



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL
 MNSD, FFT

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on August 15, 2022, the Landlord requested monetary compensation from the Tenants in the amount of \$2,400.00 for the cost to replace the flooring in the rental unit and to recover the filing fee. In the Tenants' Application for Dispute Resolution, filed on August 16, 2022, the Tenants requested return of their security and pet damage deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on May 11, 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 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 Tenants?
2. What should happen to the Tenants' security deposit?
3. Should either party recover the filing fee?

Background and Evidence

The Landlord, E.O., testified as follows. She confirmed that the rental unit is a basement suite in the rental home owned by the Landlords. The tenancy began January 31, 2022. The Tenants paid monthly rent of \$2,460.00 and paid a \$1,200.00 security deposit and \$1,200.00 pet damage deposit.

In the claim before me the Landlord sought compensation for the cost to replace the flooring in the rental unit.

In terms of the age of the flooring, the Landlord testified that they were informed by the selling agent that the flooring had been installed five years ago. The Landlords purchased the property in January of 2022 and obtained possession of the rental property January 17, 2022.

A copy of the move in and move out condition inspection report was provided in evidence before me. The document indicated that there were scratches to the floors in the two bedrooms. The Landlord then stated that they did two move out inspections, one on July 25, 2022 and one on July 31, 2022. The Landlord stated that she didn't notice the scratches until after the Tenants left and she called them to talk about the scratches. She stated that she did "add items afterwards" claiming that they didn't have enough time to do the report because the subject Tenants were moving out and the new tenants were moving in shortly.

The Landlord also submitted photos of the flooring in evidence before me; these photos showed small scratches to the flooring. One of these photos showed peeling of the laminate surface near the connection between the planks.

The Landlords claimed \$2,400.00 for replacement of the flooring. In this respect the Landlords submitted that an estimate from a flooring company in which the Landlords

were quoted \$3,065.97 for the total cost to replace the floor. As the floors were 5 years old, she reduced the claim to \$2,400.00 taking into account the useful life of flooring at 20 years.

The Landlords also sought compensation for an unpaid electrical utility in the amount of \$128.42.

The Tenant, B.W., responded to the Landlords' claim as follows. The Tenant stated that the Landlord's request was ridiculous as they did a move out inspection and the Landlord confirmed there was nothing wrong. He stated that she then went back and altered the condition inspection report to note damage which was not visible during the walk through. He also stated that to his knowledge there were no scratches and that he was very upset she was now trying to retain their deposits.

In terms of the Landlords' claim for compensation for the unpaid electrical utility the Tenant stated they were agreeable to reimbursing the Landlord the \$128.42 claimed.

Analysis

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.

Pursuant to section 23 and 35 of the *Act*, a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

- 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.

The importance of condition inspection reports is further highlighted by sections 24 and 36 as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the

landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

The undisputed evidence before me is that the parties completed a move out condition inspection together. I accept the Tenant's testimony that there was no damage noted to the floors on the original report. After the inspection occurred, the Landlord altered the report to note damage to the floors. As noted during the hearing, the report is to document the condition of the report as viewed by both parties; neither party is at liberty to change the contents of the report after the report is completed and signed. As the Landlord altered the report after the report was completed and signed, I give no evidentiary weight to the notations made by the Landlord after the inspection.

I have also reviewed the photos submitted by the Landlord and find that the photos do not depict "substantial damage" as alleged by the Landlord; rather I find the photos show minor scratches which are reasonable wear and tear. Not surprisingly the scratches were not visible during the inspection by both the parties as they were barely visible. As well, the photos suggest the flooring is of inferior quality, likely prone to premature wear. I am not satisfied, based on the evidence submitted, that the flooring required replacement.

For these reasons I dismiss the Landlord's claim for compensation for replacement of the floors in the rental unit.

The Tenants confirmed they were agreeable to the Landlord's claim for **\$128.42** for the unpaid electrical utility. I therefore grant the Landlord's request to retain \$128.42 of the Tenants' security deposit towards this amount.

I find the Tenants are entitled to return of the balance of their deposits in the amount of \$2,271.58. As the Tenants have been predominantly successful in their Application I also award them recovery of the \$100.00 filing fee for a total award of **\$2,271.58**.

In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$2,271.58**. 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 for compensation for the cost to replace the flooring is dismissed.

The Landlord's claim for compensation for the unpaid electrical utility in the amount of \$128.42 is granted. Pursuant to section 72 of the *Act* the Landlord may retain this sum from the Tenants' security deposit.

The Landlord's claim for recovery of the filing fee is dismissed.

The Tenants are entitled to the balance of their deposits and recovery of the filing fee in the amount of **\$2,271.58**.

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 7, 2023

Residential Tenancy Branch