



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On June 20, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for cleaning and compensation for repair of damages to another rental unit pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord and Tenants both attended the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that she served each of the Tenants a Notice of Hearing package and evidence by registered mail and the Tenants confirmed that they received these packages. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing packages and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation for cleaning and repairs of damage?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on January 1, 2018 as per the signed tenancy agreement and that the tenancy ended when the Tenants vacated the rental unit on June 1, 2018. Rent was established at \$1,700.00 per month, due on the first day of each month. A security deposit of \$850.00 was also paid.

All parties agreed that a move-in inspection report was not conducted with the Tenants. The Landlord submitted into evidence a "Cleaning Checklist" outlining the condition of the premises at the end of tenancy with the deficiencies noted. The Tenants provided contradictory testimony as they stated that they participated in a "walkthrough" with the Landlord on June 1, 2018 but also stated that this checklist was not done with them.

The Landlord outlined her requests for monetary compensation as follows: **\$1,523.00** for compensation due to the remediation of water damage, **\$3707.14** for the removal and replacement of carpet and laminate flooring, **\$665.00** for drywall replacement and repairs, **\$144.65** for the repair of a ceiling fan, and **\$54.97** for the cost of new paint. Invoices were submitted into evidence corroborating these costs. The Landlord is also seeking **\$210.00** for six hours of cleaning the rental unit at a cost of \$35.00 per hour.

All parties agreed that the Tenants' forwarding address in writing was served to the Landlord by registered mail on June 11, 2018.

The Landlord advised that the tenant in the basement suite contacted her on May 16, 2018 because water was flooding into her rental unit. The Landlord submitted that this flooding was due to the Tenants negligently leaving the sprinkler on beside the house for many days. The Landlord took immediate steps to address the flooding issue and then brought this up with the Tenants. They advised her to keep the security deposit and stated that they would pay the insurance deductible as well; however, this arrangement never materialized. She stated that she has owned the house for over ten years and she has never had any water issues in the past. The Landlord is seeking compensation in the amount of **\$1,523.00** for compensation due to the remediation of water damage.

The Tenants stated that before the flood, they were experiencing a major hot spell, that they were watering the yard frequently because the yard was “bone dry”, and that they would move the sprinkler around the yard. They acknowledged that they accidentally forgot to turn off the sprinkler that was placed beside the house. They stated that the basement tenant notified them via text of the flooding; however, the notifications on their phone were turned off during the night so they were not aware of the flooding. It is the Tenants’ belief that the downstairs tenant bears some responsibility for not turning off the sprinkler. The Tenants stated that the manager in charge of the restoration advised them that the flooding entered the basement due to groundwater from all four sides of the basement suite and the Tenants suggested that if this flooding was due to the sprinkler, it should have only originated from the side where the sprinkler was placed. Thus, they speculated that the flooding could have originated from a “large snow pack” from the previous winter; however, they confirmed that they had not had any snow since March 2018.

The Landlord advised that due to the flooding of the basement suite, the carpet and laminate flooring needed to be replaced. She stated that the carpet was brand new and she tried to salvage it; however, the damage was too extensive, and it required replacing. With respect to the laminate flooring, she stated this was five years old and also needed to be replaced due to the water damage. The Landlord is seeking compensation in the amount of **\$3707.14** for the removal and replacement of carpet and laminate flooring in the basement suite.

The Tenants suggested that they should not be responsible for this cost as the invoice for the repairs and damage pertain to the basement suite and this was not their responsibility as they rented the upstairs rental unit.

The Landlord advised that due to the flooding of the basement suite, repairs to the drywall were necessary as well. She is seeking compensation in the amount of **\$665.00** for the applicable drywall replacement and repairs.

The Tenants did not make any submissions with respect to this issue.

The Landlord advised that due to the flooding of the basement suite, she repainted the repaired drywall herself to save money and she is only seeking compensation in the amount of **\$54.97** for the cost of new paint.

The Tenants did not make any submissions with respect to this issue.

The Landlord advised that she is seeking compensation for a broken ceiling fan in the rental unit. She stated that the pull cord to operate the fan was missing and that the motor on the fan was seized up. She advised that the Tenants never informed her that there was an issue with the ceiling fan and she referenced text messages submitted into evidence indicating that the Tenants acknowledged they were responsible for this issue and that they would pay for it. The Landlord is seeking compensation in the amount of **\$144.65** for the repair of the ceiling fan.

The Tenants advised that they had problems with the ceiling fan in the past, but they addressed these problems. However, the Tenants tried to repair the most current problem and disassembled the fan, but the cord disappeared. The Tenants then provided conflicting testimony advising that the cord disappeared before they disassembled the fan. They stated that they informed the Landlord in May 2018 that this fan needed to be replaced; however, they also stated that they were unsure of exactly when they notified the Landlord of this issue.

