Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL, FFL, MNSD, FFT

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- repayment of the filing fee, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to section 67;
- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- repayment of the filing fee, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord's agent (the "landlord") testified that he served the tenants the notice of dispute resolution package by registered mail on January 12, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. Tenant J.B. (the "tenant") confirmed receipt of the dispute resolution package. I find that the tenants were deemed served with this package on January 17, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act.*

The tenant testified that she served the landlord the notice of dispute resolution package by handing it to the receptionist at the landlord's place of business on December 23, 2017. The landlord confirmed receipt of the dispute resolution package

on December 23, 2017. I find that the landlord was served with this package on December 23, 2017, in accordance with section 89 of the *Act.*

The tenants' application named the agent of the landlord as the landlord. Both parties agreed to amend the tenant's application to list the correct landlord. The landlord's application stated a shortened version of one of the tenant's first names, both parties agreed to amend the landlord's application to state the full legal name of the tenant in question.

The landlord testified that he served the tenant with an evidence package by registered mail on June 8, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the evidence package on June 8, 2018. I find that the tenants were served with this package on June 8, 2018 in accordance with section 88 of the *Act.*

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to repayment of the filing fee, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
5. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
6. Is the landlord entitled to repayment of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2015 and ended on November 4, 2017. Monthly rent in the amount of $1,555.00 was payable on the first day of each month. A security deposit of $750.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for these applications.

Both parties agree to the following facts. The landlord provided the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") by mail on October 17, 2017. The tenants received the Two Month Notice by October 20, 2017. The Two Month Notice had an effective date of January 1, 2018.

The tenant testified that on October 21, 2018 she texted the landlord to let him know that they were planning on moving out sooner than January 1, 2018. The tenant testified that on October 23, 2017 she texted the landlord and informed him that they were moving out on November 4, 2017.

The landlord testified that he did not receive text messages from the tenants informing him that they were planning to move out before January 1, 2018. The landlord testified that he had no notice that the tenants were moving out before January 1, 2018 and did not know that the tenants vacated the property until after they moved out. The tenant testified that she did not provide written notice of her intention to move out before January 1, 2018 other than in her text messages. No text messages regarding moving out were entered into evidence.

The landlord testified that the tenants paid a total of $985.00 in rent for October and that he refunded this amount as it was his understanding that since he issued the Two Months' Notice, he was required to give the tenants their last month of rent for free. The landlord testified that since the tenants did not give him notice that they were vacating the property early, he wants them to pay for November 2017's rent.

The tenant testified that they paid the landlord the full amount of rent for October 2017, that being $1,555.00, and that the landlord only refunded them $985.00. The tenant disputed the landlord's claim that they were responsible for November 2017's rent.

Neither party submitted evidence regarding what rent payments were made in October 2017. I allowed both parties 48 hours to upload evidence in support of their claims. Both parties uploaded evidence showing that the tenants paid a total of $955.00 in rent for October 2017. The landlord uploaded a copy of a cheque to the tenants in the amount of $955.00, with a memo stating "refund last month paid rent".

Both parties agree to the following facts, a move in inspection and inspection report was conducted by both parties on February 1, 2015. The move in inspection was accidentally filled out on the “move out” side of the inspection report. A move out inspection was conducted by both parties on November 6, 2017. The landlord did not use the residential tenancy move out report when conducting the move out inspection but wrote notes on a piece of paper regarding the condition of each room. After the inspection, the landlord transferred these notes to the proper form. The tenant did not agree with the landlord’s condition inspection notes and refused to sign the condition inspection report. The hand-written notes and the completed move in and move out inspection reports were submitted into evidence.

Both parties agreed that the tenants provided the landlord with their forwarding address via email on November 22, 2017. The landlord acknowledged receiving the tenants forwarding address on November 22, 2017. The landlord filed for dispute resolution on January 9, 2018.

The tenant argued that the landlord did not return her deposit or file for dispute resolution within 15 days of receiving her forwarding address in writing, therefore, pursuant to section 38 of the *Act*, she should receive double her security deposit from the landlord.

