



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNDCT MNSD MND MNR FF

Introduction

This hearing was reconvened from the first hearing date to address applications from both the landlord and the tenants under the *Residential Tenancy Act* (“the Act”). The landlord applied 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 the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application pursuant to section 72.

The tenants applied under the *Act* for: a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of their security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

By way of background for this reconvened hearing, the original hearing of this matter began on April 14, 2018. The matter was adjourned to a second hearing date however, on that date, there were technical difficulties and the hearing did not proceed on the second scheduled hearing date. A third hearing date was set: the Residential Tenancy Branch sent both parties the details of this third and final hearing date (in a Notice of Hearing form) directly.

The tenants did not attend the third hearing date although the teleconference line remained open for 20 minutes to enable the tenants to attend and participate in this hearing scheduled for 1:30 p.m. 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 and I were the only people who called into this teleconference.

Both parties provided evidence at the first hearing date and both parties were ordered to attend the reconvened hearing. At the first hearing, I emphasized the need for further submissions from both parties. The Residential Tenancy Branch Dispute Resolution Rules of Procedure (Rule 7) states,

*7.10 ... If the dispute resolution hearing is adjourned, the arbitrator will order the parties to attend on the date when the dispute resolution hearing will be reconvened. **If a party does not attend the reconvened hearing at the scheduled time, the arbitrator may commence, continue and conclude the hearing.** Pursuant to Rule 7.3, the arbitrator may issue a decision and order in the absence of a party.*

In the absence of the completion of the tenants' further evidence or final submissions towards their applications, I order the tenants' application dismissed with liberty to reapply. I make no findings on the merits of the tenant's application. Liberty to reapply is not an extension of any applicable limitation period. With respect to the landlord's application, I received further evidence on this hearing date and provide my findings below.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage to the rental unit or other compensable loss?

Is the landlord entitled to retain the tenants' security deposit or are the tenants entitled to its return plus an equivalent amount for the landlord's failure to return the security deposit in accordance with the Act?

Are either party entitled to recover their filing fee for this application from the other party?

Background and Evidence

This tenancy began on December 1, 2011 as a month-to-month tenancy. The rental amount was set at \$1800.00 per month however, the parties agreed that the tenants' rental amount was reduced to \$1500.00 a month. The landlord submitted a copy of a mutual agreement to end the tenancy signed by both parties indicating an end of tenancy date of August 15, 2018. However, at the first hearing, both parties agreed that the tenants vacated the rental unit on August 18, 2017. As of the date of this final hearing, the landlord

continues to hold an \$875.00 security deposit paid by the tenants at the outset of this tenancy.

The landlord testified that, when the tenants vacated the rental unit, they left behind a large storage container on the property. At the first hearing, Tenant KB testified that she intended to contact the storage company to pick up the items and that she advised the landlord of the same. However, the landlord testified that the storage container sat on the property well after the end of the tenancy (until the end of August 2017). She did not seek compensation for this particular issue but stated that this alleged neglect by the tenants illustrated that the tenants did not meet their obligations at the end of the tenancy and left the landlord with a variety of issues to address, including cleaning and the removal of items from the property.

The landlord testified that the rental unit itself was left in a dirty, messy condition and that refuse was left in the unit. At the first hearing, the tenants testified that they had cleaned the unit extensively at the end of this tenancy. The landlord testified that she had to hire a cleaner at the end of the tenancy. She provided a receipt dated September 12, 2017 for cleaning in the amount of \$258.75. The receipt detailed the required work done at the end of tenancy including; remove grease from stove and hood fan; walls washed for painting; cleaned fridge, stove and freezer; and cleaned fireplace. The landlord applied to recover the cost of cleaning services.

The landlord testified that the tenants left extensive marks and damage on the walls of the rental unit and therefore, she was required to paint the unit. She provided a quote/estimate for painting in the amount of \$3150.00 dated August 27, 2017. She testified that, while she would have been required to paint the unit anyways because of the length of the tenancy, she had to pay for extra work in repairs (mudding, drywall repair) of this unit in order to prepare the unit to be painted. She sought recovery of \$1000.00 – the cost provided on the painting invoice/estimate described as “preparation”.

