



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This teleconference hearing was scheduled in response to cross applications under the *Residential Tenancy Act* (the “*Act*”). The Landlord applied for a Monetary Order for damages, a Monetary Order for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for this application. The Tenants applied for the return of the security deposit and the recovery of the filing fee paid for this application.

The Landlord and both Tenants were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence by registered mail.

The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Landlord, but stated that they received a copy of the Landlord’s evidence by email. The Tenants also stated that all of the Landlord’s evidence was not included in the email.

Although email is not a method of service under Section 88 of the *Act*, the Tenants confirmed receipt of the evidence by email and that they had a chance to review the evidence prior to the hearing. Therefore, I determine that the Landlord’s evidence has been sufficiently served pursuant to Section 71(2)(b) of the *Act*.

However, the Tenants noted that they may not have received all of the Landlord’s evidence through email. The email was submitted into evidence and only the evidence that was included in that email will be considered for this decision. Any evidence that was not provided to the Tenants to review prior to the hearing will not be considered.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damages?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to retain the security deposit towards compensation owed?

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

Is either party entitled to the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the terms of the tenancy. The tenancy began on November 1, 2017 and rent in the amount of \$1,800.00 was due on the first day of the month. A security deposit in the amount of \$1,000.00 was paid at the outset of the tenancy and the Landlord remains in possession of the full security deposit amount.

Despite not being specified on the tenancy agreement, the Tenants testified that they understood that \$900.00 was for the security deposit and \$100.00 was paid as a pet damage deposit.

The Landlord testified that he received an email on April 4, 2018 that the Tenants would be moving out of the rental unit on May 15, 2018. The Tenants suggested that the Landlord could keep the security deposit towards the rent owing for half of May 2018. However, the Landlord did not want to find new tenants for half of a month, so offered the Tenants to leave at the end of May or the end of April 2018. The Tenants moved out on April 30, 2018.

The Landlord testified that the tenancy was for a fixed term of one year, set to end on October 31, 2018.

The Tenants testified that they did not receive a copy of the tenancy agreement during the tenancy and could not remember whether it was a fixed term tenancy or a month to month agreement. The tenancy agreement was submitted into evidence and was signed by all parties on October 29, 2017. The tenancy agreement states a fixed term of one year, set to end on October 31, 2018.

The Condition Inspection Report was submitted into evidence and shows the move-in inspection completed on November 1, 2017 and the move-out report completed on April 30, 2018.

The Tenants testified that they participated in the move-out inspection on April 30, 2018 and signed the report agreeing to what was written on it. However, they stated that the Landlord altered the report after it was signed and added in additional items that needed cleaning or repairs and also added the following statement, "pet odour, damaged walls & baseboards, cleaning, lawn care, broken tile, hole in shed floor."

The Tenants claimed that they asked for a copy of the move-out Condition Inspection Report multiple times and were provided with a copy on May 15, 2018, at which point they noticed it was altered.

The Landlord provided testimony that the move-out Condition Inspection Report was not altered and was signed by the Tenants as it was submitted. The Landlord claimed that he provided a photocopy of the move-out report at the time the inspection was completed and provided a second copy to the Tenants on May 15, 2018 as per their request.

The Tenants' forwarding address was provided to the Landlord on April 30, 2018 on the move-out Condition Inspection Report, as confirmed by both parties.

The Landlord is claiming \$200.00 for mowing and tidying up the lawn. An invoice from a lawn care company was submitted into evidence. The Landlord testified that it was the Tenants' responsibility to take care of the lawn during the tenancy and a lawnmower was provided for this reason. The Landlord testified that the lawn was very overgrown at the time the tenancy ended and looked like it had never been mowed.

The Tenants testified that they mowed the lawn during the tenancy and the lawnmower provided to them by the Landlord broke. The Tenants stated that the Landlord should have repaired the lawnmower for them, but since it was not repaired, they used their own lawnmower to mow the lawn the week prior to moving out.

The Tenants do not believe that within one week the lawn would have needed \$200.00 worth of mowing and cleanup. The Tenants submitted photos of the lawn taken on April 30, 2018.