Flooring

The landlord testified that the carpets and linoleum in the rental property were installed on October 31, 2012; an invoice in support of this testimony in the amount of $4,625.69 was provided. The landlord went on to testify that the carpets were in very good condition when the tenants moved in and that they wreaked of pet urine and defecation when the tenants moved out. The landlord testified that the carpets needed to be re-placed and the sub-floor needed to be treated to remove the odor of excrement after the tenants moved out. The landlord submitted photographic evidence showing stained and dirty carpet and stained sub-floor.

The tenant testified that the carpet was in poor condition when they moved in and that the landlord had promised them that he would have it professionally cleaned and stretched but that he never did so. The landlord denied having agreed to clean and stretch the carpets after the tenants moved in. The tenant testified that she had three cats and one dog and that they did not defecate or urinate on the carpets.

The move in condition inspection report, signed by both parties, has notations where there are issues or damages noted. I asked the tenant what her understanding of the

blank spaces were, where there was no notation whatsoever, and she testified that that meant there were no issues and the item identified was in good condition. The move in condition inspection report makes no notations whatsoever regarding the carpets throughout the house. The move out condition inspection report notes that the carpet in the living room and master bedroom were stained and had an odor. The hand-written notes made during the move out inspection by the landlord note that the carpets are clean.

The landlord testified that the linoleum was in good condition when the tenants moved in though it did have a large gouge in front of the refrigerator which was identified in the move in condition inspection report. The move in condition inspection report also lists some floor staining in the bathroom. The landlord testified that when the tenants moved out, the linoleum was in such poor condition that it needed to be replaced. The move out condition inspection report did not make any notations regarding the condition of the linoleum. The hand-written notes made by the landlord note the rip in the linoleum by the fridge and an issue with a seam in the linoleum in the kitchen.

The tenant testified that the linoleum was already cracked when they moved in and that they did not make it substantially worse and that their use fell under reasonable wear and tear.

The landlord testified that after the tenants moved out, he had the entire home, except for the stairs, re-floored with vinyl plank cork and entered into evidence an invoice in the amount of $8,730.75. The landlord testified that he had new carpets laid on the stairs and submitted an invoice for that work in the amount of $787.50.

Deck

The landlord testified that the vinyl decking was in good condition when the tenant moved in and that the vinyl was last replaced six years ago. The landlord testified that when the tenant moved out there were many perforations in the decking which he thought was caused by animals scratching the vinyl. The landlord also testified that there was a large melted space on the deck where it looked like something hot was put on the deck and melted it.

The landlord submitted photos into evidence showing perforations in the vinyl decking and a large melted spot on the vinyl. The landlord testified that all the perforations in the deck allowed water to get in which rotted out the sub-floor. The landlord testified that a new plywood sub floor was required and submitted into evidence an invoice in the

amount of $472.50 for that work. The landlord also submitted into evidence an invoice in the amount of $735.00 for the replacement of the vinyl decking.

The tenant testified that the vinyl decking was well worn and not in good condition when she moved in and that the tenants hardly ever used that space. The tenant denied that her pets scratched at the deck and that the landlord should have kept it in better repair to prevent the water damage.

The condition inspection report does not mention the deck whatsoever. The move out report states that the deck has holes and scratches on it. The hand-written notes do not mention the deck.

Window Coverings

The landlord testified that four window coverings and one sliding glass door covering were damaged by the tenants and required replacing. The landlord entered into evidence one photograph of a tattered black out blind. The move in condition inspection report does not note any damage to any window or door coverings/blinds. The move out condition inspection report does not mention damage to any window coverings. The landlord's hand-written notes do not mention any damage to window coverings. The landlord did not know how old the window coverings were.

The tenant testified that she hardly ever used the window coverings and did not open them when she did the move in inspection report. The tenant testified that the window coverings were in the same condition as when she moved in. The tenant testified that she used the patio door window coverings everyday and that they were in good shape when she left the unit.

Painting and Drywall and Trim Repair/Replacement

The landlord testified that prior to the tenants moving in the walls and trim were in good condition but required replacing after the tenancy due to scrapes, dents and scuff marks.

The move in condition inspection report states that the walls and trim had numerous scrapes, paint scuffs and some screw holes in the drywall when the tenants moved in. The move out condition inspection report states that the walls and trim had numerous

scrapes, paint scuffs and the drywall had lots of screw holes. The hand-written notes at the end of the tenancy indicate lots of wall damage but do not specifically mention the trim.

