Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On October 27, 2022, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords and both Tenants attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Landlords' Notice of Hearing and evidence packages was discussed and there were no concerns regarding service. As such, I am satisfied that the Tenants were duly served the Notice of Hearing and evidence packages. Therefore, the Landlords' evidence will be accepted and considered when rendering this Decision.

The Tenants confirmed that they did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on March 15, 2018, and that the tenancy ended on October 14, 2022, when the Tenants gave up vacant possession of the rental unit. Rent was established at an amount of $3,950.00 per month and was due on the fifteenth day of each month. A security deposit of $1,950.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties agreed that a move-in inspection report was conducted on March 15, 2018, and that a move-out inspection report was conducted on October 15, 2022; however, only a copy of the signed move-in condition inspection report was submitted as documentary evidence. As well, the Tenants indicated that they provided their forwarding address by email sometime after the move-out inspection was conducted.

Landlord S.D. advised that they are seeking compensation in the amount of **$2,415.00** because the Tenants used a mat on the vinyl deck which caused a burn mark on the deck that rendered the material no longer waterproof. She testified that all four of them attempted to wash off this mark during the move-out inspection; however, the surface of the vinyl material would come off. She stated that there were marks around the mat that should have alerted the Tenants of what was occurring under it. As well, she referenced

the before and after pictures submitted as documentary evidence to substantiate this damage.

She stated that a decking company informed them that they could not replace the damaged area as the matching vinyl was not manufactured anymore. She advised that the deck was replaced in the beginning of November 2022 with the closest material to the original vinyl that they could obtain. She referenced the documentary evidence of the estimate submitted to support the cost of the repair. As well, she stated that the original vinyl was approximately eight years old, and that it had a warranty of 25 years.

Tenant S.P. advised that they pressured washed the deck twice a year, and changed these mats every year. She testified that this burn mark was an “unfortunate accident” that “just happened”, and that it did not occur over a significant length of time. She agreed that the deck was likely eight years old, and it is her belief that the Landlords should have informed them that this vinyl was a special material so they could have purchased different mats.

Tenant A.D. advised that they were not provided with special instructions regarding the deck, and that this burn mark was not caused by neglect or ill intent on their part.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlords must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the “*Regulation*”) outlines that the

condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit or pet deposit for damage is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that a move-in inspection report and a move-out inspection report was conducted, I am satisfied that the Landlords completed these reports in accordance with the *Act*. As such, I find that the Landlords have not extinguished the right to claim against the deposit.

Furthermore, Section 38 of the *Act* outlines how the Landlords must deal with the security deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, I am satisfied that the tenancy ended on October 15, 2022, when the move-out inspection was conducted, and that the Landlords received the Tenants' forwarding address sometime soon after that. As the Landlords' Application was made within 15 days of October 15, 2022, I do not find that the doubling provisions apply to the security deposit in this instance.

With respect to the Landlords' claims for damages, when establishing if monetary

compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

In addition, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlords’ claims for compensation in the amount of $2,415.00, clearly there was no burn mark at the start of the tenancy that would have been identical to the one created by the mat that the Tenants used. As such, I am satisfied that there is no doubt that the mat that the Tenants used caused this damage to the deck. Moreover, I do not accept that this damage is just reasonable wear and tear as it is clear that the Tenants’ use of this mat caused damage to the deck. I find it important to note that Policy Guideline # 1 describes this as follows:

> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets

> reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

When reviewing the pictures submitted, this damage on the deck does not appear to be from natural deterioration due to aging or natural forces.

Furthermore, I do not find it reasonable that the Landlords could be reasonably expected to inform the Tenants of all aspects of the rental unit, and what they can or cannot possibly use in each part of the rental unit. Finally, when reviewing this damage and the area surrounding the mat, I am skeptical that this damage “just happened” as alleged by S.P. as I can reasonably infer based on the extent of this damage that it would have occurred over a substantial period of time. As such, I am satisfied on a balance of probabilities that the Tenants were responsible for this damage.

In determining the value of the vinyl deck material, I note that Policy Guideline # 40 outlines that the approximate useful life of deck and porches is 20 years. However, this is just a guideline, and this number can vary depending on the quality of the materials used. Moreover, both parties agreed that there was likely a 25-year lifespan of this vinyl material. As well, given that both parties agreed that the vinyl was approximately eight years old already, I accept that the Landlords have already had the benefit of a portion of this useful life. Consequently, while the Landlords are requesting relief in the amount of complete replacement of the vinyl, I do not find this to be appropriate.

Furthermore, I note that an excerpt from Policy Guideline # 5 outlines what the concept of betterment is:

> **Betterment**
>
> The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred.
>
> This may happen as a matter of course – for example if arborite countertops from the 1960s must be replaced because of damage, this almost always requires installing brand new countertops. Similarly, if a circuit that was wired in the 1940s needs to be replaced, it should be brought up to code. The result is that the property is made better than it was before the damage or loss occurred.

> See Policy Guideline 40: Useful Life of Building Elements for guidance on how this type of situation may be dealt with.
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> Sometimes damaged items are replaced with more extravagant, expensive or luxurious ones by choice. Some examples are:
> Replacing a damaged laminate floor with hardwood floors
> - Replacing a damaged linoleum floor with marble
> - Replacing damaged arborite countertops with granite
> - Replacing a $300 futon with a $3,000 bed
>
> A person can replace damaged items with more expensive ones if they choose, but not at the expense of the party responsible for the damage. The person responsible for the damage is only responsible for compensating their landlord or tenant in an amount that covers the loss. The extra cost of the more extravagant, expensive or luxurious item is not the responsibility of the person who caused the damage.

While the Landlords did not ask for a better material to be used, given the circumstances, it was not possible for them to obtain the exact same quality vinyl as was previously installed. Regardless, this does not change the fact that they did receive a higher quality replacement material.

As the Landlords enjoyed the benefit of approximately one third of the estimated remaining useful life of the vinyl, and as the Landlords ended up with better material, I find it appropriate to reduce the amount that the Landlords are seeking to claim for. As such, I grant the Landlords a monetary award in the amount of **$1,100.00**, which I find to be commensurate with the cost associated with repairing this damage caused by the Tenants.

As the Landlords were partially successful in this claim, I find that the Landlords are entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain a portion of the security deposit in satisfaction of this claim.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Item	Amount
Vinyl deck repair	$1,100.00
Recovery of Filing Fee	$100.00
Security deposit	-$1,950.00
Total Monetary Award	**-$750.00**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$750.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: August 1, 2023

Residential Tenancy Branch