The landlord testified that, during the course of the tenancy, the tenant had agreed to install a window within the rental unit. The landlord submitted text correspondence between her husband and the tenant discussing the agreement for installation. In 2015, the tenant writes to the landlord’s husband that he is in the process of measuring the window. In the 2015 correspondence, the tenant provides a price for the window replacement and his installation of the window. The landlord testified, confirmed by the text correspondence that window was purchased based on the tenant’s measurements and commitment to install the window. Text correspondence between the parties in 2016 shows the tenant explaining why rent has not been paid and reiterating that he will install

the windows but, for a variety of personal reasons, he has been unable to do so. At the first hearing, Tenant GD confirmed that he did not install the window for the rental unit during the course of his tenancy.

Text correspondence between the landlord and tenants at the end of the tenancy was included in the landlord's evidentiary materials. On August 15, 2017, the tenants apologized to the landlord via text message that the unit was not ready – they had not finished cleaning and clearing out the rental unit. The tenants provided their forwarding address to the landlord via text message on August 29, 2017. The tenants also requested the return of their security deposit several times over the course of August 2017 via text message.

The landlord testified that, by the end of the tenancy, the tenant had attempted to install one window, installed it incorrectly and had provided incorrect measurements resulting in the landlord needing to re-do the ordering and install of the window from scratch. The landlord testified that that she was not able to return the other window ordered by the tenant because 2 years had passed since the window had been delivered. The landlord sought to recover \$3200.00 from the tenants because the tenant never installed the window and she must now go about having a new window made and installed at an additional cost.

The landlord also sought to recover an amount for her time spent in relation to this tenancy. She sought a monetary amount of \$750.00 for 10 hours of her time valued by the landlord at \$75.00 per hour. She testified that she spent a great deal of her time dealing with the tenants at and after their move-out. She testified that she had to spend time hiring cleaning and painting providers as well as getting rid of the tenants' belongings and refuse left on the property.

The landlord submitted some black and white photographs to show the condition of the rental unit at the end of the tenancy. Some were blurry. The photographs showed what appeared to be dirt or grime built up in the bathroom and kitchen; at least three broken light switch plates; a mess at the fireplace; stickers on the bedroom walls; holes made in ceilings for wires/cables to run through; paint missing or attempted patches in the walls; and dirt/marks on the doors. The landlord did not submit a condition inspection report. She testified that she did not create a condition inspection report.

At the first hearing, the tenants stated that:

- they left the rental unit (including the yard) in “better condition than when [they] moved in;

- they had legitimate reasons to delay installing the window (including illness and family death);
- at the end of the tenancy, it was not feasible to install the window and that the landlord did not want them to install the window; and
- they should be compensated for the final month of their tenancy, at minimum as a result of the way in which the landlord ended the tenancy.

The tenants submitted that, since the landlord intended to sell the property, they should receive a month's rent as compensation for the issuance of a 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice"). They acknowledged, during the hearing, that they did not actually receive a 2 Month Notice from the landlord. The tenants applied for the return of their security deposit and double the amount of their deposit given that the landlord failed to comply with the Act by returning or applying to retain the security deposit. The tenants vacated the rental unit August 18, 2017 and the landlord made her application in April 2018, eight months after the tenants had vacated the rental unit.

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. Pursuant to section 23 of the *Act* and Residential Tenancy Regulation 14, a condition inspection report is required at the start and end of any tenancy. If the landlord fails to conduct a condition inspection (and/or fails to offer the tenant two opportunities to be present for an inspection), a landlord's right to claim the tenant's security deposit may be extinguished. Residential Tenancy Regulation No. 21 as laid out below indicates that the condition inspection report is the best evidence of the condition of the unit unless proven otherwise. Without the condition inspection report, the landlord faces a more difficult task to prove the condition at the start and end of the tenancy.

