



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 5, 2022, wherein the Landlord requested monetary compensation from the Tenant in the amount of \$1,696.00 for the cost of repairs to the rental unit and to recover the filing fee. The Landlord also requested authorization to retain the Tenant's security deposit towards any amounts awarded.

The hearing was conducted by teleconference at 1:30 p.m. on January 17, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord's Building Manager, C.S. and the Property manager, L.B. called in on the Landlord's behalf. The Tenant called in on her own behalf.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?
3. Should the Landlord be authorized to retain the Tenant's security deposit towards any amounts awarded?

Background and Evidence

The Landlord's Building Manager, C.S. testified as follows. He confirmed that the tenancy began June 1, 2020, and ended April 30, 2022. He stated that the Tenant was permitted to have pets in the building and paid a \$800.00 security deposit and a \$800.00 pet damage deposit.

C.S. testified that he completed a move in and move out condition inspection. He noted that although the Tenant participated in the move out inspection, she refused to sign the report confirming the condition of the unit when he brought to the Tenant's attention the damage caused by her pet.

C.S. stated that he had been in the rental unit on a number of occasions during the tenancy and observed pools of pet urine in the living room. He also stated that when the furniture was removed it was obvious that the flooring was damaged by the pet and at this time the rental unit smelled of pet urine.

In support of the claim the Landlord provided photos of the rental unit taken by C.S. and the general contractor. These photos showed the flooring separating as a result of the dog urine. More detailed photos showed the damage to the top layer of the flooring as well as the subfloor.

C.S. stated that the building was built in 1980, however, in 2019 they renovated 70 units at which time they replaced the flooring.

The Landlord submitted an estimate from a flooring company which confirmed the cost of repair to be \$1,696.00. C.S. confirmed this amount was spent to repair the damage

and as such the Landlord sought monetary compensation in the amount of \$1,696.00 from the Tenant.

L.B. also testified and confirmed the floors were replaced in 2019 when the owner of the unit vacated the unit.

In response to the Landlord's claim the Tenant testified as follows. The Tenant submitted that the alleged damage to the floor was simply wear and tear. The Tenant further stated that the damage was not caused by her or her pets and submitted that it was a result of plumbing issues or mold.

The Tenant also disputed that the Landlord's claim that the flooring was a year old and said that from her observations it looked older. She stated that the only place that looked brand new was the dining room floor.

In terms of C.S.'s claim that he smelled urine on several occasions, the Tenant stated that this only occurred on one occasion, namely, on February 15, 2022 at which time C.S. emailed the Tenant to inform her that there was urine on the floor.

The Tenant stated that following this she hired a dog walker, and she also bought dog diapers, and then after this she started working from home. She stated that there was no other time she believes her dog had an accident on the floor.

The Tenant also stated that she believed that C.S. was in a conflict of interest as he is also the flooring contractor and has a beneficial interest in having the flooring replaced.

The Tenant also disputed the Building Manager's claim with respect to the move out inspection; in this respect she said he only did a "preliminary inspection" on April 19, 2022. She further stated that they did not do an inspection when she moved out.

In reply C.S. stated that they did an inspection of the unit two weeks prior to move out when they looked at the condition of the floor. On the date she moved out, C.S. tried to have her review the detailed inspection report and he asked her to sign it and she refused.

Analysis

The Landlord seeks monetary compensation from the Tenant for damage to the rental unit.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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, and
 - (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.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I find the Tenant's pet caused damage to the flooring in the rental unit. I accept the Landlord's representatives' testimony that he smelled urine in the unit on more than one occasion when he attended the rental unit. I also accept the Landlord's evidence that the pet urine permeated the top layer of the flooring as well as the subfloor; this is confirmed by the Building Manager's testimony as well as the photos of the rental unit.

I also accept the Landlord's representatives' testimony as to the age of the flooring and find that it was replaced in 2019. As such, I find that the flooring was three years old when the tenancy ended.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, guidance can be found in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. Although *Policy Guideline 40* deals with flooring, it does not provide a line item for laminate flooring; this *Guideline* provides that carpet and tile have a useful life of 10 years, hardwood is noted at 20 years. I find that 10 years is a reasonable estimate of the useful life of laminate flooring. As the flooring was 3 years old when the tenancy ended, I discount the Landlord's claim by 30%, such that I award the Landlord the sum of **\$1,187.20** for the replacement cost of the laminate flooring.

The Tenant alleged the Landlord did not complete the move out condition inspection in accordance with the *Act*. The Property Manager testified that he inspected the rental unit with the Tenant prior to her departure, brought to her attention the condition of the flooring, and then asked her to sign off on the inspection on the date of move out.

While it would have been preferable for the parties to participate in the inspection together *after* the Tenant moved out, I am satisfied they inspected the unit together and discussed the condition of the unit and more particularly the flooring. I am also satisfied the Property Manager requested that the Tenant sign the inspection report on the day she moved out and she refused. The Tenant could have asked the Property Manager to make changes to the report if she felt it was inaccurate or noted her disagreement with the report contents. In the circumstances I make no adverse finding with respect to the timing of the initial inspection or the validity of the report. Nor do I make any adverse finding with respect to the Tenant's refusal to sign the report.

Having been successful in the application before me I award the Landlord recover of the **\$100.00** filing fee for a total award of **\$1,287.20**. Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain this sum from the Tenants' \$1,600.00 in deposits and I award the Tenant return of the balance in the amount of **\$312.80**. In furtherance of this I grant the Tenant a Monetary Order in the amount of \$312.80. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's claim is granted in part. The Landlord is entitled to the sum of \$1,287.20 for the depreciated of replacing the laminate flooring and recovery of the filing fee. The Landlord may retain this sum from the Tenant's security and pet damage deposit and must return the balance of \$312.80 to the Tenant.

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 15, 2023

Residential Tenancy Branch