



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* for a Monetary Order for damages and compensation against the security deposit and for the recovery of the filing fee paid for this application.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing, and were affirmed to be truthful in their testimony. No one called in for the Tenants during the approximately 21 minute hearing. As the Tenants were not present, service of the Notice of Dispute Resolution Proceeding documents (the “Notice of Hearing”) was addressed.

The Landlord testified that the Notice of Hearing, along with copies of their evidence, were sent to the Tenants by registered mail. The Landlord testified that three separate packages were sent, one to each Tenant, at the forwarding address provided to them by one of the Tenants upon moving out. The registered mail receipts were submitted in evidence and are included on the front page of this decision. Entering the tracking numbers on the Canada Post website confirms that the three registered mail packages were claimed on May 10, 2018. I am satisfied that the Tenants were duly served with the Notice of Hearing in accordance with the *Act*.

In accordance with Rule 7.3 of the Rules of Procedure, if a party fails to attend the hearing, the hearing may continue in their absence. As it was determined that the Tenants were served with the Notice of Hearing, the hearing continued in the absence of the Tenants.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

It was noted during the hearing that the name of one of the tenants and two of the landlords may have had their first and last names reversed. The Landlord clarified the names and they were corrected on the style of cause on this decision in accordance with Section 64(3) of the *Residential Tenancy Act*.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damages?

Is the Landlord entitled to a Monetary Order for compensation?

Background and Evidence

The Landlord provided affirmed and undisputed testimony regarding the tenancy. The tenancy began on October 1, 2017 and ended on March 31, 2018. The Landlord submitted in evidence the tenancy agreement signed by all three tenants, as well as a mutual agreement to end the tenancy signed on February 14, 2018.

Monthly rent was \$1,700.00 and a security deposit in the amount of \$850.00 was paid at the outset of the tenancy. The Landlord confirmed they are still in possession of the full security deposit.

A condition inspection report was completed on move-in on October 17, 2017 and at move-out on March 31, 2017. The Landlord testified that one of the tenants was present for the move-out inspection, but refused to sign the report. The Condition Inspection Report notes that the living room requires paint as well as the presence of dirt on the windows in the dining room and in the bathroom. It also notes garbage left outside and in the basement.

The Landlord testified that one of the Tenants provided a forwarding address in writing on April 12, 2018. The Landlord applied for Dispute Resolution on April 26, 2018.

The Landlord submitted a Monetary Order Worksheet outlining their claims. They have claimed for \$681.45 for the cost of removing the items/garbage left behind, as well as \$262.50 for the cost of painting the walls in the living room.

The Landlord submitted in evidence an invoice from a junk removal company in the amount of \$681.45. They also submitted photos of the items left in the basement as well as outside in the garage.

An estimate from a painting company was provided in the amount of \$250.00 plus tax. The Landlord testified that there were holes and chips on the living room walls, as well as patches that had been applied by the Tenants. The Landlord submitted photos of the living room walls. The Landlord testified that the living room had previously been painted at the beginning of 2017, before the Tenants moved in. The Landlord testified that the owners decided to paint a larger area of the home after the Tenants moved out, so the painting cost them approximately \$700.00. The Landlord testified that an estimate for the painting of just the four living room walls was included in evidence to separate that amount from the whole amount of painting that was completed in the rental unit.

Analysis

The Landlord has made two monetary claims, one for \$681.45 for junk removal and one for \$262.50 for painting. Both claims will be dealt with separately below.

Junk Removal: The Landlord provided undisputed testimony regarding the items left behind in the rental unit after the Tenants moved out. Photos of the items left behind were submitted in evidence, as was an invoice from a junk removal company dated April 5, 2018. The invoice from the junk removal company lists the items removed as cardboard, junk, wood, a screen door and other miscellaneous items.

I refer to Section 37(2)(a) of the *Act* which states that at the end of a tenancy, the tenant must leave the unit reasonably clean and undamaged. I find that leaving items behind that the Landlord must dispose of does not constitute "reasonably clean". In accordance with Section 67 of the *Act*, when one party does not comply with the *Act*, they may compensate the other party for any resulting damages. As the Landlord paid \$681.45 for junk removal after the tenancy had ended, I find that the Tenants are responsible for compensating the Landlord for this cost.

Painting: The Landlord provided undisputed testimony that the four walls of the living room required repainting after the Tenants moved out. Photos of the living room were submitted in evidence. The Landlord testified that the paint was new at the beginning of 2017. Due to having no evidence to the contrary, I accept the Landlord's photos that show patched repairs on the living room walls that would require paint to cover them.

The Landlord submitted in evidence an estimate for painting the living room for an amount of \$262.50, including taxes. I accept the Landlord's undisputed testimony on the state of the paint when the Tenants moved in and the state of the paint upon the Tenants vacating the rental unit. I also note that the Condition Inspection Report upon move-in, dated October 1, 2017, does not note any damage or repairs needed in the living room. Upon move out, the Condition Inspection Report dated March 31, 2018 notes that paint is needed in the living room. The Landlord testified that one of the Tenants was present for the Condition Inspection Report upon move-out, but did not sign the report.

I also find that the condition of the living room walls as seen in the photos does not constitute reasonably clean in accordance with Section 37(2)(a) and find that the damage for the walls goes beyond reasonable wear and tear. As such, pursuant to Section 67 of the *Act*, I find that the Tenants are responsible for the costs of painting the living room in the amount of \$262.50.

In accordance with Section 38(1), a Landlord may file a claim against the security deposit within 15 days from the later of the date the tenancy ends or the date the forwarding address is provided in writing. As the Landlord testified that the forwarding address was received April 12, 2018 and they applied for Dispute Resolution on April 26, 2018, I find they are within the timeframe provided under the *Act*.

Pursuant to the above, the Landlord is entitled to retain the security deposit in partial satisfaction of the money owed. As the Landlord was successful in their application, they are also awarded the recovery of the filing fee paid for this application in the amount of \$100.00. A Monetary Order will be granted to the Landlord in the amount outlined below.

Monetary Order Calculations

Junk removal	\$681.45
Living room painting	\$262.50
Recovery of filing fee	\$100.00
Less security deposit	(\$850.00)

Total owing to Landlord	\$193.95
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Conclusion

I order the Landlord to **retain the security deposit** in the amount of **\$850.00** in partial satisfaction of the total amount owed.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$193.95** for damages and the recovery of the filing fee paid for this application. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 11, 2018

Residential Tenancy Branch