The Landlord is also claiming \$125.00 in cleaning fees. He stated that the Tenants had cleaned the rental unit at the end of the tenancy, but upon closer inspection the Landlord noticed that the baseboards and other areas of the rental unit needed a more detailed cleaning to be able to re-rent the unit.

The Landlord also stated that the basement of the rental unit smelled of cat urine which required professional cleaning to help eliminate the smell. An invoice for cleaning was submitted into evidence for five hours of cleaning at \$25.00 per hour, for a total of \$125.00. The Landlord

testified that not all of the cleaning was stated on the Condition Inspection Report upon move-out as he did not notice all of the cleaning that was needed until later.

The Tenants testified that they cleaned the rental unit prior to moving out and note that the Condition Inspection Report does not mention cleaning being needed throughout the rental unit. The Tenants expressed that they do not believe that five hours of cleaning would have been needed.

The Landlord is claiming \$75.00 for supplies needed to help eliminate the cat urine smell found in the basement of the rental unit. He stated that he purchased cleaning supplies and did the labour himself, but did not submit a receipt into evidence. \$75.00 is an estimate of the cost of the cleaning supplies purchased from the pet store.

The Tenants testified that the Landlord should have notified them of the smell if it was noticed after they moved out and they would have attempted to clean it on their own.

The Landlord is also claiming \$400.00 for patching and painting the walls in the bathroom, bedrooms and living room. He stated that there was damage all over the walls in the form of nail holes, screw holes and dings.

The Tenants attempted to patch and paint the walls, but the Landlord stated that the work was not well done and had to be repaired. He did the work himself and did not submit an invoice for materials. He testified that approximately \$50.00 was spent on supplies and \$350.00 is the cost of his time for the labour.

The Tenants agreed that they patched and painted some areas in the home, and that they were unable to match the colour of paint in some areas. They submitted photos taken throughout the home on April 30, 2018.

The Landlord is claiming \$200.00 to repair a hole in the shed in the backyard. He testified that although the shed is thirty to forty years old, the floor was new when the Tenants moved in. He stated that the Tenants told him about the hole in the shed floor at the move-out inspection.

The Tenants agreed that they informed the Landlord of the hole in the shed floor at the time of the move-out inspection. They stated that the floor was rotting due to water damage, and the hole was caused by one of the Tenants walking on the floor and their shoe falling through. They stated that the floor was not new and submitted photos of the shed.

The Landlord's final monetary claim is for two months of unpaid rent in the amount of \$1,800.00 per month. As this was a fixed-term tenancy, the Landlord stated that the Tenants broke the fixed-term agreement by ending their tenancy on April 30, 2018.

After receiving notice to end the tenancy from the Tenants on April 4, 2018, the Landlord

advertised the rental unit for rent in mid-April. He stated that he showed the house to approximately five different potential tenants over the period of approximately one week. He testified that all of the potential new tenants advised him that the unit was not fit to be rented due to the condition of the home and property. The rental unit was advertised for rent at \$1,925.00 per month.

When the Landlord was not able to re-rent the home, he testified that he put the home on the market to sell. The home sold in May and the sale went through in early June 2018. The Tenants testified that they were unsure of whether it was a fixed term tenancy or not due to not receiving a copy of the tenancy agreement. They also noted that their notice to end the tenancy on April 4, 2018 was to end the tenancy on May 15, 2018, but that they came to an agreement with the Landlord to move out on April 30, 2018.

The Tenants also stated that the Landlord only showed the home to two potential new tenants as it was during the time they were still residing in the rental unit. As such, they do not believe that he did enough to try to find new tenants for May 2018.

The Tenants have applied for the return of double their security deposit and pet damage deposit, for a total amount of \$2,000.00. They stated that they have not yet received any amount from their security deposit and also did not provide permission for the Landlord to withhold any amount.

Analysis

Based on the evidence and testimony of both parties, and on a balance of probabilities, I find as follows:

In accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the burden of proof is on the party who is making the claim. As such, I find that the Landlord has the onus to prove, on a balance of probabilities, that he is entitled to the monetary claims he has applied for.

The Landlord has applied for a total of \$1,000.00 for cleaning and repair costs and \$3,600.00 for two months of unpaid rent. The Tenants have applied for the return of double their security and pet damage deposits. The claims will be outlined below.