The landlord submitted into evidence photographic evidence showing dirty, scraped and marked walls and trim with a large number of screw holes in the drywall. The landlord testified that the interior of the rental property was painted in October of 2012. The landlord testified that the upper floor had new trim installed in the kitchen and eating area in October 2012. The rest of the trim was original to house which was built in 1992. The landlord estimated that 1/3 of the trim was replaced in 2012.

The landlord testified that the walls required re-painting and all the trim in the house required replacing. The landlord submitted into evidence photographs of scraped and worn trim. The landlord also submitted into evidence an invoice for painting, and baseboard installation in the amount of $4,000.00. The landlord also submitted into evidence an invoice for the cost of the trim in the amount of $526.31.

The tenant testified that the trim was in the same condition when she moved out as when she moved in.

Analysis

Security Deposit

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended on November 4, 2017. The landlord received the tenants forwarding address via email on November 22, 2017. While sending an email does not conform

with the service requirements of section 88 of the *Act*, pursuant to section 71 of the *Act*, I find that the tenants sufficiently served their forwarding address on the landlord on November 22, 2017 because the landlord acknowledged receipt of the forwarding address on that date.

The landlord did not return the security deposit or make an application for dispute resolution to claim against it until January 9, 2018, more than 15 days after receiving the tenants' forwarding address in writing.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17*,* I find that the tenants are entitled to receive double their security deposit of $750.00, for a total of $1,500.00.

October and November Rent

Section 50(1)(a) states that if a tenant has received a Two Month Notice from their landlord, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

In this case, the tenant testified that she texted the landlord notice of her intention to vacate the property. The landlord denies receiving these texts. As the tenant did not serve the landlord in accordance with section 88 of the Act, and the landlord denies receipt of the tenant's notice to end tenancy early, I find that the tenant did not provide notice to end the tenancy earlier than the effective date on the Two Month Notice, pursuant to section 50(1)(a).

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

In this case, less than one month's written notice was provided to the landlord to end the tenancy. Based on the testimony of both parties I find that the tenants have breached section 45 of the *Act* by giving insufficient notice to end the tenancy. The tenants are therefore liable for November 2017's rent in the amount of $1,555.00.

Both parties submitted evidence that the tenants paid the landlord $955.00 for October 2017 rent. The landlord submitted evidence that this $955.00 was refunded to the tenants. Based on the evidence submitted by the parties regarding October 2017's rent, I find that the tenants paid the landlord $955.00 which the landlord refunded.

Flooring

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Where the landlord and the tenant disagree on the move in condition of the rental property and other evidence does not clarify the issue, I rely on the move in condition inspection report as both parties signed it.

The landlord testified that the carpets were in good condition when the tenants moved in and this is supported by the move in condition inspection report. The landlord testified that the carpets were in a very poor condition when the tenants moved out which is evidenced the photographs produced by the landlord at the end of the tenancy. The tenant testified that the carpets were in poor condition when they moved in.

The landlord testified that the linoleum was in good condition when the tenants moved in, with the noted exception of the tear near the refrigerator. The tenant testified that the linoleum was not in good condition when they moved in.

Based on the move in condition inspection report, I find that the carpet and linoleum were in good condition, with the exception of the tear in the linoleum near the refrigerator and the staining in the bathroom, when the tenants moved in.

Based on the testimony of the landlord and the photographic evidence the landlord submitted, I find that the carpet and linoleum were in a poor condition when the tenants moved out and required replacing.

The landlord testified that he replaced both the carpets and the linoleum with vinyl cork flooring. I find that this is an upgrade and that the landlord is not entitled to betterment of the rental unit at the expense of the tenant. I find that the receipt dated October 31, 2012, for the installation of the linoleum and carpet, is a better indicator of the cost of replacing the flooring with like products, than the receipt provided for the vinyl cork flooring.

