



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODBINE TOWNHOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for damage to the rental unit pursuant to section 67 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 1:11 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:00 p.m. The landlord's representatives (2) attended the hearing were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord representatives and I were the only ones who had called into this teleconference.

Landlord MW testified that the tenants were served with individual packages by registered mail at their forwarding address on October 19, 2017 with the landlord's Application for Dispute Resolution ("ADR"). Landlord MW ("the landlord") also testified that the tenants were served with copies of the landlord's documentary evidence for this hearing on April 24, 2018. The landlord submitted Canada Post registered mail receipts for each of the registered mailings and provided undisputed testimony that the tenants had picked up both the landlord's Application for Dispute Resolution and the landlord's documentary evidence. I find that the tenants were deemed served with the landlord's ADR on October 24, 2017 and with the landlord's documentary evidence on April 29, 2018 in accordance with section 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and other loss?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord submitted a copy of the residential tenancy agreement. The tenancy began on May 1, 2016 and was scheduled for a one year fixed term. The tenants ultimately vacated on September 30, 2017. Landlord CD ("the property manager") testified that the tenants provided their forwarding on October 2, 2017. The landlord testified that the tenants returned the keys and fobs for the rental unit. The landlord testified that the tenants' \$550.00 pet damage deposit was returned to them but that the landlord continues to hold a \$550.00 security deposit. The landlord sought \$1993.31 in repairs, cleaning necessary after the tenants vacated the rental unit.

A copy of the move-in and move-out condition inspection reports were submitted. The property manager testified that the tenants did not attend the condition inspection at move-out: this information was noted in the condition inspection reports. The condition inspection reports also showed that, at the start of the tenancy, the rental unit was in satisfactory condition. Several items, including the appliances were marked in the move-in condition inspection report as "new". On move-out, the condition inspection report indicated that most of the unit required cleaning, much of the unit required painting and some items required repair or replacement.

The landlord testified that the unit was re-rented for December 1, 2017 (the new tenants moved in approximately 10 days early). She testified that, prior to the December 1, 2017 tenancy, the unit was undergoing repairs. The landlord testified that a substantial amount of damage was done to the unit in the year and half that the tenants resided in the unit. The landlord, referring to the condition inspection report and photographs submitted as evidence testified that,

- All of the walls in the rental unit required cleaning and painting;
- Some of the ceilings required cleaning and painting (they were drawn on);
- All of the flooring required cleaning;
- Entranceway flooring was stained;
- The blinds in the bedrooms, living room were damaged and required replacement;
- Closet doors in bedrooms were removed and missing;
- The appliances, including the refrigerator and stove required cleaning;
- The tenants left junk that had to be removed at the landlord's cost;
- The yard had to be weeded, mowed, cleaned and junk removed.

The landlord referred to the residential tenancy agreement which stated that the tenants were responsible for maintenance of the yard at the rental unit and photographs showing that the yard was left with long grass, weeds and other junk around the yard.

The landlord sought a total monetary order as follows,

Item	Amount
Labour for paint, clean and repair	\$1237.50
Carpet cleaning	77.17
Junk removal, Yard clean	110.00
Purchase of Door (closet door)	72.79
Purchase of blinds (\$85.61 + \$78.38)	163.99
Purchase of paint	331.86
Less Security Deposit	-550.00
Recovery of Filing Fee for this Application	100.00
Monetary Order sought by Landlord	\$1379.32

The landlord submitted invoices for each of the items listed above (carpet cleaning, junk removal, purchase of door, purchase of paint, labour for paint cleaning and repair and including 1 individual receipts for the 2 blind purchases.

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 the testimony given by the two landlord representatives. The photographic evidence submitted by the landlord provides further evidence to support the landlord's claim. The residential tenancy agreement as well as the condition inspection report as well as the proof of service of their application and evidence for this hearing proves that the tenants were aware of this hearing, the landlord's claim and the landlord's evidence to support this claim.

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 sought – with the residential tenancy agreement to show the obligations of the tenant with respect to the rental unit property and the condition inspection reports and photographs documenting the damage at the end of the tenancy. I also accept the evidence that shows the rental unit was in good condition and newly renovated at the outset of this tenancy.

I find that the landlord proved, with invoice and condition inspection report as well as undisputed testimony that the walls and some of the ceilings required patch work and painting at the end of the tenancy. I accept that the necessary painting was beyond regular wear and tear over the course of the year and a half tenancy. I find that the landlord is entitled to recover \$331.86 –the costs for the paint and \$1237.50 for the labour costs related to cleaning the unit, painting the walls and ceilings as well as other repairs including \$1237.50.

I find that the landlord proved, with invoice, photographs and condition inspection report as well as undisputed testimony that the carpets required cleaning at the end of the tenancy and that the cost to the landlords was \$77.17. I find that the landlord is entitled to recover \$77.17 for carpet cleaning.

I find that the landlord proved with invoice, photographs and condition inspection report as well as undisputed testimony that there was a substantial amount of junk to be removed after the tenants vacated the unit. The landlord is entitled to recover the cost shown in the invoice for junk removal and the cost for yard clean-up in the amount of \$110.00.

I find that the landlord proved with invoice, photographs and condition inspection report as well as undisputed testimony that the landlord had to purchase a closet door and blinds for the bedrooms and living room. The landlord submitted three receipts for these items in the amounts of \$72.79 (door), \$85.61 (blinds) and \$78.38 (more blinds). I accept the landlord's testimony that these replacements were necessary. Therefore, I find that the landlord is entitled to recover the total cost shown in the three receipts – an amount totaling \$236.78 (divided below into blinds and door purchase).

I find that the landlord suffered a loss as a result of this tenancy and that the loss was as a result of the damage and neglect of the tenants at the end of the tenancy. The tenants did not, in accordance with Section 37(2)(a) of the Act, "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear". I find that the landlord has proven the value of the items sought by submitting invoices and receipts. The landlord has only asked that the tenants take responsibility for clean-up and repair that is a direct result of damage done during the course of the tenancy– the landlord has provided information about the age and character of the residence and has considered these factors in making his application. I accept the undisputed evidence of the landlord who, it should be noted, also did not claim to recover an amount in rental loss.

The landlord is entitled to a monetary order as follows,

Item	Amount
Labour for paint, clean and repair	\$1237.50
Carpet cleaning	77.17
Junk removal, Yard clean	110.00
Purchase of Doors	72.79
Purchase of blinds (\$85.61 + \$78.38)	163.99
Purchase of paint	331.86
Less Security Deposit	-550.00
Recovery of Filing Fee for this Application	100.00
Monetary Order issued to Landlord	\$1543.31

Pursuant to section 72 of the Act, I allow the landlord to set off the amount owed to the landlord with the tenants' security deposit. In this case, I find that the landlord is entitled to retain the \$550.00 security deposit paid by the tenants at the outset of this hearing.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the filing fee.

Conclusion

I issue a monetary order to the landlord in the amount of **\$1543.31**.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: May 17, 2018

Residential Tenancy Branch