Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL-S, FFL

Introduction

The landlord seeks compensation against their former tenants pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, they seek to recover the cost of the filing fee pursuant to section 72 of the Act.

Both parties, along with a witness for the landlord, attended the hearing. The landlord's witness did not testify during the hearing. Despite each party serving some evidence rather late, both parties confirmed having had the opportunity to review that evidence.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

Tenancy Background

The tenancy began on July 15, 2020 and ended on March 31, 2021. Monthly rent was $3,500.00 due on or before the first day of the month. The tenants paid a $1,750.00 security deposit and a $1,750.00 pet damage deposit, both of which are currently held in trust by the landlord pending the resolution of this application. There is a copy of a written tenancy agreement in evidence which indicates that the tenancy was intended to be a fixed-term tenancy ending on July 31, 2021.

The tenancy agreement includes a liquidated damages clause (see page 4, clause 8, of tenancy agreement) in the amount of one-half of the month's rent.

Summary of Landlord's Claim for Compensation

The landlord has applied for compensation in the amount of $7,045.65 for costs related to repairs to a hardwood floor damaged by the tenants' cat. In addition, the landlord seeks $1,750.00 in compensation pursuant to the tenancy agreement's liquidated damages clause. Last, the landlord requests $100.00 in compensation to pay for the cost of the filing fee. In respect of the above-noted claims the landlord seeks to apply the security and pet damage deposits against any award granted.

Claim for Hardwood Floor

The landlord testified that the rental unit is situated within a waterfront heritage building. The rental unit's hardwood floors were installed in 2002 and were refinished in 2010. He explained that the floors are refinished about every eight to ten years.

These are not ordinary laminate floors, however: they are ¼" solid oak hardwoods that cost the landlord approximately $20,000 to install. It should be noted that the landlord initially testified that he installed the floors in 2001 but at some point, later in the hearing, thought that it was in 2002 when they were installed. The floors were damaged by the tenants' cat urinating on the floor just as the tenants were in the process of moving out. The tenants did not deny that their cat caused the damage.

As the hardwood floor were expensive, high-quality floors, the landlord testified that the only solution to repairing them was to have the original company that installed the floor (BC Hardwood) come in and do a full floor replacement throughout the rental unit. BC Hardwood provided a quote (dated August 4, 2021) in which the representative states the following:

> Stained boards cannot be repaired and need to be replaced. Replacing of the damaged boards will create an obvious inconsistent look with the remainder of the hardwood floor. This requires, once the damaged boards have been replaced, the entire wood floor in the unit be sanded and refinished. The refinishing process cannot be limited to a particular area in the unit due to the direction which the boards run. Doing this will result in a noticeable transition point between the newly finished and old floor.

The total amount of the quote is $7,045.65.

While the tenants do not dispute that they (that is, their cat) damaged the hardwood floors, they take issue with the amount being claimed. It is their position that the landlord only obtained one quote from one contractor. The tenants argued that the landlord ought to have obtained additional quotes, and in counter to the landlord's claim the tenants submitted three quotes from three different contractors. The average quote from these is $3,500.00, and it is this amount that the tenants offered to pay to the landlord.

Further, the tenants argued that it is unfair that they ought to be liable to pay for the entire floor to be replaced when it was only a specific area of the living room floor that was damaged. In addition, the tenants argued that BC Hardwood is known to be expensive.

In rebuttal, the landlord argued that the tenants' three quotes were not for a full floor replacement but were for smaller areas of repair. In addition, that the quotes ranged in price so widely is, he suggested, proof that the quotes are not reliable.

Claim for Liquidated Damages

As noted, the tenancy agreement includes a liquidated damages clause. This clause reads as follows:

> 8. LIQUIDATED DAMAGES: If a tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of one-half month's rent as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The landlord argued that the tenants breached the tenancy agreement by terminating the tenancy before it was to end on July 31, 2021. He argued that contrary to earlier testimony from the tenants that he did not incur any costs in re-renting the rental unit, he in fact did incur such costs.

The tenants argued that the landlord ought not to profit from the tenants' ending the tenancy when the new tenant moved in on the very day that their tenancy ended. Indeed, the new tenant was already having mail being sent to the rental unit before the tenants vacated. Further, the tenants argued that finding this new tenant did not result in any cost to the landlord and the landlord suffered no costs or expenses.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Hardwood Floor

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on section 7 of the Act:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, there is no dispute by the tenants that they damaged the rental unit. Specifically, the floor. There was a breach of section 37(2) of the Act which requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

Second, there is no dispute that the landlord will incur a significant dollar loss as a result of that breach. Third, the landlord has proven that the amount is $7,045.65.

However, the specific matter that requires resolution is this: has the landlord done whatever is reasonable to minimize his potential loss. It is my finding that he has not.

While it might be preferable for the landlord to use the same company that installed the oak flooring back in 2002, that the landlord used (according to the tenants' testimony, and which the landlord did not dispute) a company known to be on the more expensive side of things, and not obtain any additional quotations from any other hardwood flooring company is not, I find, doing whatever is reasonable to minimize his loss. The landlord ought to have, at a bare minimum, obtained at least one, if not two, additional quotations from other reputable hardwood flooring companies.

The tenants' quotes are, with respect, not of much help given that the repairs quoted are for specific areas only. And, I find, it is unreasonable for the landlord to have only part of the floor replaced in what would undoubtedly be a mismatched looking floor.

That having been said, given that the landlord has proven damages to the floor that will result in an expensive repair (regardless of which contractor he ultimately retains), and given that the tenants admit negligence for having caused what are extensive damages, it is my finding that the landlord is entitled to the amount offered by the tenants to settle this aspect of the landlord's claim. As such, the landlord is awarded $3,500.00 in compensation in respect of his claim related to the hardwood floors.

Claim for Liquidated Damages

In respect of this claim, it is important to note that liquidated damages are not something that is found within the Act or the regulations. For that, we turn to *Residential Tenancy Policy Guideline 4: Liquidated Damages* for direction, which states that

> A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

In this dispute, it is my finding that a liquidated damage amount of $1,750.00 is a genuine, pre-estimate of the loss that could have occurred had the tenants breached the tenancy agreement (which they ultimately did). The amount is not extravagant in comparison the greatest loss that could follow a breach; indeed, the greatest loss from a breach of the tenancy agreement could have been an amount equivalent to four months' rent that would have been payable after March 31, 2021.

For this reason, it is my determination that the liquidated damages clause is valid. That the actual damages are negligible or non-existent is irrelevant, insofar as the tenants' liability go in paying the liquidated damages.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for liquidated damages in the amount of $1,750.00.

Claim for Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in his application, I grant him $100.00 in compensation to cover the cost of the filing fee.

Summary of Award, Retention of Deposits, and Monetary Order

The landlord is awarded a total of $5,350.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order the landlord to retain the tenants' security and pet damage deposits totalling $3,500.00 in partial satisfaction of the above-noted award.

The balance of the award is granted by way of a $1,850.00 monetary order. This monetary order is issued in conjunction with this decision, to the landlord. The landlord is responsible for serving a copy of this order on the tenants.

Conclusion

The landlord's application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 19, 2021

Residential Tenancy Branch