Policy Guideline 40 states that the useful life of carpet is 10 years, I will use this estimate for the useful life of the linoleum as well. The landlord provided evidence that the carpets and linoleum were installed on October 31, 2012 for a total of $4,625.69. I find that at the time the tenants moved out of the rental unit, the flooring should have had 5 years of useful life left but that due to its condition it required replacing. I find that the tenant owes the landlord for the flooring according to the following calculations:

$4,625.69 / 10 (years of useful life) = $462.57 (cost per year of useful life)
$462.57 * 5 (years of useful life flooring should have had remaining) = $2,312.85

I find that a further 20% reduction is in order to account for the rips and staining noted in the move in condition inspection report as per the below calculation:

$2,312.85 * .20 = $462.57
$2,312.85 - $462.57 = **$1,850.28**

Deck

The move in condition inspection report was silent on the condition of the deck when the tenants moved in. The testimony of the parties is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has failed to meet his burden of proof of establishing the condition of the deck when the tenant moved in; however, I do accept his testimony that it was in a worse condition when the tenants moved out. Nonetheless, the landlord has not established the nature and extent of the changes in the condition of the deck and so cannot quantify his claim. Pursuant to Policy Guideline 16, I find that the landlord is only entitled to nominal damages in the amount of $300.00 for the deck.

Window Coverings

The landlord and the tenant provided conflicting testimony regarding the condition of the window coverings on move in and move out. Where a conflict exists as to the condition on move in, I rely on the move in condition inspection report signed by both parties.

The move in condition inspection report did not note any damage to the window coverings, as such, I find that they were in good condition when the tenant moved in. The landlord only provided photographs of one window covering in need of replacement, but not the 3 other window coverings and patio door covering for which he is claiming. I find that at least one window covering required replacing. The landlord did not now how old the window coverings were.

Since the landlord was not able to tell me how old the window coverings were, I am not able to calculate what useful life they may have had left. I find that without knowing how old the original window coverings were, I am not able to calculate useful life and so cannot calculate damages owed to the landlord. I find that the landlord has not met his burden of proof as to the quantification of his damages. Pursuant to Policy Guideline 16, I find that the landlord is only entitled to nominal damages in the amount of $200.00 for the window coverings.

Painting and Trim Replacement

The landlord and the tenant provided conflicting testimony regarding the condition of the walls and trim on move in and move out. Where a conflict exists as to the condition on move in, I rely on the move in condition inspection report signed by both parties.

The move in condition inspection report states that the walls and trim had numerous scrapes, paint scuffs and some screw holes in the drywall when the tenants moved in. The landlord entered into evidence photographs of the walls and trim showing dirty and marked walls and trim. The landlord testified that when the tenants moved out, the walls required re-painting and all the trim in the house required replacing.

Based on the move in condition inspection report I find that the walls and trim were in poor condition on move in. Based on the photographic evidence provided by the landlord, I find that on move out, the walls and trim were very dirty, marked and contained more holes than to be expected by regular wear and tear. The landlord testified that the rental property was last painted in October 2012 and the trim in the kitchen and eating area were also replaced at that time.

Policy Guideline 40 states that the useful life of interior paint is 4 years. I find that, at the time the tenants moved out, the paint was past its useful life. Therefore, I find that the landlord is not entitled to receive compensation for painting.

I find that the trim was in poor condition when the tenants moved in but was in worse condition when the tenants moved out. Pursuant to Policy Guideline 40 I find that the useful life of trim is 15 years. The landlord estimated 2/3 of the trim in the house was original to the house which was built in 1992, making it approximately 25 years old. As 25 years is beyond the useful life of trim, I find that the landlord is not entitled to reimbursement for this claim.

The landlord did not submit evidence as to what portion of the trim purchased after the tenants moved out was used to replace the trim installed in 2012, but only offered an estimate of 1/3. I find that the landlord has not met his burden of proof to quantify his loss though I do accept that he suffered a loss on the trim installed in 2012. Pursuant to Policy Guideline 16, I find that the landlord is only entitled to nominal damages in the amount of $100.00 for the trim.

As the landlord was successful in his application, I find that he is entitled to repayment of his filing fee from the tenants in the amount of $100.00.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' doubled security deposit in the amount of $1,500.00 in part satisfaction of his monetary claim against the tenants.

Conclusion

I issue a monetary Order to the landlord under the following terms:

Item	**Amount**
November 2017 Rent	$1,555.00
Flooring	$1,850.28
Deck	$300.00
Window Coverings	$200.00
Trim	$100.00
Filing Fee	$100.00

Less Doubled Security Deposit	- $1,500.00
TOTAL	**$2,605.28**

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: July 06, 2018

Residential Tenancy Branch