Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD FFL MNDCL-S MNDL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlord requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed or compensation for loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

Issue(s) to be Decided

Are either of the parties entitled to the monetary orders that they had applied for?

Are the tenants entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 15, 2017 and ended on October 15, 2017. Monthly rent was set at $2,385.00, payable on the 15th day of the month. The landlord collected a security deposit in the amount of $1192.50, which the landlord still holds. Both parties confirmed the provision of the tenant's forwarding address on October 16, 2017.

The landlord testified that both move-in and move-out inspections were done, which is indicated by the signatures on the reports provided in evidence. The tenant AH testified that she had signed the move-out inspection report, but the landlord was not clear in explaining what she was signing. The tenant testified that she thought she was signing for keys. AH also testified that she was not sure if the signature on the document was hers. The tenants testified that although the landlord had scheduled the inspection, the landlord simply walked around with another party, and the tenants were not actively involved.

BM, the landlord's witness, testified in this hearing that he was present for the move-out inspection. BM testified that the inspection took 20 to 30 minutes to complete, and that he had witnessed AH signing the inspection report and hand over the keys to the landlord. BM testified that both tenants were aware of what was happening. The landlord testified that the tenants had agreed for the landlord to retain their security deposit in satisfaction of the damage caused by the tenants as listed below. The tenants dispute this, and applied for the return of their security deposit.

The landlord provided the following list of damages, losses, and money owed for her monetary claim:

Item	**Amount**
Master Bath Countertop Repair	$729.12
Microwave Replacement	330.39
Painting & Repairs	186.61
Sliding Screen Door Repair (undisputed)	87.57
Move Out Fee (undisputed)	100.00
Parking Stall Cleaning Fee	200.00
Outstanding Utilities	386.43
Total Monetary Order Requested	**$2,020.12**

The tenants are not disputing the $100.00 move out fee and the $87.57 for screen door repair. The tenants dispute the remaining portion of the landlord's monetary claim.

The tenants dispute the outstanding utilities as they believe that electricity was included in the monthly rent, despite the fact that this was not stated in the tenancy agreement. The landlord testified that it was clear to the tenants that the electricity was not included, and they landlord provided a copy of the tenancy agreement and electricity bill in support of her claim.

The landlord testified that the tenants had damaged the microwave handle, which had to be replaced. The microwave was approximately 2.5 years old. The landlord testified that the tenants had attempted to repair the microwave, but was not successful. The tenants dispute that they were responsible for the damage.

The landlord also testified that the tenants had damaged the bathroom countertops, which were marble. The landlord testified that the $729.12 submitted was an estimate of the cost of polishing the countertop to remove the stains on the countertop. The landlord testified that the countertop was once coated, but was now dull and stained, most likely from chemical cleaners. The approximate age of the countertops is 4 years old

The landlord also testified that the tenants had stained the parking stall as their vehicle had a leak. The landlord called a witness, who testified that the tenants' radiator had overflowed, spilling antifreeze onto the parking stall. The tenants disputed this claim as the stall was not clean before they had occupied the stall, and that the liquid overflowing from the radiator was water. The landlord acknowledged in the hearing that the stall did have pre-existing stains from the previous occupant of the stall.

The landlord also submitted a claim for painting and repairs of the damage left by the tenants, which the landlord supported with photos. The tenants dispute that they had caused any of the damage beyond regular wear and tear of the 13 year old rental unit. The landlord testified that the unit was freshly re-painted before the tenants had moved in.

The tenants submitted a monetary claim as follows:

Item	**Amount**
Loss of Quiet Enjoyment (1/2 of 6 month's rent) $2,385.00 * 6/2	$7,155.00
$900 for cleaning	900.00
Total Monetary Order Requested	**$8,055.00**

The tenants testified that they were requesting the return of half a month's rent for 6 months due to their loss of quiet enjoyment due to the repairs to the sprinkler system. The tenants testified that the scope of work was not communicated to the tenants and that the repairs were extensive and involved cutting holes into the ceiling. The tenants testified that the work involved excessive dust, which covered all their belongings despite their efforts to protect them. The tenants submitted a monetary claim of $900.00 for cleaning as a result.

The landlord called a witness who testified that they were present during the repair work, and holes were cut in 9 suites and the hallway. The holes in the tenant's suite totalled 15, and plastic drop clothes were used to minimize the debris and dust on the tenants' belongings. The witness testified that the repairs were necessary for maintenance of the sprinkler system.

The tenants also requested the return of their security deposit less the move-out fee and screen repair.

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 bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

As the tenants admitted to the move-out fee and damage to the screen door, I find that the landlord is entitled to these portions of their monetary claim.

