Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on December 19, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $2,304.75 for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' entire security deposit of $1,125.00 in partial satisfaction of the monetary order, pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The landlord's agent and the two tenants, tenant MB ("tenant") and "tenant SR" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. The landlord's witness HT called into this hearing to provide testimony from 2:25 p.m. to 2:34 p.m. only. My telephone inadvertently disconnected from the hearing from 2:34 p.m. to 2:37 p.m., but both parties remained on the teleconference line during this time. This hearing ended at 2:40 p.m. This hearing lasted approximately 70 minutes.

At the outset of this hearing, the landlord's agent stated that he intended to call a second witness from a restoration company at this hearing. Later during this hearing, the landlord's agent affirmed that this second witness was not necessary and he did not want to call this witness. He affirmed that he understood that he could not later claim that he was not given an opportunity to call this second witness, as I provided him with multiple opportunities to do so.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send copies of this decision to both parties after this hearing.

The landlord's agent confirmed that the landlord named in this application, owns the rental unit. He provided the name and spelling for the landlord. He said that he had permission to represent the landlord at this hearing. He provided the rental unit address.

The tenant identified himself as the primary speaker for the tenants at this hearing and tenant SR agreed to same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions. I informed both parties that I could not provide legal advice to them. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given multiple opportunities to settle at the beginning and end of this hearing but declined to do so.

I repeatedly cautioned the tenants that if I granted the landlord's full application, the tenants would be required to pay the landlord $2,404.75, including the $100.00 filing fee. The tenants repeatedly affirmed that they were prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord's agent that if I dismissed the landlord's application without leave to reapply, the landlord would receive $0. The landlord's agent repeatedly affirmed that the landlord was prepared for the above consequences if that was my decision.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. The landlord's agent confirmed receipt of the tenants' evidence. In

accordance with sections 88 and 89 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

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

The landlord's agent and the tenant agreed to the following facts. This tenancy began on March 8, 2021 and ended on December 4, 2022. Monthly rent in the amount of $2,283.75 was payable on the first day of each month. A security deposit of $1,125.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlord on December 4, 2022, by way of the move-out condition inspection report. The tenants provided written permission in the move-out condition inspection report, for the landlord to retain an amount to be determined for the cost of repairs.

The landlord's agent confirmed that the landlord seeks a monetary order for damages of $2,304.75, to retain the tenants' security deposit of $1,125.00, and to recover the $100.00 application filing fee.

The landlord's agent testified regarding the following facts. A condition inspection report was completed by the landlord's agent and the tenant. Before the tenants moved in, there was flooring installed, it displaced the other tenants, and ended their tenancy. The landlord redid the floors, painted, and did the countertops. They were brand new engineered hardwood floors. One week later, the tenants took possession of the rental

unit. The floors were two months old in the photographs provided of pictures 1 to 11 of the landlord's evidence. There was damage to the flooring, including large black gouges, stains, water damage, and peeling. Under the dishwasher, the floor was blistering and peeling. The landlord informed the tenant that photos were being taken and told the tenant to take photos as well at the move-out condition inspection. There was a hole in the bathroom door and gouges, scratches, and dents in the walls. There were no repair orders submitted by the tenants. The landlord could not repair the flooring because it was engineered flooring, not hardwood. The landlord had to get a restoration company to do it. The replacement for the whole floor was over $6,000.00. The landlord provided an invoice from January 4, 2023, for the repair and it was paid in full. The landlord did not provide a receipt for this cost. The landlord provided a quote for 11 boards only not 12 boards because the landlord only indicated 11 boards on the move- out condition inspection report. The landlord took photos after the repairs were completed as well. There were scratches, dents, and gouges beyond wear and tear and according to the RTB, the useful life of the flooring is 10 years. The bedroom was ok.