Lawn care: Although both parties were in agreement that the lawn care was the responsibility of the Tenants during the tenancy, they were in disagreement as to whether the lawn had been mowed at the end of the tenancy. The invoice for lawn care submitted by the Landlord is dated May 18, 2018, although he testified that the work was done prior to the date of the invoice.

I dismiss the Landlord's claim for \$200.00 for lawn care due to insufficient evidence to show the condition of the lawn at the end of the tenancy. I also find there is insufficient evidence to show

when the lawn care company completed the work. If the work was completed on May 18, 2018, the date of the invoice, I find that the care of the lawn beyond the end of the tenancy is not the responsibility of the Tenants.

Cleaning: I look to the Condition Inspection Report signed by both parties on April 30, 2018 to determine the condition of the rental unit at the time the tenancy ended. Although the Tenants claimed that they did not receive the Condition Inspection Report as required, I note Section 18 of the *Residential Tenancy Regulation* which states the following:

Condition inspection report

- 18** (1) The landlord must give the tenant a copy of the signed condition inspection report
- (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
 - (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
 - (i) the date the condition inspection is completed, and
 - (ii) the date the landlord receives the tenant's forwarding address in writing.

Section 18(1)(b), in reference to a move-out Condition Inspection Report, states that it must be given to the tenants within 15 days. As the Tenants confirmed receipt of the report on May 15, 2018, I find that the Landlord was in compliance with the *Residential Tenancy Regulation*.

The move-out Condition Inspection Report does not note that cleaning was needed in any area of the home, other than the statement on the report that was disputed by the Tenants who claimed it was added after the inspection. However, the Landlord testified that the cleaning that was needed in the home was noticed after the inspection was completed.

The Landlord submitted a photo of cat litter and cat feces that were found in the home after completing the inspection. A photo of a cat urine stain was also submitted, although no other evidence regarding cleaning was submitted.

I refer to Section 21 of the *Residential Tenancy Regulation* which states that a Condition Inspection Report is evidence of the condition of the rental unit, unless there is evidence to prove otherwise.

I accept the two photos submitted by the Landlord showing stains and dirt from the Tenants' cat that was found after the inspection was completed. However, I find insufficient evidence to demonstrate that additional cleaning was required.

The Landlord submitted a receipt for five hours of cleaning at \$25.00 per hour. Due to the evidence submitted of cat litter, cat urine stains and cat feces found in the home, I estimate the cleaning required at one hour. As such, I find that the Landlord is entitled to one hour of cleaning at \$25.00 per hour.

Cat urine cleaning supplies: The Landlord has claimed \$75.00 for the cost of supplies and labour for cleaning cat urine stains. However, I find there to be insufficient evidence of the need to clean beyond what the Tenants and professional cleaner completed, and no receipt submitted for the cost of supplies. Therefore, I dismiss the Landlord's claim for the cost of cleaning supplies.

Wall painting and patching: The Landlord stated that he was required to repair and paint the walls due to the insufficient job that was completed by the Tenants. During the hearing, the Tenants stated that they were unable to match the paint when they completed the repairs.

I refer to Section 32 of the *Act*, regarding the responsibilities of a landlord and tenant to maintain and repair a rental unit. Section 32(3) states that a tenant must repair damage to the rental unit that is caused during the tenancy.

I find that the Landlord did not submit sufficient evidence regarding the condition of the walls or the repairs required. However, I accept the testimony of both parties that some painting was needed as the job done by the Tenants was not adequate due to the paint not matching in some areas.

Although a receipt for supplies and labour was not submitted by the Landlord, I accept his testimony that approximately \$50.00 was spent on supplies and find this a reasonable amount for paint. I also find that some labour to complete the painting would be required and award the Landlord \$175.00 for painting labour charges, based on half of what the Landlord was claiming for patching and painting labour.

Therefore, I determine that the Tenants are responsible to pay the Landlord a total of \$225.00 for paint and labour costs to re-paint the areas of the home that they had painted an unmatched colour.

Repair of hole in shed floor: The Landlord is claiming \$200.00 to fix a hole in the shed floor. Although the Landlord claimed that the floor was new at the start of the tenancy, the Tenants were not in agreement.

