit to the Tenants within 15 days of May 6, 2022, and therefore breached section 38(1) of the Act.

Section 38(6) of the Act states:

38(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and*
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

The Landlord did not comply with section 38(1) of the Act and therefore the Landlord cannot claim against the security deposit and must pay the Tenants double the amount of the security deposit, plus interest. The interest amount is not doubled. However, the initial amount of the deposits are. Double the deposits held amounts to \$3,000.00 total.

Interest is calculated in accordance with the Act and the Regulations, and is calculated as follows (as of the date of this hearing):

2021 \$1500.00: \$0.00 interest owing (0% rate for 49.86% of year)
2022 \$1500.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$1500.00: \$2.08 interest owing (1.95% rate for 7.12% of year)

This amounts to interest of \$2.08, which is added on to the amount noted above. This totals \$3,002.08 which the Tenants are entitled to.

The Landlord is still entitled to claim for compensation pursuant to section 67 of the Act and I consider this now, below.

Monetary Compensation

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I have reviewed the testimony and evidence on this matter. Although there is no CIR, the Landlords provided a couple of photos taken before the Tenants moved in. The Landlords also provided a few close-up photos of the affected areas after the end of the tenancy. However, I note the photos taken before the tenancy are undated, and they are very wide angle. It is difficult to compare these photos with the photos taken at the end of the tenancy, which were taken up-close. I note the Tenants deny damaging the flooring, and state the damage was pre-existing and the flooring was poorly installed. The Tenants assert that any wear they put on the floors was “reasonable wear and tear”, and they do not feel they should be responsible for this repair.

I do not find the Landlord has provided sufficient evidence showing the condition of the flooring at the start of the tenancy. The photos are not sufficiently comparable and are taken at substantially different angles and zoom. Further, without a CIR, it is even more difficult to determine what, if any, damage or deficiencies were present when the

tenancy started. The Landlords failed to sufficiently document the condition of the rental unit in this regard. I find there is insufficient evidence that this damage was caused by the Tenants and that they ought to be responsible for the replacement of the floors. I dismiss this item, in full, without leave.

The Landlords must return double the security and pet deposit, with interest, as noted above.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$3,002.08**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: January 27, 2023

Residential Tenancy Branch