



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSGATE GARDENS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:20 am in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 am. The landlord/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that he served both the tenants with individual Application for Dispute Resolution ("ADR") packages on January 13, 2017 by registered mail. The landlord submitted Canada Post receipts and tracking information to confirm the mailing and successful delivery of these packages. I find that the landlord served the two tenants in accordance with section 89 and 90 of the Act as of January 18, 2017 (deemed date of receipt). The landlord confirmed that he sent the packages to the forwarding address provided by the tenants at the end of this tenancy.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit?
Is the landlord entitled to retain the tenants' security deposit?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy agreement began April 1, 2015 as a one year fixed term with a monthly rental amount of \$1650.00. The landlord testified that the tenants vacated the rental unit on March 31, 2016 and provided their forwarding address on the same date. The landlord testified that he continues to hold the tenants' \$825.00 security deposit paid on March 17, 2015.

The landlord testified that the tenants providing 5 days verbal notice prior to vacating the rental unit March 31, 2016. He testified that, while he advertised online immediately on a variety of rental sites, he was unable to re-rent the unit until June 1, 2016. The landlord testified that, given the lack of notice provided by the tenants, he should be entitled to recover the loss of rental income for the month of April 2017.

The landlord provided a monetary worksheet providing a breakdown of the monetary amount he sought to recover from the tenants.

Item	Amount
April 2017 rental loss	\$1650.00
Light bulbs	45.00
Fix toilet handle	200.00
Clean oven	400.00
Patch holes	550.00
Less Security Deposit	-825.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2120.00

The landlord testified that the majority of the lights in the rental unit require halogen bulbs and are therefore very expensive. He submitted a receipt from a restoration company indicating an amount of \$45.00 for replacement of halogen light bulbs.

The landlord testified that the toilet handle was broken at the end of the tenancy but not at the outset of tenancy. He submitted an invoice showing a cost of \$200.00 to have the handle repaired.

The landlord testified that there were a variety of holes and scratches on the walls. He submitted digital photographic evidence to support his claim. He submitted a receipt for the patchwork on the walls in the amount of \$1150.00. He conceded that some of the patchwork was as a result of wear and tear over the tenancy or scratches from prior to this tenancy and therefore requested only \$550.00 from the tenants.

The landlord testified that the cabinets, carpets and hardwood floors had to be repaired and cleaned. He submitted an invoice for their repair totalling \$775.00 however he testified that he paid this amount himself to upgrade the residence and therefore does not seek an amount from the tenants with respect to the floors. Furthermore, the tenants wrote on the condition inspection report that they did not agree that the scratches and holes or carpet condition was their responsibility: they wrote that it was in that condition prior to the start of their tenancy.

The landlord testified that the oven, refrigerator, cabinets and much of the unit required cleaning at the end of the tenancy. He testified that the unit was in good condition at the outset of the tenancy but very unclean at the end of the tenancy. The landlord provided an invoice including \$400.00 for cleaning services.

The landlord submitted the condition inspection report from move in and move out. He testified that he provided the tenants with a copy of the condition inspection report. I note that the tenants' signatures appear to both be on the condition inspection report at move in and move out. Further, I note that the condition inspection report verifies the state of the unit and repairs required as described by the landlord at this hearing.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has proven damage and loss as a result of this tenancy by virtue of the provision of the condition inspection report that accurately reflects his testimony and indicates that the tenants were privy to the condition inspection.

The landlord must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Again, the condition inspection report is clear and, according to Residential Tenancy Regulation No. 21 as laid out below, the condition inspection report is the best evidence of the condition of the unit unless proven.

Evidentiary weight of a condition inspection report

- 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 landlord must also provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlord has provided evidence with respect to monetary amount of each item he seeks – with the residential tenancy agreement to show the amount of unpaid rent and the condition inspection report to document any damage at the end of the tenancy.

I find that the landlord proved, with invoice and condition inspection report as well as undisputed testimony that the walls required some patch work at the end of the tenancy that were beyond regular wear and tear over the course of the tenancy. I find that the landlord is entitled to recover \$550.00 – a portion of the costs for repairs to the walls.

I find that the landlord proved, with invoice and condition inspection report as well as undisputed testimony that the unit, particularly the appliances, required extensive cleaning at the end of the tenancy. I accept his testimony that the unit was very unclean and that the stove was a particularly extensive job to clean. Therefore, I find that the landlord is entitled to recover \$400.00 for cleaning of the rental unit.

I find that the landlord proved, with invoice and condition inspection report, that the toilet handle required repair at the end of the tenancy. The landlord also provided photographic evidence to support some of the repairs, including this item. I accept the invoice submitted by the landlord reflecting an amount of \$200.00 to fix the toilet handle.

I find that the landlord has proven that the lack of notice prevented him from renting the unit immediately after the tenants vacated the premises. I accept the undisputed evidence of his efforts to rent and given candid testimony regarding the limited responsibility of the tenants with respect to the whole of the repairs required. Therefore I find that the landlord is entitled to \$1650.00 for one month of rental loss as the tenants failed to provide adequate notice that they intended to vacate the rental unit.

I find that the landlord is not entitled to recover the cost of light bulbs as I have insufficient evidence that it was as a result of actions by the tenant and not merely

passage of time or some other act of another party that resulted in the need to replace the expensive halogen bulb.

In accordance with section 72, I find that the landlord is entitled to retain the tenants' security deposit towards the monetary amount below. As the landlord was successful in his application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application.

Item	Amount
April 2017 rental loss	\$1650.00
Fix toilet handle	200.00
Clean oven, appliances, unit	400.00
Patch holes	550.00
Less Security Deposit	-825.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2075.00

Conclusion

I grant the landlord a monetary order in the amount of \$2075.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: June 22, 2017

Residential Tenancy Branch