The landlord acknowledged that the parking stall was not clean before the tenants had occupied the stall. I find that the landlord has failed to provide sufficient supporting evidence to demonstrate that the tenants were responsible for the staining in the stall. On this basis, this portion of the landlord's application is dismissed without leave to reapply.

The landlord also made a monetary claim for the damage to the marble countertop, which they attributed to the removal of the protective coating or sealant on the countertop due to harsh chemical cleaners. I find that this hypothesis was not sufficiently supported by the landlord with evidence such as an analysis by an expert to determine the cause of the staining. The move-in inspection report indicates previous staining. Without sufficient evidence of how or why the marble was no longer properly sealed, I find that the landlord has failed to establish that the new staining was due to the tenants' actions rather than regular wear and tear. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

The landlord also made a monetary claim for the replacement of the microwave, which was approximately 2.5 years old. I find that the landlord is seeking compensation for the replacement of the microwave. Although I find that it was undisputed that the microwave was damaged, I am not satisfied that the landlord provided sufficient evidence to support that the entire microwave required replacement, and that the tenants should be responsible for the entire cost of replacing the microwave.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

> *An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

I accept the evidence of the landlord that the microwave was in excellent condition at the beginning of this 6 month tenancy. Despite the fact that the microwave was damaged, I am not satisfied that the landlord provided sufficient evidence to support that the tenants should be responsible for the replacement of the entire microwave. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlord nominal damages of $50.00 for the damaged door handle.

The landlord testified that the rental unit was freshly painted at the beginning of this tenancy. I am satisfied that the landlord had provided sufficient evidence to support that their monetary claim of $186.61 for painting and repairs.

I have reviewed the written tenancy agreement, which states that the tenants are to pay for electricity. I find it clear that the tenants are responsible for the cost of electricity, and on this basis I find the landlord is entitled to the $386.43 for outstanding utilities.

I have considered the testimony and the evidence for the tenant's monetary claim for loss of quiet enjoyment and cleaning due to the repairs undertaken during this tenancy to the sprinkler system. The tenants testified that the landlord failed to fulfill their obligations in protecting their right to quiet enjoyment under section 28 of the *Act* as stated below:

Protection of tenant's right to quiet enjoyment

> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following…
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;

> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony of both parties, and while the tenants had provided testimony to support that they had experienced stress and extreme discomfort as part of the repairs during this tenancy, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill their obligations as required by section 28 of the *Act* as stated above.

I accept the facts as testified to by the landlord and the landlord's witnesses: that the repairs were necessary for the maintenance of the building, and that the landlord had to take the necessary steps to maintain the property in a state of repair as required by section 32 of the *Act*. I find that the inconvenience and stress that the tenants faced is the result of the landlord's necessary steps to fulfill their obligations, rather than their failure to fulfill their obligations, as required by section 32 of the *Act*.

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> >
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

I find that the landlord and strata council attempted to minimize the tenants' exposure to the disruption as much as possible in compliance with the *Act*. I also find that the landlord had fulfilled their obligations as required by the *Act*. Although I sympathize with the tenants that they experienced stress and discomfort during the repairs, I find there is insufficient evidence for me to make a finding that the landlord failed to meet her obligations regarding this matter, and on this basis I am dismissing the tenant's entire application for loss of quiet enjoyment and for cleaning.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order

allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

As the landlord filed for dispute resolution on October 27, 2017, within 15 days of the date the tenants moved out, and provision of the forwarding address, I find that the tenants are not entitled to a monetary award equivalent to the original value of the security deposit. I find that the landlord complied with section 38 of the *Act,* as well as sections 23 and 35 of the *Act* in performing both move-in and move-out inspections, and providing the reports to the tenants. As for the return of the original deposit, I find that the tenants did not give any written authorization to the landlord at the end of the tenancy to retain any portion of the security deposit. Accordingly I find that the tenants are entitled to the return of their security deposit in full, less any monetary amount owing to the landlord in satisfaction of the landlord's monetary claim in accordance with the offsetting provisions of section 72 of the *Act*.

As both parties were equally successful in their applications and obtained the following offsetting monetary awards, no order will be made in regards to the recovery of their filing fees.

Conclusion

I issue a $381.89 Monetary Order in favour of the tenants under the following terms, which allows for the return of the tenants' security deposit less the monetary order granted to the landlord for the losses associated with the tenants' failure to comply with the *Act:*

Item	Amount
Security Deposit Held by landlord	$1,192.50
Damage to Microwave	-50.00
Painting & Repairs	-186.61
Sliding Screen Door Repair	-87.57

Move Out Fee	-100.00
Outstanding Utilities	-386.43
Total Monetary Order to Tenants	**$381.89**

The landlord must be served with this Order as soon as possible. Should the landlord 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.

The remaining portions of both applications are dismissed without 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: July 6, 2018

Residential Tenancy Branch