The tenant testified regarding the following facts. The photos from the landlord do not show any big gouges or cracks. It is the layer of finish from the friction of the tenants' furniture sitting on it. The floorboards appear to be black. There are no dents, gouges, or impact marks. The landlord has "zoomed in" on the photos and they do not show gouges. The landlord provided two photos of the same floorboard in photos 3 and 4 of the landlord's evidence. The landlord is exaggerating the narrative. The landlord has cropped their photos as well. The tenants provided four quotes from other contractors ranging between $500.00 and $600.00. This is four times less than the amount of the landlord's invoice. The tenants agree to pay $545.60 to the landlord, for the flooring, which is the average of the four quotes that the tenants provided. The tenants agree for the above amount to be deducted from their security deposit. If there is severe damage to the floorboards, then they can be replaced. The patchwork repair was done by the landlord at an excessively high price, and it was not replaced. The wood grain can be seen and there are no scratches, gouges, or dents in the flooring.

Tenant SR testified regarding the following facts. The floor is worn off but the wood grain does not show any gouges or peeling. The contractor cannot prove the damages. The landlord submitted photos 3 and 4, in their evidence, which is of the same floorboard. There are only ten other photos, so there were damages to 10 boards not 11.

The tenant stated the following facts. You would have to get on your hands and knees to see the damage being claimed by the landlord. The tenants only lived in the house, and this is reasonable wear and tear. The furniture was sitting on the floor only.

The landlord's agent stated the following facts in response. He is aware that the tenants provided quotes from four or five different people, ranging between $450.00 and $600.00 dollars. This is for the repair of 8 boards not 11. There are additional costs for more boards. The tenants could have gotten higher quotes but excluded them from their evidence. If the landlord knew the companies that provided the quotes for the tenants, then it would be ok. The tenants used lower quote prices for their own benefit. The landlord zoomed in on photos taken close-up. The green tape in the photo is from the technician. There was more than one area damaged on the one board, so the landlord submitted two photographs of the same board. The landlord is not claiming for the damages to the wall in the bedroom or the hole in the door that is the size of a loonie. The landlord has lived in places with hardwood flooring, with no damage. The tenants could have put a $5.00 coaster under the feet of their furniture. The damages are to the flooring in the dining room, living room, kitchen, and front door entry. The tenants should have notified the landlord or put a carpet or a coaster under the foot of their furniture. The tenants provided quotes for sanding and re-varnishing from handymen, not quotes from flooring experts. The landlord does not recommend using a handyman. This is engineered hardwood flooring, which requires a specialist. The landlord provided the amount for 11 boards to be sanded down and refinished. The tenants' quote are 75% of the floorboard repairs. They should be disregarded by the Arbitrator. These are not qualified experts; they are only handymen or carpenters. Vancouver is an expensive area. If you have a Mercedes, you do not take it to a Midas. You take it to the Mercedes dealership or a place they recommend. $2,300.00 is a lot of money. But the landlord's restoration company did not recommend the companies that the tenants provided quotes from.

The landlord's agent stated the following facts in response to my questions. The landlord did not re-rent the unit after the tenants moved out. The landlord's son moved into the rental unit, but the landlord's agent does not know exactly when. The landlord does not charge any rent to her son for living at the rental unit. The landlord's son moved in sometime in the beginning of January. He moved in after the repairs were done on January 4. The landlord did not provide a receipt for payment of the invoice. The invoice shows a balance due of $2,304.75. The landlord's agent made a payment by e-transfer but did not provide a copy of any of the emails or other documents to confirm the payment. It is the landlord's agent's own fault for not providing this information.

The tenant stated the following facts in response. The company S, that the tenants provided a quote from, does quotes all the time and offers reasonable prices. The landlord only provided one quote and "greenlighted" the first quote. The tenants did research. The landlord's agent initially stated that sanding could not be done for the floorboards and then later said that sanding could be done, so this is contradictory.

The landlord's witness HT testified regarding the following facts in response to questions from the landlord's agent. He has been repairing hardwood flooring for 15 years. He completed the repair of 11 boards at the rental unit. It was not normal wear and tear. He has never seen this type of damage in less than a two-year period. It is easy to repair hardwood flooring. The landlord's agent paid in full for the invoice.

The landlord's witness HT testified regarding the following facts in response to questions from the tenant. There were materials to buy for the job, which cost money. He buys in bulk. He used a power gel. There were no material costs on the invoice provided by the landlord. He charges $295.00 for the first floorboard and then $100.00 to $175.00 for each additional floorboard. There was no cost breakdown on the invoice. He charges by the job, not by the hour. There are guys who are cheap and buy wax colour crayon from Home Depot and rub it into the flooring. But this will rub off with mopping or cleaning. His company does sanding, filling, painting, and brushing back of the wood grains, so the texture is back on and it is sealed. It is permanent so it does not come off with cleaning. He agrees that people can do the job for $500.00 but it will not last. He does work for flooring companies, so he knows. He has never heard of the companies in the quotes provided by the tenants, so he is speculating because he does not know if they use crayon for their repairs.