Based on the conflicting testimony of the parties, and with insufficient evidence from the Landlord who bears the burden of proof, I am not able to find that the Tenants were responsible for the hole in the shed floor. Therefore, I decline to award compensation for the repair of the shed and dismiss the Landlord's claim of \$200.00.

Unpaid rent: Although the Tenants claimed they were unaware of whether the tenancy was fixed term or month to month, I accept the tenancy agreement that was submitted into evidence showing a fixed term of one year.

The Tenants and the Landlord all signed the tenancy agreement and I therefore find it likely that the terms of the agreement would have been outlined prior to the parties signing it.

The Tenants provided notice on April 4, 2018 that they would be moving out of the rental unit on May 15, 2018, although they ended up moving out on April 30, 2018.

I refer to Section 45(2)(b) of the *Act* which states that a fixed term tenancy cannot be ended prior to the date that the fixed term ends. Section 45(3) allows a fixed term tenancy to be ended early if a landlord has breached a material term of the tenancy agreement, if written notice is provided to the landlord and the issue not resolved within a reasonable time period.

However, I do not find any evidence that the Tenants were claiming that a material term had been breached and that written notice to resolve the breach had been provided. As such, when the Tenants ended their tenancy on April 4, 2018, I find they were not in compliance with the *Act*, as the fixed term tenancy was not to end until October 31, 2018.

Section 7(1) of the *Act* states that when one party is not in compliance with the *Act*, they must compensate the other party for any losses that occur. I also note that Section 7(2) of the *Act* states that the party claiming loss must do what they can to minimize their losses.

The Landlord advertised the unit for rent for May 2018, and after he was unable to rent the unit, he decided to sell the home. As the home was advertised for sale in May 2018 and the sale was completed in early June 2018, I find that the Landlord did not experience a loss of rental income in June 2018 and will therefore not be compensated for the month of June 2018.

I refer to *Residential Tenancy Policy Guideline 16: Compensation for Damage and Loss* which outlines the following four-part test to determine if compensation is owed:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss

I find that the Tenants did not comply with the tenancy agreement when they ended the fixed term tenancy early, that the Landlord experienced a loss due to this non-compliance and that

the loss has a value of \$1,800.00, the amount of the monthly rent due, subject to the Landlord's obligation to mitigate his losses.

However, I find that the Landlord did not comply with the fourth term of the four-part test, due to advertising the rental unit for rent at \$1,925.00 per month and only advertising it for a period of approximately one week before deciding to sell.

I find that the Landlord failed to act reasonably to minimize his losses, as a result, I find that the Tenants are not responsible for compensating the Landlord for the loss of rental income for May 2018.

Return of security deposit and pet damage deposit: To determine whether the Landlord is able to retain the deposits towards compensation owing, or whether the Tenants are entitled to doubling of their deposits, I refer to Section 38 of the *Act*.

Section 38(1) states that a landlord has 15 days from the later of the date the tenancy ends or the forwarding address is provided to return the deposits or file against them.

As this tenancy ended on April 30, 2018, the same day the Tenants' forwarding address was provided in writing, and the Landlord filed an Application for Dispute Resolution on May 15, 2018, I find that the Landlord applied within the 15 days allowable under the *Act* and is therefore able to claim against the deposits.

As the Landlord was in compliance with Section 38(1), I find that the Tenants are not entitled to the doubling of the deposits pursuant to Section 38(6)(b) of the *Act*.

Filing fees: As both parties were partially successful in their applications, I find each party is entitled to partial recovery of the filing fee paid for the Application for Dispute Resolution. However, as both parties paid a filing fee, I find that the amounts offset each other and therefore no money will be exchanged to provided compensation for this.

A Monetary Order will be issued to the Tenants for the return of the remainder of their security deposit after deductions for compensation to the Landlord.

Monetary Order Calculations

Security deposit	\$900.00
Pet damage deposit	\$100.00
<i>Less one hour of cleaning</i>	<i>(\$25.00)</i>
<i>Less paint supplies and labour</i>	<i>(\$225.00)</i>
Total owing to Tenants	\$750.00

Conclusion

Pursuant to Section 67 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$750.00** for the return of the remainder of their security deposit and pet damage deposit after deductions for compensation to the Landlord.

The Tenants are provided with this Order in the above terms and 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.

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 19, 2018

Residential Tenancy Branch