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.*

In this case, the landlord provided photographic evidence to support the claim that cleaning was required after the end of the tenancy. This claim is also supported by the text communications between the parties where the tenants acknowledge the unit was not ready for inspection or turn over on August 15, 2017. The landlord provided a cleaning invoice dated within a reasonable time after the end of the tenancy (within 2 weeks). Therefore, I find that the landlord has provided sufficient proof of the amount of her loss and that the loss was a result of the failure of the tenants to clean at the end of the tenancy. Therefore, I find that the landlord is entitled to recover \$288.75 in cleaning costs from the tenants.

With respect to the landlord's claim for repair and cleaning of the walls prior to painting, I find that the landlord's photographs have provided evidence to show that additional work was required before re-painting the unit. The damage to the walls is evident from the photographs submitted for this hearing: a multitude of small holes, stickers in the bedroom walls and wallpaper borders added. The photographs provide support to the landlord's claim for additional work prior to painting at the end of the tenancy.

The Residential Tenancy Useful Life Guidelines (Policy Guideline No. 40) suggest that a rental unit requires repainting approximately every 4 years. As this tenancy ended after 6 years, it is reasonable to assume that the landlord would be required to re-paint the unit. The landlord has provided evidence, in this particular case, that it was necessary to spend extra time and cost to clean the walls and then make repairs to the walls. I find that the damage to the walls was beyond reasonable wear and tear and required the landlord to spend extra in cleaning and painting costs. Therefore, I find that the landlord is entitled to a portion of her \$1000.00 claim for repair and wall in preparation for painting. I find that, because this tenancy lasted 6 years and that either party did not describe as being new or in new condition at the start of this tenancy the property, the landlord is entitled to recover 1/3 of the \$1000.00 sought for painting preparation (\$333.33).

The landlord sought to recover the cost of installing windows in the rental unit. The landlord provided undisputed evidence that the Tenant had agreed (during the year 2015) to install one window and was provided with a reduction in rent (two months' unpaid rent excused) in compensation. I note that, ultimately the installation of windows is a benefit to the landlord and an improvement to her property. However, in this particular case, where the tenant agreed to install one window, received benefit and did not, prior to the end of this tenancy, install the window, I find that the landlord is entitled to an amount of compensation equivalent to two months' rent (\$3000.00).

I find that the landlord has proven some financial loss as a result of this tenancy as described above and that the loss stemmed directly from the tenants' violation of the residential tenancy agreement, the agreement to install the window and contravention of the *Act* on the part of the tenant. The landlord has provided evidence by way of invoices to verify the actual amount of her losses as a result of this tenancy.

I dismiss the landlord's claim for her time spent in taking steps to make repairs and deal with the cleaning and repairs after the end of this tenancy. I find that the time that the landlord submits should be compensated by the tenant (approximately \$10.00 per hour and 75 hours of her time) are generally time spent meeting the obligation of a landlord and attending to the landlord's residential rental property. Among other duties requiring the landlord's time, a landlord must create a condition inspection report at move-in and move-out: as the landlord did not meet this basic obligation during this tenancy, I find that she is not entitled to what she has described as "additional time" in addressing the end of this tenancy. I find that the landlord is not entitled to the cost of doing business as a landlord.

I find that the landlord is entitled to a monetary order as follows,

Item	Amount
Cleaning	\$288.75
Painting	333.33
Window & Installation	3000.00
Less Security Deposit	-875.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2847.08

Pursuant to section 72(2)(b), I find that the landlord is entitled to retain the tenants' security deposit towards the monetary amount as above. Pursuant to section 72(1), as the landlord has been successful in her application, the landlord is entitled to recover the filing fee for this application from the tenants.

Conclusion

I issue the landlord a monetary order in the amount of \$2847.08.

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.

Based on the failure to attend this hearing, I dismiss the tenants' application in its entirety with leave to reapply.

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 28, 2018

Residential Tenancy Branch