The tenant stated that the landlord is a millionaire and has money, so it is no big deal for her to provide an invoice for $2,300.00.

Analysis

Burden of Proof

I informed the landlord's agent of the following information during this hearing. The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove the landlord's application and monetary claims. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of the monetary claim, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord served the application to the tenants, as required. The landlord received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing this application. This document contains the phone number and access code to call into the hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*
> - *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. I informed both parties that I had 30 days to issue a written decision after this hearing.

The landlord received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of her claims, since she chose to file this application on her own accord.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented
Evidence must be presented by the party who submitted it, or by the party's agent…
…
7.17 Presentation of evidence
Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…

7.18 Order of presentation
The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…

I find that the landlord's agent did not sufficiently present the landlord's application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules.* During this hearing, the landlord's agent failed to sufficiently review and explain the landlord's claims and the documents submitted with this application.

This hearing lasted 70 minutes, so the landlord's agent had ample and multiple opportunities to present the landlord's application and respond to the tenants' evidence. I repeatedly asked the landlord's agent if he had any other information to add and if he wanted to respond to the tenants' submissions.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claims. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

C. COMPENSATION

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. ***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.*

…

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. ***A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

Findings

I award the landlord $545.60 for damages to the flooring, since the tenants agreed to pay this amount during this hearing. I find that the above amount is reasonable and sufficient to repair the flooring damages claimed by the landlord at the rental unit. The tenants provided four quotes ranging between $420.00 and $682.50 and selected the average amount for the quotes of $545.60, to arrive at this amount.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application for $1,759.15 for damages to the flooring, without leave to reapply. I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16. I find that the landlord failed to show

sufficient damages to the flooring, beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1.

The landlord failed to provide a receipt to show if, when, or how the landlord paid for the damages to the flooring at the rental unit, as per Residential Tenancy Policy Guideline 16 above. The landlord only provided an invoice with a balance due for $2,304.75, and it does not indicate that any payments were made towards this balance. The landlord's agent said that he paid the above amount by e-transfer, but the landlord did not provide written proof of same, even though emails were sent to confirm same. The landlord did not provide any bank records or other such documents to confirm payment. The landlord's agent agreed that this was his error, for not having provided this written proof as evidence for this hearing.

During this hearing, the landlord's agent stated that he would try to locate the e-transfer document for the above payment, but he did not state whether he did. He did not provide a date of payment in his testimonial evidence. The landlord's witness HT claimed that the invoice was paid in full, but he did not provide a date of payment either, in his testimonial evidence.

I also note that there is no breakdown of costs in the invoice provided by the landlord. This issue was raised by the tenants at this hearing and the landlord's agent was provided with an opportunity to respond but he failed to sufficiently do so. The landlord's witness HT claimed that he only charges per job, not per hour. However, there were no costs for materials, or the specific tasks completed, indicated on the invoice. The landlord's witness HT agreed that he did not indicate a cost for materials, even though he bought materials and used them for this job.

The landlord's invoice simply indicates a lump sum cost of $2,195.00 for "repair 11 boards to floor" plus GST tax of $109.75 for a total of $2,304.75 due. It is not signed by anyone, even though there is a signature line and a space specifically for a signature. It only indicates the first name of the landlord's witness HT, not his surname. It only indicates the first name of the landlord's agent, not his surname.

The landlord had ample time of almost 1.5 months, from filing this application on December 19, 2022, to this hearing date of January 31, 2023, to provide the above evidence but failed to do so.

I note that the repairs to the flooring were completed on January 4, 2023, as per the landlord's invoice and the testimony of the landlord's agent during this hearing. This is

approximately 1 month after the tenants moved out on December 4, 2022, as agreed by both parties at this hearing. The landlord's agent did not provide a sufficient reason for the delay of one month, for the repairs to be completed.