The Landlord referred to the Cleaning Checklist and explained the condition of the premises that was documented at the end of the tenancy. She stated that she did the necessary cleaning herself to save money and that she is seeking compensation in the amount of **\$210.00** for six hours of cleaning at a cost of \$35.00 per hour.

The Tenants stated that they cleaned and wiped down the rental unit, that they ran the light fixtures through the dishwasher, and they refuted some of the Landlord's claims on the checklist, but they also acknowledged that they were responsible for others. They stated that they "cleaned to the best of their abilities".

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full 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 pay double the deposit to the Tenants, pursuant to section 38(6) of the *Act*.

However, the undisputed evidence is that the forwarding address in writing was provided on June 11, 2018 by registered mail and that the Landlord made the Application on June 20, 2018. As such, I am satisfied that the Landlord complied with the requirements of the *Act* with respect to the handling of the security deposit at the end of the tenancy.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for the cost to remediate the flooding issue, I find it important to note that the Tenants acknowledged that the yard was extremely dry due to a prolonged hot spell, that they had been watering accordingly, and that they forgot that they left the sprinkler running beside the house. Despite their suggestion that the flooding from all sides of the basement suite demonstrates that the sprinkler was not likely the cause of the flooding, I do not find their testimony of a "large snow pack" from the previous winter to be a logical or plausible suggestion as a possible cause of the flooding, especially given that they confirmed that there had not been any snow since March 2018. Without any credible evidence for what may have been an alternative source of the water, I am satisfied on a balance of probabilities that the Tenants were responsible for the flooding of the basement suite.

Consequently, I find that the Landlord has established that she is entitled to a monetary award of \$1,523.00 for compensation due to the remediation of the water damage, \$665.00 for the applicable drywall replacement and repairs, and \$54.97 for the cost of new paint, totaling **\$2,242.97**.

With respect to the claims for compensation for the removal and replacement of carpet and laminate flooring in the basement suite, the undisputed evidence is that the Tenants were responsible for the flooding which necessitated these repairs. Moreover, the undisputed evidence was that the carpet was brand new and could not be salvaged;

however, she stated that this was only in the living room. Furthermore, she stated that she was “not sure of the carpet cost” when reviewing the breakdown on the invoice. As such, based on the evidence before me, I am awarding a monetary award in the amount of **\$1,200.00** for the cost associated with the disposal and replacement of the carpet.

Regarding the laminate flooring, she stated that it was already five years old. According to Policy Guideline #40, the approximate useful life of hardwood floors is twenty years; however, I find it reasonable to conclude that the approximate useful life of laminate flooring would not be this lengthy. Based on the age of the laminate flooring, I find it more likely than not that the useful life of the flooring has been partially depreciated. As such, I find that the Tenants should bear a partial cost of replacement of the flooring. Consequently, I am satisfied that the Landlord has established a nominal award in the amount of **\$900.00** as compensation for the cost to repair and replace the laminate flooring due to the Tenants’ negligence.

With respect to the Landlord’s claim for repair of the ceiling fan, the consistent and undisputed evidence is that the Tenants disassembled the fan and that they acknowledged being responsible by accepting to pay for the cost to replace the fan. As such, I am satisfied that the Landlord has established an award in the amount of **\$144.65** as compensation for the cost to repair the ceiling fan.

With respect to the Landlord’s claim for cleaning, I find it important to note that a move-in inspection report was not conducted, and it is unclear whether this Cleaning Checklist was conducted with the Tenants’ participation. However, based on the testimony during the hearing, the Tenants acknowledged that they were responsible for some issues. Furthermore, I do not find their statement that they “cleaned to the best of their abilities” to be wholly persuasive or compelling. Consequently, I am satisfied that there were some deficiencies in the condition of the rental unit at the end of the tenancy that the Tenants were responsible for. As such, I am granting a nominal award to the Landlord in the amount of **\$105.00** to rectify these issues.

As the Landlord was successful in her claims, I find that the Landlord is entitled to the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debts outstanding.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Emergency water remediation	\$1,523.00
Drywall replacement and damage repair	\$665.00
Paint	\$54.97
Carpet replacement and repair	\$1,200.00
Laminate flooring replacement and repair	\$900.00
Ceiling fan repair	\$144.65
Cleaning	\$105.00
Recovery of filing fee	\$100.00
Security deposit	-\$850.00
TOTAL MONETARY AWARD	\$3,842.62

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$3,842.62** 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: October 22, 2018

Residential Tenancy Branch