I note that the tenants provided more detailed documentary evidence, regarding the flooring photographs and damages, with explanations and locations of the damages, as compared to the landlord. The tenant also provided more detailed testimonial evidence at this hearing, regarding the above. The landlord's agent referenced providing photographs and an invoice, but failed to sufficiently review and explain these and the landlord's other documents, such as the move-out condition inspection report, during this hearing. He provided more detail in response to the tenant's allegations regarding the landlord's deficient documentary evidence.

I reviewed the photographs provided by both parties, as evidence for this hearing. The landlord provided photographs with damages that are difficult to see in many of the photographs, as they are either faint or small in size, such that the landlord left green tape on the flooring and zoomed in, to show damages. I find that the landlord's photographs fail to show the exact areas where the flooring is located in the rental unit and the landlord failed to adequately name and label their photographs. Conversely, the tenants provided photographs that are named by board number and show the location of the boards in the rental unit. The photographs highlight and label the damages using clear red markings, and show the location of the boards relative to the tenants' furniture placement in the rental unit.

I also note that the landlord's agent alleged that the tenants only provided cheaper quotes to repair flooring, rather than more expensive quotes that they may have obtained. However, it is the landlord's burden of proof, as the applicant, to prove flooring damages to obtain a monetary order. It is not a reverse onus of proof for the tenants to prove the landlord's claim. The landlord only provided one invoice for the cost of the repairs, not any other estimates or quotes to show an average or reasonable cost to repair the flooring.

The landlord indicated a cost of $24.54 for registered mail for serving documents related to this application, in the landlord's monetary order worksheet, submitted for this hearing. The landlord's agent did not claim this amount or reference it at all during this hearing. The only hearing-related costs recoverable under section 72 of the Act, are for filing fees. Therefore, this claim is dismissed without leave to reapply.

As the landlord was only partially successful in this application, based only on what the tenants agreed to pay during this hearing, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenants. This claim is dismissed without leave to reapply.

Security Deposit

The landlord applied to retain the tenants' security deposit in this application. The landlord continues to hold the tenants' security deposit of $1,125.00.

Although the tenants did not apply for the return of their security deposit, I am required to consider it since the landlord filed this application to retain the security deposit, as per Residential Tenancy Policy Guideline 17.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The following facts are undisputed by both parties. This tenancy ended on December 4, 2022. The tenants provided a written forwarding address to the landlord on December 4, 2022, by way of the move-out condition inspection report.

Although both parties agreed that the landlord had written permission to retain money from the tenants' security deposit, the landlord did not indicate a specific amount in the move-out condition inspection report, indicating it was to be determined. Therefore, I find that the tenants did not agree for any random amount to be retained or for the amount to be at the landlord's discretion only. I find that the tenants could not have agreed for any random amount to be retained because no specific amount was indicated in the report by the landlord.

The landlord filed this application on December 19, 2022, which is within 15 days of December 4, 2022. Therefore, I find that the tenants are not entitled to double the value of their security deposit.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain $545.60 from the tenant's security deposit of $1,125.00, in full satisfaction of the monetary claim. The tenants agreed to pay the above amount during this hearing.

Over the period of this tenancy, interest is payable on the tenant's security deposit. No interest is payable for the years 2021 and 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1 to 31, 2023, since the date of this hearing was January 31, 2023. This results in $1.86 interest on $1,125.00 for 8.49% of the year based on the RTB online deposit interest calculator. Interest is paid on the full amount of the original security deposit of $1,125.00, before any deductions are made, including for the $545.60, as per Residential Tenancy Policy Guideline 17.

Although the date of this decision is February 7, 2023, this is not within the landlord's control, as it is only within my control when this decision is issued to both parties. Although the RTB hearing date of January 31, 2023, is not within the control of either party, the landlord continues to retain the tenants' security deposit in full and did not return any amount to the tenants, pending this hearing scheduled after the landlord filed this application.

In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to the return of their security deposit of $1,125.00, plus interest of $1.86, totalling $1,126.86, minus the deduction of $545.60. I issue a monetary order for the balance of $581.26 to the tenants against the landlord.

Conclusion

I order the landlord to retain $545.60 from the tenants' security deposit of $1,125.00 in full satisfaction of the monetary claim.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $581.26 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 7, 2023

Residential Tenancy Branch